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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

FEDERAL RESERVE SYSTEM

12 CFR Part 252

[Regulation YY; Docket Nos. R-1534]

RIN 7100-AE 38

Single-Counterparty Credit Limits for Bank Holding Companies and Foreign Banking Organizations; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule, correcting amendments.

SUMMARY: On August 6, 2018, the Board of Governors of the Federal Reserve System (Board) published a final rule in the **Federal Register** (83 FR 38460) regarding Single-Counterparty Credit Limits for Bank Holding Companies and Foreign Banking Organizations. That document included certain incorrect paragraph designations. This document corrects those typographical errors in subparts H and Q of Regulation YY.

DATES: Effective on December 13, 2018.

FOR FURTHER INFORMATION CONTACT:

Benjamin McDonough, Assistant General Counsel, (202) 452-2036, Pam Nardolilli, Special Counsel, (202) 452-3289, Chris Callanan, Counsel, (202) 452-3594, or Lucy Chang, Counsel, (202) 475-6331, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869.

SUPPLEMENTARY INFORMATION: The Board is correcting two errors in the final rule that was published in the **Federal Register** on August 6, 2018 (83 FR 38460) which caused incorrect paragraph designations in sections 252.76 and 252.174 of the final rule.

List of Subjects in 12 CFR Part 252

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies,

Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is amended as follows:

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 1. The authority citation for part 252 continues to read as follows:

Authority: 12 U.S.C. 321-338a, 481-486, 1467a(g), 1818, 1828, 1831n, 1831o, 1831p-l, 1831w, 1835, 1844(b), 1844(c), 3904, 3906-3909, 4808, 5361, 5365, 5366, 5367, 5368, 5371.

§ 252.76 [Amended]

■ 2. In § 252.76, redesignate paragraphs (d)(i), (d)(ii), and (d)(ii)(A) through (C) as paragraphs (d)(1), (d)(2), and (d)(2)(i) through (iii).

§ 252.174 [Amended]

■ 3. In § 252.174 redesignate paragraphs (i)(3)(1) through (4) as paragraphs (i)(3)(i) through (iv).

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 10, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018-27044 Filed 12-12-18; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2018-0153]

Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation; modification.

SUMMARY: The Coast Guard has modified a temporary deviation from the operating schedule that governs the Tower Drawbridge over the Sacramento River, mile 59.0, at Sacramento, CA. The modified deviation extends the period the bridge may remain in the closed-to-navigation position to allow the bridge owner to complete mechanical and

electrical rehabilitation work on the bridge.

DATES: This modified deviation is effective without actual notice from December 13, 2018 through 6 a.m. on January 1, 2019. For the purposes of enforcement actual notice will be used from December 10, 2018 until December 13, 2018.

ADDRESSES: The docket for this deviation, [USCG-2018-0153], 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 Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510-437-3516; email Carl.T.Hausner@uscg.mil.

SUPPLEMENTARY INFORMATION: On October 19, 2018, the Coast Guard published a temporary deviation entitled "Drawbridge Operation Regulation; Sacramento River, Sacramento, California" in the **Federal Register** (83 FR 52976). That temporary deviation, from 6 a.m. on October 8, 2018 to 6 a.m. on December 1, 2018, allowed the drawspan to remain in the closed-to-navigation position. The bridge owner, the California Department of Transportation, has requested a modification to the currently published deviation to extend from 6 a.m. on December 1, 2018 to 6 a.m. on January 1, 2019 in order to complete the mechanical and electrical rehabilitation work on the bridge.

The Tower Drawbridge, mile 59.0, across the Sacramento River, has a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw operates as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 6 a.m. on December 1, 2018 to 6 a.m. on January 1, 2019 to complete electrical and mechanical rehabilitation on the bridge. The extension of time is necessary due to supply chain disruptions and atmospheric conditions. This temporary deviation modification has been coordinated with the waterway users. No objections to the proposed temporary deviation modification were raised.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies if at least 72-hour notice is given to the bridge operator. There is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterway 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(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: December 10, 2018.

Carl T. Hausner,
District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2018-26997 Filed 12-12-18; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2018-1053]

Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, 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 Ballard Bridge, mile 1.1, the Fremont Bridge, mile 2.6, and the University Bridge, mile 4.3, all crossing the Lake Washington Ship Canal at Seattle, WA. The deviation is necessary to accommodate re-routed roadway traffic while the Alaskan Way Viaduct is closed. This deviation allows the subject bridges to remain in the closed-to-navigation position to allow congested roadway traffic to move easier.

DATES: This deviation is effective from 7 a.m. on January 11, 2019, to 7 p.m. on February 9, 2019.

ADDRESSES: The docket for this deviation, USCG-2018-1053 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: Seattle Department of Transportation (SDOT), the owner of the impacted drawbridges, requested a temporary deviation from the operating schedule for the Ballard Bridge, mile 1.1, the Fremont Bridge, mile 2.6, and the University Bridge,

mile 4.3, all crossing the Lake Washington Ship Canal at Seattle, WA, to facilitate morning and afternoon re-routed roadway traffic. Washington Department of Transportation is closing the Alaskan Way Viaduct forever, and have not finished building new ramp approaches to the new SR99 Tunnel into Seattle, WA. During the closure of the viaduct, SDOT will be re-routing roadway traffic into Seattle across the Lake Washington Ship Canal, and requested to extend the closure hours of the subject bridges. The Ballard Bridge provides a vertical clearance of 29 feet in the closed-to-navigation position; the Fremont Bridge provides a vertical clearance of 14 feet (31 feet of vertical clearance for the center 36 horizontal feet) in the closed-to-navigation position; the University Bridge provides a vertical clearance of 30 feet (45 feet at the center) in the closed-to-navigation position. Vertical clearances refer to the Mean Water Level of Lake Washington. The normal operating schedule for the three subject bridges is in 33 CFR 117.1051(d).

During this deviation period, the three subject bridge draws need not open per the following table for vessels of less than 1000 gross tons, unless the vessel has in tow a vessel of 1000 gross tones or more:

Bridge	Date	Time	Span position
Fremont	Jan 11, 2019 to Feb 9, 2019	7 a.m. to 10 a.m	Closed.
Fremont	Jan 11, 2019 to Feb 9, 2019	3:30 p.m. to 7 p.m	Closed.
Ballard	Jan 11, 2019 to Feb 9, 2019	7 a.m. to 10 a.m	Closed.
Ballard	Jan 11, 2019 to Feb 9, 2019	3:30 p.m. to 7 p.m	Closed.
University	Jan 11, 2019 to Feb 9, 2019	7 a.m. to 10 a.m	Closed.
University	Jan 11, 2019 to Feb 9, 2019	3:30 p.m. to 7 p.m	Closed.

Waterway usage on the Lake Washington Ship Canal range from commercial tug and barge to small pleasure craft. Vessels able to pass through the subject bridges in the closed-to-navigation position may do so at any time. All three bridges will not be able to open for emergencies, and there is no immediate alternate route for vessels to pass. 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 bridges so that vessel operators can arrange their

transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the three drawbridges must return to their regular operating schedules 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: December 3, 2018.

Steven M. Fischer,
Bridge Chief Administrator, Thirteenth Coast Guard District.

[FR Doc. 2018-26976 Filed 12-12-18; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Military Ocean Terminal Concord, CA; Restricted Area

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Direct final rule.

SUMMARY: The U.S. Army Military Surface Deployment and Distribution

Command (SDDC) requested that the U.S. Army Corps of Engineers (Corps) change the name of a restricted area from “Suisun Bay at Naval Weapons Station, Concord; restricted area” to “Military Ocean Terminal Concord (MOTCO); restricted area.” The restricted area is located in Suisun Bay, north of the City of Concord, California. The request to change the name of the restricted area is due to a transfer of real estate from the U.S. Navy to the U.S. Army SDDC. A Memorandum of Agreement between the U.S. Navy and the U.S. Army for the interagency transfer of base closure property and all associated environmental programs for portions of the Naval Weapons Station Seal Beach Detachment Concord was signed on January 24, 2007. The SDDC officially accepted the former U.S. Navy real estate in Fall 2008 to Winter 2009.

DATES: This rule is effective February 11, 2019 without further notice, unless the Corps receives adverse comment by January 14, 2019. If we receive such adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: You may submit comments, identified by docket number COE–2018–0006, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Email: david.b.olson@usace.army.mil. Include the docket number COE–2018–0006 in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street NW, Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2018–0006. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](http://www.regulations.gov) or email. The [regulations.gov](http://www.regulations.gov) website is an anonymous access system, which means we will not know your identity or contact information unless you provide

it in the body of your comment. If you send an email directly to the Corps without going through [regulations.gov](http://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, we recommend that you include your name and other contact information in the body of your comment and with any compact disc you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Ms. Naomi Schowalter, U.S. Army Corps of Engineers, San Francisco District, at 415–503–6763.

SUPPLEMENTARY INFORMATION: By letter dated October 23, 2018, SDDC’s 834th Transportation Battalion Commander requested the restricted area name change from “Suisun Bay at Naval Weapons Station, Concord; restricted area” to “Military Ocean Terminal Concord (MOTCO); restricted area.” The request was made because of the transfer of the restricted area property from the U.S. Navy to the U.S. Army SDDC. In response to this request by the SDDC, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR part 334 by changing the name of the restricted area.

The Corps is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comment. We are only changing the name of the facility associated with this restricted area, and are not changing the restricted

area itself or the rules governing that restricted area.

Procedural Requirements

a. *Review Under Executive Orders 12866 and 13563.* Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This direct final rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this direct final rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The Corps determined this direct final rule is not a significant regulatory action. This regulatory action determination is based on this direct final rule being limited to a name change for the facility associated with the restricted area, from “Suisun Bay at Naval Weapons Station, Concord” to “Military Ocean Terminal Concord.” This direct final rule is issued with respect to a military function of the Department of Defense.

b. *Review Under the Regulatory Flexibility Act.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). This rulemaking is limited to changing the name of the facility to which the existing regulations apply, and no changes are being made to the restricted area itself or to the regulations governing that restricted area. Unless information is obtained to the contrary during the comment period, the Corps certifies that the direct final rule would have no significant economic impact on the public. After considering the economic impacts of this direct final rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* The Corps expects that the direct final rule will not have a significant impact to the quality

of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. If no adverse comments are received, the environmental assessment will be prepared before the effective date. After the environmental assessment is prepared, it may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT**, above.

d. *Unfunded Mandates Act.* The direct final rule does not impose an enforceable duty among the private sector and, therefore, are not a Federal private sector mandate and are not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Public Laws 104-4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Amend § 334.1110 by revising the section heading and paragraph (b) to read as follows:

§ 334.1110 Military Ocean Terminal Concord; restricted area.

(a) * * *

(b) *The regulations.* (1) No person, vessel, watercraft, conveyance or device shall enter or cause to enter or remain in this area. No person shall refuse or fail to remove any person or property in his custody or under his control from this area upon the request of the Commanding Officer of Military Ocean Terminal Concord or his/her authorized representative.

(2) The regulations in this section shall be enforced by the Commanding Officer, Military Ocean Terminal Concord, and such agencies as he/she shall designate.

Dated: December 6, 2018.

Thomas P. Smith,
Chief, Operations and Regulatory Division
Directorate of Civil Works.

[FR Doc. 2018-27031 Filed 12-12-18; 8:45 am]

BILLING CODE 3720-58-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2018-0587; FRL-9986-16-Region 9]

Revisions to California State Implementation Plan; South Coast Air Quality Management District, San Joaquin Valley Air Pollution Control District and Yolo-Solano Air Quality Management; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing action on three state implementation plan (SIP) revisions submitted by the State of California addressing the nonattainment new source review (NNSR) requirements for the 2008 8-hour ozone National Ambient Air Quality Standards

(NAAQS). These SIP revisions address the South Coast Air Quality Management District (SCAQMD), San Joaquin Valley Air Pollution Control District (SJVAPCD) and Yolo-Solano Air Quality Management District (YSAQMD) portions of the California SIP.

DATES: This rule is effective on January 14, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2018-0587. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region 9, (415) 972-3534, yannayon.laura@epa.gov.

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

Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

I. Proposed Action

On August 20, 2018 (83 FR 42063), the EPA proposed to approve the SIP revisions listed in Table 1, addressing the NNSR requirements for the 2008 8-hour ozone NAAQS for the SCAQMD, SJVAPCD and YSAQMD.

TABLE 1—SUBMITTED CERTIFICATION LETTERS

District	Adoption date	Submittal date
South Coast AQMD	7/7/2017	11/16/17
San Joaquin Valley APCD	4/19/18	6/19/18
Yolo-Solano AQMD	3/14/18	6/19/18

We proposed approval of these SIP revisions because we determined that the 2008 ozone certification submitted for each district fulfills the 40 CFR 51.1114 revision requirement and meets the requirements of Clean Air Act (CAA) section 110 and the minimum SIP requirements of 40 CFR 51.165.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period. During this period, we received three comments on the proposed rule. None of those comments are germane to our evaluation

of the submitted 2008 ozone certifications for each district.

III. EPA Action

No comments were submitted that change our assessment of the 2008 ozone certifications as described in our proposed action. Therefore, as

authorized in section 110(k)(3) of the Act, the EPA is approving these certifications into the California SIP as proposed.

IV. Statutory and Executive Order Reviews

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

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

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

List of Subjects in 40 CFR Part 52

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

Dated: October 24, 2018.

Michael Stoker,
Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(510) and (511) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(510) New additional materials for the following APCD was submitted on

November 16, 2017 by the Governor’s designee.

(i) [Reserved]

(ii) *Additional materials.* (A) South Coast Air Quality Management District.

(1) “Nonattainment New Source Review (NSR) Compliance Demonstration for the 2008 Ozone National Ambient Air Quality Standard (NAAQS),” adopted July 7, 2017.

(2) [Reserved]

(511) New additional materials for the following APCD’s were submitted on June 19, 2018 by the Governor’s designee.

(i) [Reserved]

(ii) *Additional materials.* (A) San Joaquin Valley Air Pollution Control District.

(1) “Certification that the San Joaquin Valley Unified Air Pollution Control District’s Current NNSR Program Addresses the 2008 Ozone NAAQS SIP Requirements Rule,” adopted April 19, 2018.

(2) [Reserved]

(B) Yolo-Solano Air Quality Management District.

(1) “Certification that Yolo-Solano’s Existing NNSR Program meets the 2008 Ozone NAAQS SIP Requirements Rule,” adopted March 14, 2018.

(2) [Reserved]

[FR Doc. 2018–26921 Filed 12–12–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0288 and EPA–HQ–OPP–2017–0283; FRL–9986–73]

6-Benzyladenine; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of 6-benzyladenine in or on avocados, peppers, tomatoes, cucumbers, melons, and squash. Interregional Research Project Number 4 and Valent BioSciences LLC have requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 13, 2018. Objections and requests for hearings must be received on or before February 11, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The dockets for this action, identified by docket identification (ID)

numbers EPA-HQ-OPP-2017-0288 and EPA-HQ-OPP-2017-0283, are available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: BPPDFRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation

in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2017-0288 and EPA-HQ-OPP-2017-0283 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 11, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID numbers EPA-HQ-OPP-2017-0288 and EPA-HQ-OPP-2017-0283, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Background

In the **Federal Register** of September 15, 2017 (82 FR 43352) (FRL-9965-43), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of two pesticide petitions: PP 6E8526 by Interregional Research Project Number 4 (IR-4), Rutgers, State University of New Jersey, 681 U.S. Highway No. 1, S. North Brunswick, NJ 08902; and PP 7F8548 by Valent BioSciences LLC (Valent), 870 Technology Way, Libertyville, IL 60048. Petition 6E8526 requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the plant growth regulator 6-benzyladenine, in or on avocados at 0.05 parts per million (ppm). Petition

7F8548 requested amendment of the current exemption from the requirement of tolerance for residues of 6-benzyladenine, 40 CFR 180.1150, to add fruiting vegetables (tomatoes and peppers) and cucurbit vegetables (cucumbers, melons, and squash). That document referenced summaries of the petitions prepared by Valent, the registrant, which are available in the respective dockets via, www.regulations.gov. Comments were received on the notice of filing, and the Agency's response can be found in Unit III.D.

Based upon review of the data supporting each petition, EPA is establishing tolerance levels for 6-benzyladenine on avocados, tomatoes, peppers, cucumbers, melons and squash in one final rule. The reasons for these changes are explained in Part III.E. of this document.

III. Final Rule

A. EPA's Safety Determination

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings but does not include occupational exposure. EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue" Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider "available information concerning the cumulative effects of a particular pesticide's residues and other substances that have a common mechanism of toxicity."

EPA evaluated the available toxicological and exposure data on 6-benzyladenine and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. A summary of the data upon which EPA relied and its risk assessment based on those data can be found within the document

entitled “Federal Food, Drug, and Cosmetic Act (FFDCA) Safety Assessment for Tolerances for Residues of 6-benzyladenine.” This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

The available data demonstrated that the predominant adverse effect from exposure to 6-benzyladenine was a significant reduction in body weight, including an increased susceptibility of body weight effects in fetuses and offspring. Despite these effects, EPA determined that reliable data show the safety of infants and children would be adequately protected if the Food Quality Protection Act (FQPA) safety factor was reduced to 1X. EPA conducted a quantitative aggregate risk assessment, taking into account chronic exposures to residues of 6-benzyladenine in food and drinking water (no residential exposures are anticipated) and concluded that risks do not exceed EPA’s level of concern.

Based upon its evaluation, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of 6-benzyladenine. Therefore, tolerances are established for residues of 6-benzyladenine, in or on tomato, pepper, cucumber, melon, and squash at 0.01 ppm and in or on avocado at 0.02 ppm.

B. Analytical Enforcement Methodology

Adequate enforcement methodologies to quantitatively determine 6-benzyladenine residues by liquid chromatography/mass spectrometer/mass spectrometer (LC/MS/MS) (Meth-209, Determination of 6-Benzyladenine (6-BA) in Selected Fruiting Vegetable and Cucurbit Vegetable Raw Agricultural and Processed Commodities and Meth-210, Determination of 6-Benzyladenine (6-BA) in Selected Oily Crop Raw Agricultural Commodities) are available to enforce the tolerance expression. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: residuemethods@epa.gov.

C. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits

(MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established an MRL for 6-benzyladenine; however, Canada and the European Union (EU) have set default MRLs at 0.1 ppm (Canada) and 0.01 ppm (EU), respectively.

D. Response to Comments

One comment was received in response to each of the petitions. Each comment generally opposed pesticide residues on food; only one mentioned 6-benzyladenine by name. Neither comment was accompanied by any substantiation or data supporting a conclusion that the tolerances being established in this action do not meet the FFDCA safety standard. Although EPA recognizes that some individuals would oppose any use of pesticides on food, section 408 of the FFDCA authorizes EPA to set tolerances for residues of pesticide chemicals in or on food when it determines that the tolerance meets the safety standard imposed by that statute. EPA has made that determination for the 6-benzyladenine tolerances established by this final rule.

E. Revisions to Petitioned-For Tolerance and Tolerance Exemption

The applicant requested a tolerance for residues of 6-benzyladenine on avocado at 0.05 ppm. Based on available residue data and using the Organisation for Economic Co-operation and Development (OECD) calculator, EPA has determined that a tolerance for residues of 6-benzyladenine on avocado at 0.02 ppm is appropriate. In addition, the applicant requested to amend the current exemption, 40 CFR 180.1150, for residues of 6-benzyladenine by adding fruiting vegetables (tomatoes and peppers) and cucurbit vegetables (cucumbers, melons, and squash) at 20 parts per million (ppm) at a maximum of five applications (total 18.8 grams of active ingredient per acre per season) with a seven-day interval between applications. Due to the toxicological profile of the chemical and the measurable residues, EPA has

concluded that a tolerance is the appropriate regulatory mechanism for covering residues of 6-benzyladenine under the FFDCA. Based on the available residue data and using the OECD calculator, EPA has determined that tolerances for residues of 6-benzyladenine on tomato, pepper, cucumber, melon, and squash at 0.01 ppm are appropriate.

IV. Statutory and Executive Order Reviews

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

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal

governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: November 28, 2018.

Richard P. Keigwin, Jr.,
Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

- 1. The authority citation for part 180 continues to read as follows:
Authority: 21 U.S.C. 321(q), 346a and 371.
- 2. Add § 180.703 to subpart C to read as follows:

§ 180.703 6-benzyladenine; tolerances for residues.

(a) *General.* Tolerances are established for residues of the plant growth regulator, 6-benzyladenine in or on the commodities listed in the table below. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only 6-benzyladenine in or on the commodity.

Commodity	Parts per million
Avocado	0.02
Cucumber	0.01
Melon	0.01
Pepper	0.01
Squash	0.01
Tomato	0.01

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

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2018–27047 Filed 12–12–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–8559]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA’s Community Status Book (CSB). The CSB is available at <https://www.fema.gov/national-flood-insurance-program-community-status-book>.

DATES: The effective date of each community’s scheduled suspension is the third date (“Susp.”) listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a

particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 212–3966.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59.

Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA’s initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The

Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because

the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region IV				
North Carolina:				
Camden County, Unincorporated Areas	370042	May 14, 1974, Emerg; December 4, 1985, Reg; December 21, 2018, Susp.	Dec. 21, 2018 ...	Dec. 21, 2018.
Currituck County, Unincorporated Areas	370078	March 4, 1974, Emerg; November 1, 1984, Reg; December 21, 2018, Susp.	.....do *	Do.
Region V				
Indiana:				
DeMotte, Town of, Jasper County	180100	March 24, 1975, Emerg; September 1, 1976, Reg; December 21, 2018, Susp.	.....do	Do.
Jasper County, Unincorporated Areas ..	180439	July 21, 1982, Emerg; July 1, 1994, Reg; December 21, 2018, Susp.	.....do	Do.
Remington, Town of, Jasper County	180101	December 8, 1975, Emerg; November 1, 1995, Reg; December 21, 2018, Susp.	.....do	Do.
Rensselaer, City of, Jasper County	180102	April 22, 1975, Emerg; February 1, 1994, Reg; December 21, 2018, Susp.	.....do	Do.
Minnesota:				
Carver, City of, Carver County	275233	April 2, 1971, Emerg; September 8, 1972, Reg; December 21, 2018, Susp.	.....do	Do.
Carver County, Unincorporated Areas ..	270049	April 19, 1973, Emerg; February 1, 1978, Reg; December 21, 2018, Susp.	.....do	Do.
Chanhassen, City of, Carver and Hennepin Counties.	270051	June 23, 1975, Emerg; July 2, 1979, Reg; December 21, 2018, Susp.	.....do	Do.
Chaska, City of, Carver County	275234	March 19, 1971, Emerg; September 8, 1972, Reg; December 21, 2018, Susp.	.....do	Do.
Mayer, City of, Carver County	270053	N/A, Emerg; May 29, 2002, Reg; December 21, 2018, Susp.	.....do	Do.
Norwood Young America, City of, Carver County.	270593	December 24, 1975, Emerg; May 13, 1983, Reg; December 21, 2018, Susp.	.....do	Do.
Victoria, City of, Carver County	270054	June 17, 1975, Emerg; July 6, 1984, Reg; December 21, 2018, Susp.	.....do	Do.
Waconia, City of, Carver County	270055	July 2, 1974, Emerg; January 5, 1978, Reg; December 21, 2018, Susp.	.....do	Do.
Watertown, City of, Carver County	270056	March 14, 1975, Emerg; November 1, 1978, Reg; December 21, 2018, Susp.	.....do	Do.
Region VI				
Louisiana:				
Carencro, City of, Lafayette Parish	220103	May 10, 1977, Emerg; November 5, 1980, Reg; December 21, 2018, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Duson, Town of, Acadia and Lafayette Parishes.	220104	November 11, 1975, Emerg; September 30, 1981, Reg; December 21, 2018, Susp.	.....do	Do.
Scott, City of, Lafayette Parish	220106	September 24, 1974, Emerg; April 4, 1983, Reg; December 21, 2018, Susp.	.....do	Do.
Youngsville, City of, Lafayette Parish ...	220358	January 16, 1975, Emerg; March 30, 1982, Reg; December 21, 2018, Susp.	.....do	Do.

-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: Dec 4, 2018.

Katherine B. Fox,
Assistant Administrator for Mitigation,
Federal Insurance and Mitigation
Administration—FEMA Resilience,
Department of Homeland Security, Federal
Emergency Management Agency.

[FR Doc. 2018–26998 Filed 12–12–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 171128999–8999–02]

RIN 0648–BH43

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Permit Renewal Applications

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement administrative revisions to the renewal process for Federal vessel permits, licenses, and endorsements, and dealer permits in the NMFS Southeast Region. This final rule removes the regulatory requirement that NMFS must mail a renewal application to a permit holder whose Federal vessel, license, or endorsement, or dealer permit is expiring. NMFS will continue to provide notice of the upcoming expiration date to the permit holder. This final rule also removes the regulatory requirement that NMFS must notify an applicant of any deficiency in a renewal application only through sending a letter via traditional mail, such as through the U.S. Postal Service, which allows NMFS expanded options for notifying permit holders. The purpose of this final rule is to reduce the administrative costs and burden to NMFS of renewing Federal permits,

while still maintaining the renewal notice, information, and services to the public.

DATES: This final rule is effective on January 14, 2019.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Adam Bailey, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701, or the Office of Management and Budget (OMB) by email to *OIRA_Submission@omb.eop.gov*, or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Sarah Stephenson, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *sarah.stephenson@noaa.gov*.

SUPPLEMENTARY INFORMATION: In the U.S. southeast region, NMFS and regional fishery management councils manage fisheries in Federal waters under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and through regulations implemented by NMFS at 50 CFR part 622.

On August 1, 2018, NMFS published a proposed rule and requested public comment on possible administrative process revisions to the renewal of Federal vessel permits, licenses, or endorsements, and Federal dealer permits (hereafter referred to collectively as permits) for species managed under multiple fishery management plans (FMPs) developed by Gulf of Mexico (Gulf) and South Atlantic Fishery Management Councils (83 FR 37455). The proposed rule outlined the rationale for the actions contained in this final rule. A summary of the management measures described in the proposed rule and implemented by this final rule is provided below.

Management Measures Contained in This Final Rule

This final rule removes the requirement that the Regional Administrator (RA) for the NMFS Southeast Region automatically mails a renewal application with the notice sent to a permit holder whose Federal permit is expiring. Instead, approximately 2 months prior to the expiration date of the permit, the RA will continue to provide notice to each permit holder through a letter, email, or other appropriate means, and in the notice provide the available options for an applicant to obtain a permit renewal application.

NMFS will continue to mail renewal applications upon request from an applicant. Permit holders may call the NMFS Southeast Permits Office to make that request at 1–877–376–4877, Monday through Friday between 8 a.m. and 4:30 p.m., eastern time. Permit holders may also obtain applications in person or through written request from the NMFS Southeast Permits Office, located at 263 13th Ave. South, St. Petersburg, Florida 33701.

Applications to renew a Federal permit are currently available for download and printing from the NMFS Southeast Permits Office website at http://sero.nmfs.noaa.gov/operations_management_information_services/constituency_services_branch/permits/index.html.

In addition, NMFS has continued to expand the number of renewal applications that can be accessed and submitted online at the Southeast Permits Office website. This option includes the ability to pay application fees electronically. As of October 3, 2018, applicants can submit applications online to renew the majority of the Federal permits in the southeast region.

This final rule also removes the requirement that the RA must notify an applicant of any deficiency in a renewal application only by a letter sent through traditional mail. NMFS may notify a permit holder of an application

deficiency through a letter, email, or other appropriate means that may be available.

NMFS expects this final rule to reduce administrative labor and material costs associated with mailing permit renewal applications and letters of application deficiency to permit holders by allowing NMFS the flexibility to use more efficient means to provide the permit renewal applications and notifications of application deficiency.

NMFS does not expect this final rule to affect the overall number of annual permit renewals that NMFS receives or change the average time necessary for an applicant to complete an application. This final rule will not result in any change to fisheries operations.

As described in 50 CFR 622.4(g)(1), NMFS reminds permit holders that a completed renewal application along with required supporting documentation, must be submitted to the RA at least 30 days prior to the date on which the applicant desires to have the permit effective. This final rule does not revise this permit renewal requirement.

Additional Change Not Part of This Final Rule

Although not a regulatory requirement, NMFS has historically mailed renewal applications for Federal operator cards (required for the Atlantic dolphin and wahoo, and South Atlantic rock shrimp commercial fisheries) to vessel operators prior to the expiration date. Upon implementation of this final rule, NMFS will not automatically mail a renewal application to individuals with an operator card prior to the expiration date; however, similar to the notification of permit holders with Federal permits discussed in this final rule, NMFS intends to continue providing notification to a vessel operator with an operator card of its upcoming expiration prior to that date. Additionally, NMFS may use methods other than by letter to notify applicants that a renewal application contains deficiencies.

Comments and Responses

NMFS received 23 comments from individuals and a fisheries consulting company on the proposed rule. The majority of the comments were in support of the proposed rule. NMFS acknowledges the comments in favor of all or part of the proposed rule, and agrees with them. Comments that were beyond the scope of the proposed rule are not responded to in this final rule. Comments specifically in opposition to all or some of the actions in the

proposed rule, as well as NMFS' respective responses, are summarized below.

Comment 1: The proposed rule will result in additional burdens to permit holders such as additional time requirements and steps in the permit renewal process, and as a result, could cause permits to expire.

Response: As discussed in the proposed rule, although permit holders who currently rely on the application being automatically mailed to them will be affected, any added cost or time to permit holders to acquire an application by the most commonly anticipated methods, that is, by telephone request, digital download, or online access and submission, is expected to be minimal. All of these methods to acquire an application already exist, and an applicant may select a different option based on their preference each time they need to renew a permit. As of October 2018, applicants can access and submit applications online for the majority of the permits issued under the FMPs, and NMFS continues to expand the number of permit renewal applications that are available to submit online. For those permit holders with access to a computer and the internet, accessing and submitting a renewal application online will provide a direct benefit to permit holders by eliminating the cost of mailing a completed paper application and a check or money order. By providing the ability to pay the permit renewal fee electronically, the benefits include, but are not restricted to, higher transaction speed, reduced check-associated costs, and greater transaction transparency. Those permit holders that do not have access to a computer or the internet can call and request that NMFS mail them an application.

NMFS does not expect this final rule to change the average time required for an applicant to complete a permit renewal application. NMFS will continue to provide permit reporting requirements and instructions for viewing vessel reporting status in the permit renewal notification, which NMFS sends to every permit holder approximately 2 months prior to the expiration date of a permit. NMFS does not expect this final rule to affect the ability of any permit holder to renew a permit.

Comment 2: Renewing permits should continue via printed and mailed applications. Receiving an application in the mail has helped remind permit holders to renew their permits, and not all permit holders have access to a computer or prefer not to use electronic

methods to obtain an application (e.g., through email or digital download).

Response: Those permit holders who continue to need NMFS to send a paper application can request one. Removing the requirement to mail all permit renewal applications will reduce costs, while still allowing NMFS to provide paper applications to those permit holders who want them.

This final rule also allows NMFS to use expanded options for notifying permit holders about permit renewals. NMFS will continue to notify the permit holder approximately 2 months prior to the expiration date of their permit through a letter, email, or other appropriate means that may be available. That renewal notification will also include instructions for obtaining an application.

Comment 3: Commercial fishermen in catch share programs pay a 3 percent cost recovery fee to NMFS. Because commercial fishermen pay these administrative costs, it is not fair to reduce administrative costs to the government and impose additional administrative duties on commercial fishermen.

Response: Cost recovery fees can only be used to pay for incremental costs directly related to the management and enforcement of the red snapper and grouper-tilefish individual fishing quota (IFQ) programs. The costs incurred by NMFS to mail renewal applications to permit holders are unrelated to the management and enforcement of those programs. Permits are required to harvest and possess multiple species of fish regardless of whether someone participates in one of IFQ programs, and this final rule applies to all permits issued by the Southeast Permits Office.

Further, as discussed in the response to *Comment 1*, any added cost or time to permit holders to acquire an application by the most commonly anticipated methods, that is, by telephone request, digital download, or online access and submission, is expected to be minimal. However, this final rule gives NMFS the flexibility to use more efficient means to provide permit renewal applications and notifications of application deficiency.

Classification

The RA for the NMFS Southeast Region has determined that this final rule is consistent with the applicable FMPs in the Gulf and South Atlantic, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, recordkeeping, or other compliance requirements are introduced by this final rule.

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 rule would not have a significant adverse economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No significant issues were raised by public comments related to the economic impacts on small businesses, and no changes to this final rule were made in response to public comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that OMB has approved under control number 0648-0205. Public reporting burdens for renewal applications in the Southeast Region Permit Family of Forms are estimated to vary between 30 and 55 minutes, depending on the applicable form. The estimated reporting burdens are based on an individual response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This final rule does not change existing collection-of-information requirements or estimated reporting burdens. Send comments regarding the burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden to Adam Bailey, NMFS Southeast Regional Office (see ADDRESSES), by email to OIRA_Submission@omb.eop.gov, or fax to 202-395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person will be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved collections of information may be viewed at http://www.cio.noaa.gov/services_programs/prasubs.html.

List of Subjects in 50 CFR Part 622

Commercial, Dealer, Endorsement, Fisheries, Fishing, Gulf of Mexico, License, Permit, South Atlantic.

Dated: December 10, 2018.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.4, revise paragraph (g)(1) to read as follows:

§ 622.4 Permits and fees—general.

* * * * *

(g) * * *

(1) *Vessel permits, licenses, and endorsements, and dealer permits.* Unless specified otherwise, a vessel or dealer permit holder who has been issued a permit, license, or endorsement under this part must renew such permit, license, or endorsement on an annual basis. The RA will notify a vessel or dealer permit holder whose permit, license, or endorsement is expiring approximately 2 months prior to the expiration date. A vessel or dealer permit holder who does not receive a notification is still required to submit an application form as specified below. The applicant must submit a completed renewal application form and all required supporting documents to the RA prior to the applicable deadline for renewal of the permit, license, or endorsement, and at least 30 calendar days prior to the date on which the applicant desires to have the permit made effective. Application forms and instructions for renewal are available online at sero.nmfs.noaa.gov or from the RA (Southeast Permits Office) at 1-877-376-4877, Monday through Friday between 8 a.m. and 4:30 p.m., eastern time. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 calendar days of the notification date by the RA, the application will be considered abandoned. A permit, license, or endorsement that is not renewed within

the applicable deadline will not be reissued.

* * * * *

[FR Doc. 2018-26984 Filed 12-12-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170816769-8162-02]

RIN 0648-XG672

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Operating as Catcher Vessels Using Pot Gear in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by non-American Fisheries Act (AFA) crab vessels that are subject to sideboard limits, and operating as catcher vessels (CVs) using pot gear, in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2018 Pacific cod sideboard limit established for non-AFA crab vessels that are operating as CVs using pot gear in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), December 10, 2018, through 2400 hours, A.l.t., December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2018 Pacific cod sideboard limit established for non-AFA crab vessels, and that are operating as CVs using pot

gear in the Western Regulatory Area of the GOA, is 564 metric tons (mt), as established by the final 2018 and 2019 harvest specifications for groundfish of the GOA (83 FR 8768, March 1, 2018).

In accordance with § 680.22(e)(2)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the 2018 Pacific cod sideboard limit established for non-AFA crab vessels that are operating as CVs using pot gear in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance of 560 mt, and is setting aside the remaining 4 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non-AFA crab vessels that are

operating as CVs using pot gear in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the sideboard directed fishing closure of Pacific cod for non-AFA crab vessels that are subject to sideboard

limits, and that are operating as CVs using pot gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 6, 2018.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 680.22 and is exempt from review under Executive Order 12866.

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

Dated: December 10, 2018.

Karen H. Abrams,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2018-26971 Filed 12-10-18; 4:15 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 83, No. 239

Thursday, December 13, 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.

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

[Docket No. CFPB–2018–0042]

Policy on No-Action Letters and the BCFP Product Sandbox

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed policy guidance and procedural rule; proposed information collection; request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or BCFP) invites the public to take this opportunity to comment on its proposed Policy on No-Action Letters and the BCFP Product Sandbox, which is intended to carry out certain of the Bureau's authorities under Federal consumer financial law; and a proposed information collection associated with applications submitted by applicants requesting admission to the BCFP Product Sandbox under the proposed Policy as required by the Paperwork Reduction Act of 1995.

DATES: Written comments are encouraged and must be received on or before February 11, 2019.

ADDRESSES: You may submit comments, identified by Docket No. [CFPB–2018–0042], by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* FederalRegisterComments@cfpb.gov. Include Docket No. [CFPB–2018–0042] in the subject line of the email.
- *Mail/Hand Delivery/Courier:*

Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

Instructions: All submissions should include the agency name and docket number. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments

received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Standard Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For additional information about the proposed Policy, contact Paul Watkins, Assistant Director; Edward Blatnik, Senior Counsel; Albert Chang, Counsel; Office of Innovation, at officeofinnovation@cfpb.gov or 202–435–7000. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

Documentation prepared in support of the information collection request is available at www.regulations.gov. Requests for additional information on the proposed information collection should be directed to the Bureau of Consumer Financial Protection, Attention: PRA Office, 1700 G Street NW, Washington, DC 20552, (202) 435–9575, or email: PRA@cfpb.gov. Please do not submit comments to this mailbox.

SUPPLEMENTARY INFORMATION:

I. Background

In section 1021(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress established the Bureau's statutory purpose as ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.¹ Relatedly, the Bureau's objectives include exercising its authorities under Federal consumer financial law for the purposes of ensuring that outdated, unnecessary, or unduly burdensome regulations are regularly identified and

addressed in order to reduce unwarranted regulatory burdens, and that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.²

Congress has given the Bureau a variety of authorities under Title X of the Dodd-Frank Act and the enumerated consumer laws³ that it can exercise to promote this purpose and these objectives. These authorities include the authority to permit certain activity by a particular entity (or entities) by order (including approvals and exemptions), and discretionary supervision and enforcement authority.⁴

Pursuant to the purpose, objectives, and certain of the authorities listed above, the Bureau proposed its Policy on No-Action Letters in October 2014⁵ and finalized it in February 2016 (2016 Policy).⁶ The 2016 Policy provides for the issuance of No-Action Letters consisting of non-binding staff-level no-action recommendations. The Bureau has issued only one such No-Action Letter to date.⁷

II. Summary of the Proposed Policy

In line with the above authority, the Bureau is proposing to revise the 2016 Policy and proposing the BCFP Product Sandbox through its proposed Policy on No-Action Letters and the BCFP Product Sandbox (Policy) in order to more effectively carry out its statutory purpose and objectives. As noted, the Bureau has provided only one No-Action Letter under the 2016 Policy. The Bureau believes this strongly suggests that both the process required to obtain a No-Action Letter and the relief available under the 2016 Policy have not provided firms with sufficient incentives to seek No-Action Letters from Bureau staff. Accordingly, the Bureau is seeking comment on a number of changes to the 2016 Policy that would address these issues and bring certain aspects of the Bureau's policy more into alignment with no-action letter

² 12 U.S.C. 5511(b)(3), (5).

³ 12 U.S.C. 5481(12).

⁴ See notes 61, 64–65, *infra*.

⁵ 79 FR 62118 (Oct. 16, 2014).

⁶ 81 FR 8686 (Feb. 22, 2016).

⁷ See Bureau of Consumer Financial Protection, CFPB Announces First No-Action Letter to Upstart Network (Sept. 14, 2017), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-first-no-action-letter-upstart-network/>.

¹ 12 U.S.C. 5511(a).

programs offered by other Federal regulators. The proposed Policy has two parts. Part I is a revision of the 2016 Policy designed to increase the utilization of the Policy and bring certain elements more in line with similar no-action letter programs offered by other agencies. Part II is a description of the BCFP Product Sandbox.⁸

The proposed Policy has the following overarching goals: (1) Streamlining the application process; (2) streamlining the Bureau's processing of applications; (3) expanding the types of statutory and/or regulatory relief available;⁹ (4) specifying procedures for an extension where the relief initially provided is of limited duration; and (5) providing for coordination with existing or future programs offered by other regulators designed to facilitate innovation.

Part I: No-Action Letters. In Part I, the Bureau is proposing to streamline the process of applying for a No-Action Letter by eliminating several elements it believes to be redundant or unduly burdensome, such as a commitment to data-sharing.¹⁰ Similarly, the Bureau's review of applications for a No-Action Letter would be streamlined to focus on the quality and persuasiveness of the application, with particular emphasis on the potential benefits of the product or service in question for consumers, the extent to which the applicant identifies and controls for potential risks to consumers, and the extent to which no-action relief is needed. Because these measures would be likely to expedite the application and review process, the Bureau would expect to grant or deny an application within 60 days of notifying the applicant that the Bureau has deemed the application to be complete.¹¹

To more closely align Part I with certain aspects of no-action letter programs offered by other Federal

agencies, the Bureau is re-assessing data-sharing requirements and time-period limitations for No-Action Letters available under Part I.¹² In contrast to the 2016 Policy, which requires applicants to commit to sharing data about the product or service in question, no such data sharing would be expected under Part I of the proposed Policy. Similarly, whereas one of the factors Bureau staff will consider in deciding whether to grant an application for a No-Action Letter under the 2016 Policy is the extent to which the letter would be limited in duration, the default assumption under Part I of the proposed Policy would be that No-Action Letters would have no such temporal limitation.

Under the 2016 Policy, a No-Action letter is a staff recommendation of no-action relief. Under Part I of the proposed Policy, in contrast, No-Action Letters would be issued by duly authorized officials of the Bureau to provide recipients greater assurance that the Bureau itself stands behind the no-action relief provided by the letters. Whereas UDAAP-focused No-Action Letters were expected to be particularly uncommon under the 2016 Policy, there would be no such expectation under Part I of the proposed Policy.¹³

Finally, Part I would include a new section concerning Bureau coordination with other regulators that offer no-action letters or similar forms of relief.¹⁴

Part II: BCFP Product Sandbox. The 2016 Policy is limited to a single type of relief: Non-binding staff-level no-action recommendations. In comments

on the proposed 2016 Policy, the Bureau was urged to provide types of relief that are legally binding on the Bureau as well as other parties. In its response to such comments, the Bureau stated that "experience with the NAL process will assist the Bureau in evaluating other potential" forms of relief.¹⁵ As noted, the Bureau has provided only one No-Action Letter under the 2016 Policy since it was finalized in February 2016, which strongly suggests that the relief available under the 2016 Policy has not provided firms with a sufficient incentive to seek No-Action Letters from Bureau staff. In view of this experience, the Bureau is proposing to create the BCFP Product Sandbox. The BCFP Product Sandbox would include no-action relief substantially the same as that available under Part I, as well as two forms of additional relief: (a) Approvals by order under three statutory safe harbor provisions¹⁶ (approval relief); and (b) exemptions by order (i) from statutory provisions (as well as provisions of regulations implementing the statute in question) under statutory exemption-by-order provisions (statutory exemptions);¹⁷ or (ii) from regulatory provisions that do not mirror statutory provisions under rulemaking authority or other general authority (regulatory exemptions).¹⁸

In keeping with the "sandbox" concept, approval relief and exemption relief would be provided for a limited period of time. The Bureau expects that two years would be appropriate in most cases.¹⁹ Part II of the proposed Policy also includes a section regarding extensions for participation in the BCFP Product Sandbox, which would specify the procedures for applying for such an extension and clarify the Bureau's intention to grant such applications where there is evidence of consumer benefit and an absence of consumer harm. Similarly, in contrast to Part I, Part II would require applicants to commit to sharing data with the Bureau concerning the products or services offered or provided in the BCFP Product Sandbox.

Finally, like Part I, Part II would have a streamlined application and review process, and the Bureau would expect to grant or deny an application within 60 days of notifying the applicant that the Bureau has deemed the application to

⁸ The Bureau believes it is necessary and appropriate, and in the public interest, to include both parts in a single Policy in order to establish uniform procedures to encourage focused presentation of issues, ensure expeditious consideration of applications, and minimize the expenditure of Bureau resources.

⁹ For convenience, the term "relief" will be used hereinafter to cover relief from statutory and/or regulatory provisions.

¹⁰ Commenters on the proposed 2016 Policy stated that it would require applicants to submit an unduly burdensome volume of information. 81 FR 8686, 8689 (Feb. 22, 2016). Stakeholders have expressed similar concerns subsequent to the finalization of the 2016 Policy.

¹¹ In comments on the proposed 2016 Policy, several stakeholders urged the Bureau to adopt a specific timetable for granting or denying an application for a No-Action Letter—ranging from 45 to 90 days—in order to accommodate the rapid development processes of innovative products and services. 81 FR 6686, 8689 (Feb. 22, 2016).

¹² Many of the proposed revisions are designed to more closely align Part I with no-action letter programs offered by other Federal agencies. See, e.g., Securities and Exchange Commission, Procedures Applicable to Requests for No-Action and Interpretive Letters, Securities Act Release No. 6269 (Dec. 5, 1980) (available at: <http://www.sec.gov/rules/other/33-6269.pdf>) (limited application elements; no temporal limitation; no data-sharing requirements); Commodity Futures Trading Commission, Requests for Exemptive, No-Action and Interpretive Letters, 17 CFR 140.99 (same); Federal Housing Finance Agency, 12 CFR 1211.1, 1211.4, 1211.6 (same); Federal Energy Regulatory Commission, Informal Staff Advice on Regulatory Requirements; Interpretive Order Regarding No-Action Letter Process, 70 FR 71487 (Nov. 29, 2005) (same).

¹³ Several commenters on the proposed 2016 Policy urged the Bureau not to exclude UDAAP-focused No-Action Letters on the grounds that no-action relief is particularly valuable for UDAAP matters. 81 FR 6686, 8688 (Feb. 22, 2016). Stakeholders have reiterated this view subsequent to the finalization of the 2016 Policy, including in comments submitted in response to the Bureau's Request for Information Regarding Bureau Guidance and Implementation Support. 83 FR 13959 (Apr. 20, 2018).

¹⁴ The Bureau has also made a number of technical changes to accommodate the above-described substantive revisions and to increase clarity.

¹⁵ 81 FR 8686, 8688 (Feb. 22, 2016).

¹⁶ See note 61, *infra*.

¹⁷ See note 64, *infra*.

¹⁸ See note 65, *infra*. Collectively, statutory exemptions and regulatory exemptions are referred to in the Policy as exemption relief.

¹⁹ Like the no-action relief available under Part II, the no-action relief available under Part II would not have a limited duration.

be complete. It would also include a similar provision concerning Bureau coordination with other regulators that offer similar programs designed to facilitate innovation.

The Bureau invites comments with respect to any aspect of the proposed Policy. The Bureau is particularly interested in comment on the scope of the grounds for revocation, including whether there are additional changes in law that should be included as grounds for revocation.

III. Regulatory Requirements

The Bureau has concluded that, if finalized, this Policy Guidance would constitute an agency general statement of policy and a rule of agency organization, procedure, or practice exempt from the notice and comment rulemaking requirements under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(b). The Policy is intended to provide information regarding the Bureau's plans to exercise its discretion to provide no-action, approval, and exemption relief, and to describe the procedural components of such discretion. The Policy does not impose any legal requirements on third parties, nor does it create or confer any substantive rights on third parties that could be enforceable in any administrative or civil proceeding. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.²⁰

IV. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are generally required to seek the Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. Further, the Bureau may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and it displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. OMB has previously approved the collections of information contained in the Bureau's current Policy on No-Action Letters. The OMB Number is 3170-0059 (Expiration Date: 02/28/2019). The Bureau has determined that certain proposed revisions to the Policy would result in material changes from

what has been previously approved by OMB; therefore, the Bureau plans to submit a request to OMB seeking approval for the revised information collections as contained in this proposed revised Policy.

As part of its continuing effort to reduce paperwork and respondent burden, the Bureau conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on the new information collection requirements in accordance with the PRA (*See* 44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Bureau's requirements or instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Bureau can properly assess the impact of collection requirements on respondents.

The Proposed Policy contains revised information collection requirements which consist of the information that should be submitted in applications for admission to the BCFP Product Sandbox as described below in Section II.B. Documentation prepared in support of this information collection request is available at www.regulations.gov. Requests for additional information and comments regarding the proposed revised collection of information should be submitted as described in the **ADDRESSES** section of this document.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this document will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

V. Proposed Policy

The text of the proposed Policy is as follows:

Policy on No-Action Letters and the BCFP Product Sandbox

In section 1021(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress established the Bureau of Consumer Financial Protection's (Bureau's) statutory purpose as ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.²¹ Relatedly, the Bureau's objectives include exercising its authorities under Federal consumer financial law for the purposes of ensuring that outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens, and that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.²²

Congress has given the Bureau a variety of authorities under Title X of the Dodd-Frank Act and the enumerated consumer laws²³ that it can exercise to promote this purpose and these objectives. These authorities include the authority to permit certain activity by a particular entity (or entities) by order (including approvals and exemptions), and discretionary supervision and enforcement authority.²⁴ Providing such types of relief may not only benefit consumers and entities that offer or provide consumer financial products or services; it may also inform the Bureau's exercise of other authorities with respect to such products or services, such as market monitoring and rulemaking.

The Policy on No-Action Letters and the BCFP Product Sandbox (Policy) sets forth the Bureau's policy and procedures regarding (i) issuance of No-Action Letters; and (ii) admission to the BCFP Product Sandbox, which involves issuance of (a) approvals by order and/or exemptions by order, and (b) no-action relief. The Policy's main purpose is to provide a mechanism through which the Bureau may more effectively carry out its statutory purpose and objectives.²⁵

²¹ 12 U.S.C. 5511(a).

²² 12 U.S.C. 5511(b)(3), (5).

²³ 12 U.S.C. 5481(12).

²⁴ *See* notes 26, 61, 64-65, *infra*.

²⁵ The Policy is not intended to, nor should it be construed to: (1) Restrict or limit in any way the Bureau's discretion in exercising its authorities; (2) constitute an interpretation of law; or (3) create or confer upon any covered person or consumer, any substantive or procedural rights or defenses that are enforceable in any manner. In contrast, a particular No-Action Letter involves the Bureau's exercise of

²⁰ 5 U.S.C. 603(a), 604(a).

The Policy has two parts: (I) No-Action Letters; (II) the BCFP Product Sandbox. The Bureau considers Part I and Part II to be mutually exclusive.

Part I. No-Action Letters

This part consists of six sections:

- Section A describes No-Action Letters.
- Section B describes information that should be included in applications for a No-Action Letter.
- Section C lists factors the Bureau intends to consider in deciding whether to grant an application for a No-Action Letter.
- Section D describes the Bureau's procedures for issuing No-Action Letters.
- Section E describes how the Bureau intends to coordinate with other regulators with respect to No-Action Letters.
- Section F describes Bureau disclosure of information about No-Action Letters.

A. Description of No-Action Letters

A No-Action Letter under Part I is a document provided to a particular entity or entities, based on particular facts and circumstances, through which the Bureau exercises its discretionary supervision and enforcement authority by providing no-action relief.²⁶ The Bureau intends that a No-Action Letter will include a statement that, subject to good faith, substantial compliance with the terms and conditions of the letter, and in the exercise of its discretion, the Bureau will not make supervisory findings or bring a supervisory or enforcement action against the recipient predicated on the recipient's offering or providing the described aspects of the product or service²⁷ under (a) its authority to prevent unfair, deceptive, or abusive acts or practices;²⁸ or (b) any

its supervision and enforcement discretion in a particular manner, and a particular approval or exemption gives the recipient certain legal rights.

²⁶ See 12 U.S.C. 5561 *et seq.* (enforcement authority); 12 U.S.C. 5531(a) (UDAAP enforcement authority); 12 U.S.C. 5514, 5515 (supervision authority); 12 U.S.C. 5511(a) ("The Bureau shall seek to implement and, *where applicable*, enforce Federal consumer financial law . . .") (emphasis added); *Heckler v. Chaney*, 470 U.S. 821, 832 (1985); see also 12 U.S.C. 5512(b)(1) (authorizing the Director of the Bureau to "issue . . . guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof").

²⁷ For convenience, "described aspects of the product or service" is used in Part I to capture the subject matter scope of a No-Action Letter, including both the particular aspects of the product or service in question, and the particular manner in which it is offered or provided.

²⁸ Implicit in the statement under part (a) is that the Bureau has not determined that the acts or

other identified statutory or regulatory authority within the Bureau's jurisdiction.²⁹ The Bureau intends that a No-Action Letter will also include a statement that the letter is limited to the recipient's (or recipients') offering or providing the described aspects of the product or service, and that it does not apply to the recipient's (or recipients') offering or providing different aspects of the product or service.^{30 31}

B. Submitting Applications for No-Action Letters

Applications for a No-Action Letter should include the following:

1. The identity of the entity or entities applying for a No-Action Letter;
2. A description of the consumer financial product or service in question, including (a) how the product or service functions, and the terms on which it will be offered; and (b) the manner in which it is offered or provided, including any consumer disclosures;
3. An explanation of the potential consumer benefits of the product or service and/or the manner in which it is offered or provided;
4. An explanation of the potential consumer risks posed by the product or service and/or the manner in which it is offered or provided, and how the applicant(s) intends to mitigate such risks;
5. An identification of the statutory and/or regulatory provisions from which the applicant(s) seeks no-action relief and an identification of the potential uncertainty, ambiguity, or barrier that such relief would address;³²
6. If an applicant(s) wishes to request confidential treatment under the Freedom of Information Act,³³ the

practices in question are unfair, deceptive, or abusive.

²⁹ The Bureau maintains the right to obtain information relating to the consumer financial product or service subject to a No-Action Letter under its applicable supervision and enforcement authorities.

³⁰ For example, if only written disclosures were included within the scope of a No-Action Letter, marketing representations made orally by call center representatives could nevertheless be subject to supervisory or enforcement action.

³¹ Additional content the Bureau expects to be included in No-Action Letters is specified in Section I.D.

³² Applicants should describe the relevant provisions with as much specificity as practicable, in part to enable the Bureau to respond expeditiously to the application. The Bureau recognizes that in some cases it may be difficult to determine precisely which provisions would apply, in the normal course, to the product or service in question. In other cases, the applicant may lack the legal resources to make a fully precise determination. In such circumstances, the applicant should provide the maximum specification practicable under the circumstances and explain the limits on further specification.

³³ 5 U.S.C. 552.

Bureau's rule on Disclosure of Records and Information,³⁴ or other applicable law, this request and the basis therefor should be included in a separate letter and submitted with the application.³⁵ Applicants are advised to specifically identify the information for which confidential treatment is requested, and may reference the Bureau's intentions regarding confidentiality under Section I.F; and

7. If an applicant(s) wishes the Bureau to coordinate with other regulators, the applicant(s) should identify those regulators, including but not limited to those that have been contacted about offering or providing the product or service in question.³⁶

The Bureau invites applications from trade associations, service providers,³⁷ and other third-parties. A trade association may wish to apply for a No-Action Letter on behalf of one or more of its members. Similarly, a service provider may wish to apply for a No-Action Letter covering business relationships with existing or prospective clients. In either case, the third-party applicant may be unable to describe all entities interested in a No-Action Letter. The third-party applicant may also have difficulty submitting a complete application without specific knowledge of the business practices of every entity interested in a No-Action Letter.

A trade association, service provider, or other third-party applicant should endeavor to submit a complete application. However, if a third-party applicant is unable to submit a complete application,³⁸ the Bureau may issue a

³⁴ 12 CFR part 1070.

³⁵ Applicants should describe the relevant legal bases for confidentiality with as much specificity as practicable. The Bureau recognizes that some applicants may lack the legal resources to provide a detailed and complete showing. In such circumstances, the applicant should provide the maximum specification practicable under the circumstances and explain the limits on further specification.

³⁶ Depending on the extent of coordination requested, the Bureau may not be able to respond to the application within the time frame specified in Section I.C.

³⁷ The term "service provider" is generally defined in section 1002(26) of the Dodd-Frank Act as "any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service." 12 U.S.C. 5481(26). Some potential service providers may be unable to submit an application for a No-Action Letter without entering into a business relationship that enables them to provide a material service to a covered person. At the same time, a service provider may be unable to enter into such a business relationship absent appropriate relief.

³⁸ For example, although a third-party should endeavor to identify all other entities jointly interested in pursuing an application, it may not be

provisional No-Action Letter subject to submission of additional information and the Bureau's subsequent issuance of a non-provisional No-Action Letter. Based on a review of this additional information, a non-provisional No-Action Letter may be issued to the third-party and/or the entity (or entities) described by the third-party. Additional entities described by the third-party applicant may receive the letter at the same or later time by informing the Bureau that they wish to receive the letter and providing the necessary information.

Applications may be submitted via email to: officeofinnovation@cfpb.gov or through other means designated by the Office of Innovation.³⁹ Submitted applications may be withdrawn at any time. Potential applicants are encouraged to contact the Office of Innovation at the same email address for informal preliminary discussion of a contemplated proposal prior to submitting a formal application.⁴⁰

C. Bureau Assessment of Applications for No-Action Letters

In deciding whether to grant an application for a No-Action Letter, the Bureau intends to consider the quality and persuasiveness of the application, with particular emphasis on the information specified in subsections I.B.3, I.B.4, and I.B.5.⁴¹

The Bureau intends to grant or deny an application within 60 days of notifying the applicant that the Bureau has deemed the application to be complete.

D. Bureau Procedures for Issuing No-Action Letters

When the Bureau decides to grant an application for a No-Action Letter, it intends to provide the recipient(s) with a No-Action Letter signed by the Assistant Director of the Office of Innovation or other members of the Office of Innovation, duly authorized by the Bureau, that sets forth the specific terms and conditions of the no-action relief provided.⁴² The Bureau expects the No-Action Letter will:

able to identify all such entities by name at the time of the application. In such cases, the third-party applicant could describe the type of other entity it wishes to receive a No-Action Letter.

³⁹Except as provided in Section I.B, applications should not include any PII.

⁴⁰The email subject line should begin: "No-Action Letter—Inquiry."

⁴¹The decision whether to grant an application for a No-Action Letter will be within the Bureau's sole discretion.

⁴²If the Bureau decides to deny an application, it will inform the applicant(s) of its decision. The Bureau intends to respond to reasonable requests to reconsider its denial of an application within 60

1. Identify the recipient(s);
2. Specify the subject matter scope of the letter, *i.e.*, the described aspects of the product or service;
3. State that the letter is limited to the recipient's (or recipients') offering or providing the described aspects of the product or service, and that it does not apply to the recipient's (or recipients') offering or providing different aspects of the product or service;
4. State that the letter is limited to the recipient(s), and that it does not apply to any other persons or entities;
5. Require the recipient(s) to inform the Bureau of material changes to information included in the application that would materially increase the risk of material, tangible harm to consumers;
6. Specify any other limitations or conditions, and the extent that the Bureau intends to publicly disclose information about the No-Action Letter;⁴³
7. State that, subject to good faith, substantial compliance with the terms and conditions of the letter, and in the exercise of its discretion, the Bureau will not make supervisory findings or bring a supervisory or enforcement action against the recipient(s) predicated on the recipient's (or recipients') offering or providing the described aspects of the product or service under (a) its authority to prevent unfair, deceptive, or abusive acts or practices;⁴⁴ or (b) any other identified statutory or regulatory authority within the Bureau's jurisdiction.⁴⁵
8. State that, if the No-Action Letter is revoked for a reason other than the recipient's (or recipients') failure to substantially comply in good faith with the terms and conditions of the letter, the revocation is prospective only; *i.e.*, that the Bureau would not pursue an action to impose retroactive liability in such circumstances.

days of such requests. Applicants may also withdraw, modify, and re-submit applications at any time.

⁴³If an applicant(s) objects to the disclosure of certain information and the Bureau insists that the information must be publicly disclosed if a No-Action Letter is issued, the applicant(s) may withdraw the application and the Bureau intends to treat all information related to the application as confidential to the full extent permitted by law.

⁴⁴Implicit in the statement under part (a) is that the Bureau has not determined that the acts or practices in question are unfair, deceptive, or abusive.

⁴⁵A No-Action Letter permits the Bureau to exercise its supervision and enforcement authorities with respect to the recipient's (or recipients') conduct outside the scope of the No-Action Letter.

Bureau anticipates revocation to be quite rare. The Bureau expects the No-action Letter to specify the grounds of revocation, which the Bureau anticipates will be: (i) Failure to substantially comply in good faith with the terms and conditions of the letter; (ii) a determination by the Bureau that the recipient's (or recipients') offering or providing the described aspects of the product or service is causing material, tangible, harm to consumers; and (iii) a determination by the Bureau that the legal uncertainty, ambiguity, or barrier that was the basis for grant of a No-Action Letter has changed as a result of as statutory change or a Supreme Court decision.

Before revoking a No-Action Letter, the Bureau will notify the recipient(s) of the grounds for revocation, and permit an opportunity to respond within a reasonable period of time. If the Bureau determines that the recipient(s) failed to substantially comply in good faith with the terms and conditions of the No-Action Letter, it will offer the recipient(s) an opportunity to cure the failure within a reasonable period of time before revoking the No-Action Letter. If the Bureau revokes or partially revokes a No-Action Letter, it will do so in writing and it will specify the reason(s) for its decision. The Bureau intends to allow the recipient(s) to wind-down the offering or providing of the describe aspects of the product or service during an appropriate period after revocation, unless the revocation was based upon the product or service causing material, tangible harm to consumers and a wind-down period would increase such harm.

E. Regulatory Coordination

Section 1015 of the Dodd-Frank Act instructs the Bureau to coordinate with Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.⁴⁶ Similarly, section 1042(c) of the Dodd-Frank Act instructs the Bureau to provide guidance in order to further coordinate actions with the State attorneys general and other regulators.⁴⁷ Such coordination includes coordinating in circumstances where other regulators have chosen to limit their enforcement or other regulatory authority. The Bureau is interested in entering into agreements with State authorities that issue similar forms of no-action relief that would provide for an alternative means of receiving a No-Action Letter from the Bureau, *i.e.*,

⁴⁶ 12 U.S.C. 5495.

⁴⁷ 12 U.S.C. 5552(c).

alternative to the process described in Sections I.B, I.C, and I.D.

Furthermore, the Bureau wishes to coordinate with other regulators more generally. To this end, the Bureau intends to enter into agreements whenever practicable to coordinate relief under Part I with similar forms of relief offered by State, Federal, or international regulators.

F. Bureau Disclosure of Information Regarding No-Action Letters

The Bureau intends to publish No-Action Letters on its website, as well as, in appropriate cases, a version or summary of the application. The Bureau also may publish denials of applications on its website, including an explanation of why the application was denied, particularly if it determines that doing so would be in the public interest.⁴⁸

Public disclosure of any other information regarding No-Action Letters is governed by applicable law, including the Dodd-Frank Act,⁴⁹ the Freedom of Information Act (FOIA),⁵⁰ and the Bureau's rule on Disclosure of Records and Information (Disclosure Rule).⁵¹ The Disclosure Rule generally prohibits the Bureau from disclosing confidential information,⁵² and defines confidential information to include information that may be exempt from disclosure under the FOIA⁵³—including Exemption 4 regarding trade secrets and confidential commercial or financial information that is privileged or confidential.⁵⁴ The Disclosure Rule defines confidential supervisory information to include any information provided to the Bureau by a financial institution to enable the Bureau to monitor for risks to consumers in the offering or provision of consumer financial products or services.⁵⁵ Relatedly, the Disclosure Rule defines business information as commercial or financial information obtained by the Bureau from a submitter that may be protected from disclosure under Exemption 4 of FOIA, and generally provides that such business information shall not be disclosed pursuant to a FOIA request except in

accordance with section 1070.20 of the rule.⁵⁶

The Bureau anticipates that much of the information submitted by applicants in their applications, and by recipients during the pendency of the No-Action Letter, will qualify as confidential information, which may include confidential supervisory information and/or business information, under the Disclosure Rule.⁵⁷ In particular, information requested from applicants under subsections I.B.3, I.B.4, and I.B.5 is designed to enable the Bureau to assess potential risks to consumers posed by a No-Action Letter. Similarly, under subsection I.D.5, the Bureau is requiring notification of material changes to any application information to enable the Bureau to monitor for risks during the pendency of a No-Action Letter. Therefore, the Bureau expects that much of the information submitted that is responsive to subsections I.B.3, I.B.4, I.B.5, and I.D.5 may constitute confidential supervisory information since it is obtained, in part, for the purpose of monitoring for risks to consumers. Additionally, the Bureau expects that much of the information submitted that is responsive to subsection I.B.2 will constitute business information. The Bureau expects that it may also constitute confidential supervisory information, since understanding the nature of the applicant's product or service and the manner in which it is offered or provided is essential for the Bureau to monitor for risks to consumers.⁵⁸

Disclosure of information or data provided to the Bureau under the Policy to other Federal and State agencies is governed by applicable law, including the Dodd-Frank Act⁵⁹ and the Bureau's Disclosure Rule, and subject to Bureau Bulletin 12–01.⁶⁰ This includes disclosure consistent with Memoranda of Understanding (MOUs) the Bureau has with other Federal and State agencies. For example, under certain MOUs with other Federal agencies, the Bureau has agreed to provide CSI to those agencies.

To the extent the Bureau wishes to publicly disclose non-confidential information regarding a No-Action Letter, the terms of such disclosure will be included in the letter. The Bureau intends to draft the No-Action Letter in a manner such that confidential information is not disclosed. Consistent with applicable law and its own rules, the Bureau will not seek to publicly disclose any information that would conflict with consumers' privacy interests.

Part II. BCFP Product Sandbox

This part consists of seven sections:

- Section A describes the three types of relief available to participants in the BCFP Product Sandbox.
- Section B describes information that should be included in applications for admission to the BCFP Product Sandbox.
- Section C lists factors the Bureau intends to consider in deciding whether to grant an application for admission to the BCFP Product Sandbox.
- Section D describes procedures for granting admission to the BCFP Product Sandbox.
- Section E describes procedures for granting extensions of participation in the BCFP Product Sandbox.
- Section F describes how the Bureau intends to coordinate with other regulators with respect to the BCFP Product Sandbox.
- Section G describes Bureau disclosure of information about the BCFP Product Sandbox.

A. Types of Relief Available to Participants in the BCFP Product Sandbox

1. Approvals

An approval under Part II is relief provided by the Bureau to a particular entity or entities, based on particular facts and circumstances, under one or more of three statutory safe harbor provisions.⁶¹ An approval issued to a particular entity or entities will include (a) a statement that, subject to good faith compliance with specified terms and conditions, the Bureau approves the recipient's (or recipients') offering or providing the described aspects of the product or service;⁶² and (b) a specification of the legal authority and

⁴⁸ The Bureau intends to publish denials only after the applicant is given an opportunity to request reconsideration of the denial. Upon request, and to the extent permitted by law, the Bureau does not intend to release identifying information from published denials, and intends to redact such information from the denials published on its website.

⁴⁹ See, e.g., 12 U.S.C. 5512(c)(8).

⁵⁰ 5 U.S.C. 552.

⁵¹ 12 CFR part 1070.

⁵² 12 CFR 1070.41.

⁵³ 12 CFR 1070.2(f).

⁵⁴ 5 U.S.C. 552(b)(4).

⁵⁵ 12 CFR 1070.2(i)(1)(iv).

⁵⁶ 12 CFR 1070.20(a), (b).

⁵⁷ To the extent associated communications include the same information, that information would have the same status. But other information in associated communications may be subject to disclosure.

⁵⁸ To the extent an applicant or recipient submits information in connection with any of the identified subsections that is not actually responsive to these subsections, such information may be subject to disclosure.

⁵⁹ See, e.g., 15 U.S.C. 5512(c)(6); 5514(b)(3); 5515(b)(2); 5516(c)(2); 5516(d)(2).

⁶⁰ Available at: https://files.consumerfinance.gov/f/2012/01/GC_bulletin_12-01.pdf.

⁶¹ 15 U.S.C. 1640(f) (TILA); 15 U.S.C. 1691e(e) (ECOA); 15 U.S.C. 1693m(d) (EFTA).

⁶² For convenience, "described aspects of the product or service" is used in Part II to capture the subject matter scope of admission to the BCFP Product Sandbox and the attendant relief, including both the particular aspects of the product or service in question, and the particular manner in which it is offered or provided.

rational basis for the Bureau's issuance of the approval.

By operation of the applicable statutory provision(s), the recipient would have a "safe harbor" from liability under the applicable statute(s) to the fullest extent permitted by these provisions as to any act done or omitted in good faith in conformity with the approval; *i.e.*, the recipient would be immune from enforcement actions by any Federal or State authorities, as well as from lawsuits brought by private parties.⁶³

2. Exemptions

An exemption under Part II is relief provided to a particular entity or entities, based on particular facts and circumstances, through which the Bureau exercises its authority to grant exemptions by order (i) from statutory provisions (as well as provisions of regulations implementing the statute in question) under statutory exemption-by-order provisions (statutory exemptions);⁶⁴ or (ii) from regulatory provisions that do not mirror statutory provisions under rulemaking authority or other general authority (regulatory exemptions).⁶⁵ An exemption issued to a particular entity or entities will include (a) a statement that, subject to good faith compliance with specified terms and conditions, the Bureau exempts the recipient(s) from complying with or deems it to be in compliance with specified statutory or regulatory provisions in connection with its offering or providing the described aspects of the product or service; and (b) a specification of the legal authority and rational basis for the Bureau's issuance of the exemption.

Where the Bureau provides such an exemption to a recipient(s), the recipient(s) would be immune from enforcement actions by any Federal or State authorities, as well as from lawsuits brought by private parties,

⁶³ 15 U.S.C. 1640(f); 15 U.S.C. 1691e(e); 15 U.S.C. 1693m(d).

⁶⁴ See, e.g., 15 U.S.C. 1691c-2(g)(2) (ECOA); 15 U.S.C. 1639(p)(2) (HOEPA); 12 U.S.C. 1831t(d) (FDIA). Any exemption issued by the Bureau pursuant to such statutory authority will satisfy any applicable statutory requirements.

⁶⁵ See, e.g., *United States v. Allegheny-Ludlum Steel Corp.*, 406 U.S. 742, 755 (1972) ("It is well established that an agency's authority to proceed in a complex area . . . by means of rules of general application entails a concomitant authority to provide exemption procedures in order to allow for special circumstances."); *Brodsky v. U.S. Nuclear Regulatory Comm'n*, 783 F. Supp. 2d 448 (S.D.N.Y. 2011) (same); 15 U.S.C. 5512(b)(1) (authorizing the Director of the Bureau to "prescribe rules and issue orders and guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof").

based on the relevant statutory or regulatory provisions and on the recipient's (or recipients') offering or providing the described aspects of the product or service.⁶⁶

3. No-Action Relief

The no-action relief available under Part II is substantially the same as the no-action relief available under Part I, including not having a limited duration.⁶⁷

B. Submitting Applications for Admission to the BCFP Product Sandbox

An application for admission to the BCFP Product Sandbox should include the following:

1. The identity of the entity or entities applying for admission to the BCFP Product Sandbox;

2. A description of the consumer financial product or service to be offered or provided within the BCFP Product Sandbox, including (a) how the product or service functions, and the terms on which it will be offered; and (b) the manner in which it is offered or provided to consumers, including any consumer disclosures;

3. The requested duration of participation in the BCFP Product Sandbox,⁶⁸ and a description of any other limitations on participation, such as limits on the volume of transactions, the number of consumers to which the product or service is to be offered or provided, or geographic scope;

4. An explanation of the potential consumer benefits of the product or service and/or the manner in which it is offered or provided, and suggested metrics for evaluating whether such benefits are realized, such as consumer utilization numbers;

5. An explanation of the potential consumer risks posed by the product or service and/or the manner in which it is offered or provided, and how the

⁶⁶ See, e.g., 15 U.S.C. 5532(e) (exemption from a rule or enumerated consumer law issued by the Bureau constitutes a safe harbor from liability); *Williams v. Chartwell Fin. Servs., Ltd.*, 204 F.3d 748, 754 (7th Cir. 2004) (exemption effectively provides a safe harbor from liability).

⁶⁷ Although the no-action relief itself is substantially the same under Part I and Part II, potential applicants should keep in mind other differences between Part I and Part II when deciding whether to apply for a No-Action Letter under Part I, or for admission to the BCFP Product Sandbox under Part II, such as differences in data sharing expectations.

⁶⁸ The Bureau expects that two years will be an appropriate duration in most cases. As indicated in subsection II.A.3, the no-action relief available under Part II, like the no-action relief available under Part I, can be of unlimited duration. The "requested duration of participation in the BCFP Product Sandbox" element pertains only to approval relief and exemption relief.

applicant(s) intends to mitigate such risks, including any plans for addressing unanticipated consumer harms and the amount of resources available to provide restitution for material, quantifiable, economic harm to consumers caused by the applicant's (or applicants') offering or providing the product or service;

6. An identification of the statutory and regulatory provisions from which the applicant(s) seeks relief, the type of relief sought (approval, exemption, and/or no-action relief), and an identification of the potential uncertainty, ambiguity or barrier that such relief would address;^{69 70}

7. A description of data the applicant(s) possesses and/or intends to develop pertaining to the impact of the product or service on consumers that will be shared with the Bureau if the application is granted,⁷¹ and a proposed schedule for sharing this data with the Bureau;

8. If an applicant(s) wishes to request confidential treatment under the Freedom of Information Act,⁷² the Bureau's rule on Disclosure of Records and Information,⁷³ or other applicable law, this request and the basis therefor should be included in a separate letter and submitted with the application.⁷⁴ Applicants are advised to specifically identify the information for which confidential treatment is requested; and

9. If an applicant(s) wishes the Bureau to coordinate with other regulators, the applicant(s) should identify those regulators, including but not limited to those that have been contacted about

⁶⁹ Applicants should describe the relevant provisions with as much specificity as practicable, in part to enable the Bureau to respond expeditiously to the application. The Bureau recognizes that in some cases it may be difficult to determine precisely which provisions would apply, in the normal course, to the product or service in question. In other cases, the applicant may lack the legal resources to make a fully precise determination. In such circumstances, the applicant should provide the maximum specification practicable under the circumstances and explain the limits on further specification.

⁷⁰ If an applicant(s) seeks an exemption under statutes that permit the Bureau to issue exemptions by order provided certain standards are satisfied, the applicant(s) should explain how the relevant standards are satisfied.

⁷¹ The data the applicant expects to share with the Bureau should be limited to aggregate data.

⁷² 5 U.S.C. 552.

⁷³ 12 CFR part 1070.

⁷⁴ Applicants should describe the relevant legal bases for confidentiality with as much specificity as practicable. The Bureau recognizes that some applicants may lack the legal resources to provide a detailed and complete showing. In such circumstances, the applicant should provide the maximum specification practicable under the circumstances and explain the limits on further specification.

offering or providing the product or service in question.⁷⁵

The Bureau invites applications from trade associations, service providers,⁷⁶ and other third-parties. A trade association may wish to apply for admission to the BCFP Product Sandbox on behalf of one or more of its members. Similarly, a service provider may wish to apply for admission to the BCFP Product Sandbox with existing or prospective clients. In either case, the third-party applicant may be unable to describe all entities interested in admission to the BCFP Product Sandbox. The third-party applicant may also have difficulty submitting a complete application for admission without specific knowledge of the business practices of every entity interested in admission.

A trade association, service provider, or other third-party applicant should endeavor to submit a complete application. However, if a third-party applicant is unable to submit a complete application,⁷⁷ the Bureau may grant provisional admission to the BCFP Product Sandbox subject to submission of additional information and the Bureau's subsequent grant of non-provisional admission. Based on a review of this additional information, non-provisional admission may be granted to the third-party and/or the entity (or entities) described by the third-party. Additional entities identified by the third-party may be granted admission at the same or later time by informing the Bureau that they wish to be granted admission and providing the necessary information.

Applications may be submitted via email to: officeofinnovation@cfpb.gov or through other means designated by the Office of Innovation.⁷⁸ Submitted

⁷⁵ Depending on the extent of coordination requested, the Bureau may not be able to respond to the application within the time frame specified in Section II.C.

⁷⁶ The term "service provider" is generally defined in section 1002(26) of the Dodd-Frank Act as "any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service." 12 U.S.C. 5481(26). Some potential service providers may be unable to submit an application for admission to the BCFP Product Sandbox without entering into a business relationship that enables them to provide a material service to a covered person. At the same time, a service provider may be unable to enter into such a business relationship absent appropriate relief.

⁷⁷ For example, although a third-party should endeavor to identify all other entities jointly interested in pursuing an application, it may not be able to identify all such entities by name at the time of the application. In such cases, the third-party applicant could describe the type of other entity it wishes to be admitted to the BCFP Product Sandbox.

⁷⁸ Except as provided in Section II.B, applications should not include any PII.

applications may be withdrawn at any time. Potential applicants are encouraged to contact the Office of Innovation at the same email address for informal preliminary discussion of a contemplated proposal prior to submitting a formal, complete application.⁷⁹

C. Bureau Assessment of Applications for Admission to the BCFP Product Sandbox

In deciding whether to grant an application for admission to the BCFP Product Sandbox,⁸⁰ the Bureau intends consider the quality and persuasiveness of the application, with particular emphasis on the information specified in subsections II.B.4, II.B.5, and II.B.6.

The Bureau intends to grant or deny an application within 60 days of notifying the applicant that the Bureau has deemed the application to be complete.

D. Procedures for Granting Admission to the BCFP Product Sandbox⁸¹

When the Bureau decides to grant an application for admission to the BCFP Product Sandbox, it intends to provide the recipient(s) with a document entitled: BCFP Product Sandbox Participation Terms and Conditions (Terms and Conditions document), that sets forth the terms and conditions of the recipient's (or recipients') participation in the BCFP Product Sandbox, including the types and scope of the relief provided to the recipient(s) during its participation in the Sandbox. The Terms and Conditions document will be signed by the Assistant Director of the Office of Innovation or other members of the Office of Innovation, duly authorized by the Bureau and by an officer of each recipient.⁸² The Bureau expects the Terms and Conditions document will:

1. Identify the recipient entity or entities;
2. Specify the subject matter scope of the document, *i.e.*, the described aspects of the product or service;
3. State that the document is limited to the recipient's (or recipients') offering

⁷⁹ The email subject line should begin "BCFP Product Sandbox—Inquiry."

⁸⁰ The decision whether to grant an application for admission to the BCFP Product Sandbox will be within the Bureau's sole discretion.

⁸¹ The procedures specified in Section II.D may be modified pursuant to coordination efforts with other regulators, as specified in Section II.F.

⁸² If the Bureau decides to deny an application, it will inform the applicant(s) of its decision. The Bureau intends to respond to reasonable requests to reconsider its denial of an application within 60 days of such requests. Applicants may also withdraw, modify, and re-submit applications at any time.

or providing the described aspects of the product or service, and that it does not apply to the recipient's (or recipients') offering or providing different aspects of the product or service;

4. State that the document is limited to the recipient(s), and that it does not apply to any other persons or entities;

5. Require the recipient(s) to report information about the effects of offering or providing the described aspects of the product or service on complaint patterns, default rates, or similar metrics that will enable to the Bureau to determine if doing so is causing material, tangible harm to consumers.

6. Include a commitment by the recipient(s) to compensate consumers for material, quantifiable, economic harm caused by the recipient's (or recipients') offering or providing the described aspects of the product or service within the BCFP Product Sandbox;

7. Specify any other limitations or conditions, such as the duration of the recipient's (or recipients') participation in the BCFP Product Sandbox,⁸³ the nature and extent of the recipient's (or recipients') data sharing, and the extent that the Bureau intends to publicly disclose information about the recipient's (or recipients') participation in the BCFP Product Sandbox;⁸⁴

8. (a) State that, subject to good faith compliance with the terms and conditions of the document, (i) the Bureau approves the recipient's (or recipients') offering or providing the described aspects of the product or service, and/or (ii) the Bureau exempts the recipient(s) from complying with or deems it to be in compliance with specified statutory or regulatory provisions in connection with its offering or providing the described aspects of the product or service; and (b) specify the legal authority⁸⁵ and rational basis for the Bureau's issuance of the approval and/or exemption.

9. State that, subject to good faith compliance with the terms and conditions of the document, and in the exercise of its discretion, the Bureau will not make supervisory findings or bring a supervisory or enforcement action against the recipient(s) predicated on the recipient's (or recipients') offering or providing the

⁸³ The Bureau expects two years to be an appropriate duration in most cases.

⁸⁴ If an applicant(s) objects to the disclosure of certain information and the Bureau insists that the information must be publicly disclosed if admission to the BCFP Product Sandbox is to be granted, the applicant(s) may withdraw the application and the Bureau intends to treat all information related to the application as confidential to the full extent permitted by law.

⁸⁵ See notes 61, 64–65, *supra*.

described aspects of the product or service under (a) its authority to prevent unfair, deceptive, or abusive acts or practices;⁸⁶ or (b) any other identified statutory or regulatory authority within the Bureau's jurisdiction.⁸⁷

10. State that, if the relief provided pursuant to the document is revoked for a reason other than the recipient's (or recipients') failure to comply in good faith with the terms and conditions of the document, the revocation is prospective only; *i.e.*, that the Bureau would not pursue an action to impose retroactive liability in such circumstances.

In certain circumstances, the Bureau may revoke admission to the BCFP Product Sandbox in whole or in part. Based, in part, on its knowledge of similar relief programs operated by other Federal agencies, the Bureau anticipates revocation to be quite rare. The Bureau expects the Terms and Condition document to specify the grounds of revocation, which the Bureau anticipates will be: (i) Failure to comply in good faith with the terms and conditions of the document; (ii) a determination by the Bureau that the recipient's (or recipients') offering or providing the described aspects of the product or service is causing material, tangible harm to consumers; and (iii) a determination by the Bureau that the legal uncertainty, ambiguity, or barrier that was the basis for the relief provided has changed as a result of a statutory change or a Supreme Court decision.

Before issuing a revocation, the Bureau will notify the recipient(s) of the grounds for revocation, and permit an opportunity to respond within a reasonable period of time. If the Bureau nonetheless determines that the recipient(s) failed to comply with the Terms and Conditions document, it will offer the recipient(s) an opportunity to cure the failure within a reasonable period of time before issuing a revocation. If the Bureau issues a revocation for failure to comply in good faith with the Terms and Conditions document, it will do so in writing and it will specify the reason(s) for its decision, including the reason(s) why any attempt to cure was inadequate. The Bureau intends to allow the recipient(s) to wind-down the offering or providing of the described aspects of the product or service during a period of six months

⁸⁶ Implicit in the statement under part (a) is that the Bureau has not determined that doing so is deceptive, unfair, or abusive.

⁸⁷ The relief provided to a participant(s) in the BCFP Product Sandbox permits the Bureau to exercise its supervision and enforcement authorities with respect to conduct by the participant(s) outside the scope of that relief.

after revocation, unless the revocation was based upon the product or service causing material, tangible harm to consumers and a wind-down period would increase such harm.

E. Procedures for Extension of Participation in the BCFP Product Sandbox

Participants in the BCFP Product Sandbox may apply for an extension of a specified period of time based upon the quality and persuasiveness of the data provided to the Bureau under Section II.D. The Bureau expects to place particular weight on the extent to which the data shows that the described aspects of the product or service are benefitting consumers and/or not causing material, tangible harm to consumers. Such applications for an extension should include the proposed duration of the extension and should be submitted no later than 90 days prior to the expiration of the applicant's participation in the BCFP Product Sandbox.⁸⁸ Alternatively, participants may reapply by resubmitting the entirety of the information specified in Section II.B.

Upon the presentation of persuasive data, the Bureau anticipates granting such extension applications for a period at least as long as the period of the applicant's (or applicants') original participation in the BCFP Product Sandbox. The Bureau anticipates permitting longer extensions where the Bureau is considering amending applicable regulatory requirements.⁸⁹ During the time period pending a rule amendment, the Bureau intends to consider means of providing similar relief to other covered entities that engage in the same or similar conduct in offering or providing comparable products.

F. Regulatory Coordination

Section 1015 of the Dodd-Frank Act instructs the Bureau to coordinate with Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and

⁸⁸ Assuming the two-year period the Bureau expects to be appropriate in most cases, the Bureau believes recipients would have sufficient time to gather evidence supportive of an extension request. For periods of one year or less, the Bureau may consider an extension deadline appropriate for the period in question.

⁸⁹ The Bureau's plans regarding rulemaking activity are set forth in its Semiannual Regulatory Agenda, published in full on www.reginfo.gov. If the period of an extension were tied to the Bureau's consideration of amending relevant regulatory provisions and the Bureau announced it was discontinuing its plans to amend the provisions in question, the extension period would be adjusted accordingly, *e.g.*, adjusted to end on a specific date.

services.⁹⁰ Similarly, section 1042(c) of the Dodd-Frank Act instructs the Bureau to provide guidance in order to further coordinate actions with the State attorneys general and other regulators.⁹¹ Such coordination includes coordinating in circumstances where other regulators have chosen to limit their enforcement or other regulatory authority. One method of limiting such authority is through a State sandbox, or group of State sandboxes, or other limited scope State authorization program ("State sandbox").⁹² The Bureau is interested in entering into agreements with State authorities that operate or plan to operate a State sandbox that would provide for an alternative means of admission to the BCFP Product Sandbox, *i.e.*, alternative to the process described in Sections II.B, II.C, and II.D.

Furthermore, the Bureau wishes to coordinate with other regulators more generally. To this end, the Bureau intends to enter into agreements whenever practicable to coordinate relief under Part II with similar forms of relief offered by State, Federal, or international regulators.

G. Bureau Disclosure of Information Regarding the BCFP Product Sandbox

The Bureau intends to publish on its website information about the BCFP Product Sandbox. For entities admitted to the BCFP Product Sandbox pursuant to the process specified in Sections II.B, II.C, and II.D, the information is expected to include: (i) The identity of the entity or entities admitted to the BCFP Product Sandbox; (ii) the subject matter scope of its or their participation;⁹³ (iii) the duration of its or their participation; (iv) the types of relief provided to participant(s); (v) for approvals and/or exemptions, the legal authority and rational basis for the approval and/or exemption; and (vi) in appropriate cases, a version or summary of the application.⁹⁴ The Bureau also intends to publish on its website information about denials of applications submitted pursuant to

⁹⁰ 12 U.S.C. 5495.

⁹¹ 12 U.S.C. 5552(c).

⁹² The concept of a regulatory sandbox is relatively new and does not have a precise, generally accepted definition. The term is used in this Policy to refer to a regulatory structure where a participant obtains limited or temporary access to a market in exchange for reduced regulatory barriers to entry or reduced regulatory uncertainty.

⁹³ See subsection II.D.2, *supra*.

⁹⁴ The Bureau intends, at minimum, to publish the names of participants admitted to the BCFP Product Sandbox pursuant to Section II.F, but reserves the discretion to negotiate any additional disclosure terms with the corresponding regulator to the extent permitted by law.

Section B, including an explanation of why the application was denied.⁹⁵

Public disclosure of any other information regarding admission to the BCFP Product Sandbox is governed by applicable law, including the Dodd-Frank Act,⁹⁶ the Freedom of Information Act (FOIA),⁹⁷ and the Bureau's rule on Disclosure of Records and Information (Disclosure Rule).⁹⁸ The Disclosure Rule generally prohibits the Bureau from disclosing confidential information,⁹⁹ and defines confidential information to include confidential supervisory information and Bureau information that may be exempt from disclosure under the FOIA¹⁰⁰—including trade secrets and confidential commercial or financial information that is privileged or confidential.¹⁰¹ The Disclosure Rule defines confidential supervisory information to include any information provided to the Bureau by a financial institution to enable the Bureau to monitor for risks to consumers in the offering or provision of consumer financial products or services.¹⁰² Relatedly, the Disclosure Rule defines business information as commercial or financial information obtained by the Bureau from a submitter that may be protected from disclosure under Exemption 4 of FOIA, and generally provides that such business information shall not be disclosed pursuant to a FOIA request except in accordance with section 1070.20 of the rule.¹⁰³

The Bureau anticipates that much of the information submitted by applicants in their applications, and by recipients during their participation in the BCFP Product Sandbox pursuant to the Terms and Conditions document, will qualify as confidential information, which may include confidential supervisory information, and/or business information, under the Disclosure Rule.¹⁰⁴ In particular, the information requested under subsections II.B.3, II.B.4, II.B.6, and II.B.8 is designed to

enable the Bureau to assess potential risks to consumers posed by the described aspect of the product or service. Similarly, subsection II.D.5 requires recipients to report information about the effects of offering or providing the described aspects of the product or service on complaint patterns, default rates, or similar metrics that will enable to the Bureau to determine if doing so is causing material, tangible harm to consumers. The other data and information the recipient(s) will provide pursuant to subsection II.D.6 will likewise be used by the Bureau to monitor for risks to consumers. Therefore, the Bureau expects that much of the information submitted that is responsive to subsections II.B.3, II.B.4, II.B.6, and II.B.8, and the referenced portions of subsection II.D, may constitute confidential supervisory information, since it is obtained for the purpose of monitoring for risks to consumers. Additionally, the Bureau expects that much of the information or data submitted responsive to subsections II.B.2, II.B.8, and II.D.6 will constitute business information. The Bureau expects that it may also constitute confidential supervisory information, since understanding the nature of the described aspects of the product or service is essential for the Bureau to monitor for risks to consumers.^{105 106}

Disclosure of information or data provided to the Bureau under the Policy to other Federal and State agencies is governed by applicable law, including the Dodd-Frank Act¹⁰⁷ and the Bureau's Disclosure Rule, and subject to Bureau Bulletin 12–01.¹⁰⁸ This includes disclosure consistent with Memoranda of Understanding (MOUs) the Bureau has with other Federal and State agencies. For example, under certain MOUs with other Federal agencies, the Bureau has agreed to provide CSI to those agencies.

To the extent the Bureau wishes to publicly disclose non-confidential

⁹⁵ Upon request, and to the extent permitted by law, the Bureau does not intend to release identifying information from published denials, and intends to redact such information from the denials published on its website. The Bureau intends to publish denials only after the applicant is given an opportunity to request reconsideration of the denial.

⁹⁶ See, e.g., 12 U.S.C. 5512(c)(8).

⁹⁷ 5 U.S.C. 552.

⁹⁸ 12 CFR part 1070.

⁹⁹ 12 CFR 1070.41.

¹⁰⁰ 12 CFR 1070.2(f).

¹⁰¹ 5 U.S.C. 552(b)(4).

¹⁰² 12 CFR 1070.2(i)(1)(iv).

¹⁰³ 12 CFR 1070.20(a), (b).

¹⁰⁴ To the extent associated communications include the same information, that information would have the same status. But other information in associated communications may be subject to disclosure.

¹⁰⁵ To the extent an applicant or recipient submits information in connection with any of the identified subsections that is not actually responsive to these subsections, such information may be subject to disclosure.

¹⁰⁶ The Bureau notes that the preceding protections from public disclosure must be balanced against the Bureau's potential need to publicly disclose submitted data in some form—as permitted by applicable law and/or consent of recipients—if it decides to revise relevant regulatory provisions through notice-and-comment rulemaking based, in part, on such data—as provided in Section E.

¹⁰⁷ See, e.g., 15 U.S.C. 5512(c)(6); 5514(b)(3); 5515(b)(2); 5516(c)(2); 5516(d)(2).

¹⁰⁸ Available at: https://files.consumerfinance.gov/f/2012/01/GC_bulletin_12-01.pdf.

information regarding the BCFP Product Sandbox, the terms of such disclosure will be included in the Terms and Conditions document specified in Section II.D. The Bureau intends to draft the document in a manner such that confidential information is not disclosed. Consistent with applicable law and its own rules, the Bureau will not seek to publicly disclose any information or data that would conflict with consumers' privacy interests.

Dated: December 6, 2018.

Mick Mulvaney,

Acting Director, Bureau of Consumer Financial Protection.

[FR Doc. 2018–26873 Filed 12–12–18; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2018–C–4464]

Impossible Foods, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Impossible Foods, Inc., proposing that the color additive regulations be amended to provide for the safe use of soy leghemoglobin as a color additive in plant-based, non-animal derived ground beef analogue products.

DATES: The color additive petition was filed on November 5, 2018.

ADDRESSES: For access to the docket to read background documents or 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: Ellen Anderson, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1309.

SUPPLEMENTARY INFORMATION: Under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e(d)(1)), we are giving notice that we have filed a color additive petition (CAP

9C0314), submitted by Impossible Foods, Inc., c/o Exponent, Inc., 1150 Connecticut Avenue NW, Suite 1100, Washington, DC 20036. The petition proposes to amend the color additive regulations in part 73 (21 CFR part 73), “Listing of Color Additives Exempt From Certification,” to provide for the safe use of soy leghemoglobin as a color additive in plant-based, non-animal derived ground beef analogue products.

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(k) because soy leghemoglobin would be added directly to food and is intended to remain in food through ingestion by consumers and is not intended to replace macronutrients in food. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist. If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: December 7, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–26949 Filed 12–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE

22 CFR Part 147

[Public Notice: 10458]

RIN 1400–AE35

Information and Communication Technology

AGENCY: State Department.

ACTION: Proposed rule.

SUMMARY: The Department of State (the Department) updates and revises the rules that implement Section 508 of the Rehabilitation Act of 1973, consistent with a recent update to accessibility standards from the U.S. Access Board.

DATES: The Department will accept comments until February 11, 2019.

ADDRESSES: You may submit comments by the method:

- *Internet:* At www.Regulations.gov, you can search for the document using the Docket Number: DOS–2018–0029 or using the notice’s RIN 1400–AE35.

- *Email:* kottmyeram@state.gov—Alice Kottmyer, Attorney-Adviser, Department of State.

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Attorney Adviser,

Office of Management, Office of the Legal Adviser, (202) 647–2318.

SUPPLEMENTARY INFORMATION:

Background

The Department published its rules implementing section 508 of the Rehabilitation Act of 1973, 29 U.S.C. 794d (section 508), in 2016. 81 FR 32645.

Section 508 authorizes the Access Board to establish standards for technical and functional performance criteria to ensure that information technologies are accessible and usable by persons with disabilities. In January of 2017, the Access Board published a “refresh” of its existing standards and guidelines, which updated accessibility requirements for information and communication technology (ICT) covered by section 508 of the Rehabilitation Act or section 255 of the Communications Act. The rule jointly updated and reorganized the section 508 standards and section 255 guidelines to advance accessibility, facilitate compliance, and harmonize the requirements with other standards in United States and abroad. 82 FR 5832. Federal agencies, however, need only comply with the revised 508 standards (codified at 38 CFR 1194.1 and appendices A, C, and D), whereas the revised section 255 guidelines apply exclusively to telecommunications equipment manufacturers.

Why is the Department promulgating this rule?

In its “refresh”, the Access Board, among other things, reorganized the section 508 standards and updated terminology, such as replacing references to “electronic and information technology” with “information and communication technology”. The title of the standards was also changed from “Electronic and Information Technology Accessibility Standards”, to “Information and Communication Technology Standards and Guidelines”.

The amendments to part 147 proposed in this notice are intended to align the Department’s regulations with the Access Board’s revised section 508 standards. The Department also proposes adding one new provision (§ 147.9), which provides a prohibition against intimidation or retaliation against anyone who files a complaint, furnishes information, or engages in other lawful activities in furtherance of section 508, part 147, or other regulations that implement section 508.

Regulatory Findings

Administrative Procedure Act

This Department is publishing this document as a proposed rule with a 60-day comment period.

Regulatory Flexibility Act/Executive Order 13272: Consideration of Small Entities in Agency Rulemaking

The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities (*small businesses, small nonprofit organizations and small governmental jurisdictions*).

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804. With this rulemaking, the Department is making changes to terminology to align its rules with those of the Access Board. The Department is aware of no monetary effect on the economy that would result from this rulemaking, nor will there be any increase in costs or prices; or any effect on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Order 12866: Regulatory Planning and Review

The Department of State does not consider this rule to be a “significant regulatory action” under Executive Order 12866, section 3(f). The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. The Department has determined that the benefits of this regulation, *i.e.*, aligning its regulation with the standards promulgated by the Access Board, outweigh any costs.

Executive Orders 12372: Intergovernmental Review of Federal Programs and 13132: Federalism

This regulation will not have substantial direct effects on the States,

on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13563: Improving Regulation and Regulatory Review

The Department has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This proposed rule is not an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

Paperwork Reduction Act

The regulations in 22 CFR part 147 are related to OMB Control Number 1405–0220, which is in effect. This rule does not impose new or revised information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 147

Civil rights, Communications equipment, Computer technology, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

For the reasons set forth in the preamble, the Department of State proposes to amend 22 CFR part 147 as follows:

PART 147—INFORMATION AND COMMUNICATION TECHNOLOGY

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 22 U.S.C. 2651a; 29 U.S.C. 794, 794d; 36 CFR part 1194.

■ 2. Revise the heading for part 147 as set forth above.

Subpart A of Part 147 [Amended]

■ 3. In subpart A of part 147:
■ a. Remove “electronic and information technology” and add in its

place “information and communication technology”, wherever it occurs.

■ b. Remove the acronym “EIT” and add in its place the acronym “ICT”, wherever it occurs.

§ 147.2 [Amended]

■ 4. In § 147.2, remove “36 CFR 1194.4” and add in its place “E103.4 of appendix A to 36 CFR part 1194.”

■ 5. In § 147.3, revise the introductory text and the definition of “Section 508.”

§ 147.3 Definitions.

The Department of State adopts the definitions in E103.4 of appendix A to 36 CFR part 1194.

* * * * *

Section 508 means section 508 of the Rehabilitation Act of 1973, as amended, codified at 29 U.S.C. 794d.

§ 147.4 [Amended]

■ 6. Amend § 147.4 as follows:

■ a. In paragraph (a), remove “Electronic and Information Technology Accessibility Standards (36 CFR part 1194)” and add in its place “Revised 508 Standards (36 CFR 1194.1 and appendices A, C and D to 36 CFR part 1194).”

■ b. In paragraph (b), remove “36 CFR part 1194” and add in its place “36 CFR 1194.1.”

§ 147.5 [Amended]

■ 7. In § 147.5, remove “EIT Accessibility Standards” and add in its place “Revised 508 Standards.”

§ 147.6 [Amended]

■ 8. Amend § 147.6 as follows:

■ a. In paragraph (b), remove “Electronic and Information Technology Accessibility Standards, 36 CFR part 1194” and add in its place “Revised 508 Standards (36 CFR 1194.1 and appendices A, C and D to 36 CFR part 1194).”

■ b. In paragraph (c), remove “36 CFR part 1194” and add in its place “36 CFR 1194.1”.

■ c. In paragraph (d), remove “36 CFR part 1194” and add in its place “36 CFR 1194.1”.

§ 147.7 [Amended]

■ 9. Amend § 147.7(b) by removing “36 CFR part 1194” and adding in its place “36 CFR 1194.1”.

■ 10. Add § 147.9 to read as follows:

§ 147.9 Intimidation and retaliation prohibited.

No person may discharge, intimidate, retaliate, threaten, coerce or otherwise discriminate against any person because such person has filed a complaint, furnished information, assisted or participated in any manner in an

investigation, review, hearing or any other activity related to the administration of, or exercise of authority under, or privilege secured by section 508 and the regulations in this part.

Dated: November 26, 2018.

Gregory B. Smith,

Director, Office of Civil Rights and Chief Diversity Officer.

[FR Doc. 2018–26570 Filed 12–12–18; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2018–0010; Notice No. 179]

RIN 1513–AC41

Proposed Establishment of the Eastern Connecticut Highlands Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the approximately 1,246 square-mile “Eastern Connecticut Highlands” viticultural area in all or portions of Hartford, New Haven, Tolland, Windham, New London, and Middlesex Counties in Connecticut. The proposed viticultural area is not within and does not overlap any other established AVA. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: Comments must be received by February 11, 2019.

ADDRESSES: Please send your comments on this notice to one of the following addresses:

- *Internet:* <https://www.regulations.gov> (via the online comment form for this notice as posted within Docket No. TTB–2018–0010 at “*Regulations.gov*,” the Federal e-rulemaking portal);
- *U.S. mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing or view or obtain copies of the petition and supporting materials.

FOR FURTHER INFORMATION CONTACT:

Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202-453-1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120-01, dated December 10, 2013, (superseding Treasury Order 120-01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these provisions.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality,

reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes the standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Eastern Connecticut Highlands Petition

TTB received a petition from Steven Vollweiler, president of Sharpe Hill Vineyard, proposing the establishment of the approximately 1,246-square mile "Eastern Connecticut Highlands" AVA. The proposed Eastern Connecticut Highlands AVA covers the eastern third of the State and includes all or portions of Hartford, New Haven, Tolland, Windham, New London, and Middlesex Counties. Sixteen commercially-producing vineyards covering approximately 114.75 acres are distributed throughout the proposed AVA. An additional 20.5 acres of commercial vineyards are planned for the near future. Six wineries are also within the proposed AVA, with an additional three new wineries planned for the near future. Grape varieties

planted within the proposed AVA include cold-resistant varieties such as St. Croix, Traminette, Vidal, Cayuga, Frontenac, and Vignoles.

According to the petition, the distinguishing features of the proposed Eastern Connecticut Highlands AVA include its geology, topography, soils, and climate. Unless otherwise noted, all information and data pertaining to the proposed AVA contained in this document are from the petition for the proposed Eastern Connecticut Highlands AVA and its supporting exhibits.

Name Evidence

The proposed Eastern Connecticut Highlands AVA is located in what is known and referred to as the upland areas east of the Central Valley of Connecticut. These upland areas are commonly referred to as the "eastern highlands." The petition proposes adding "Connecticut" to the proposed AVA name in order to avoid confusion with other regions in the United States that are referred to as "eastern highlands."

Examples of the use of the term "eastern highlands" to describe the region of the proposed AVA include an article about Connecticut's physiography that appears on the Connecticut Department of Energy & Environmental Protection's web page. The article describes the region of the proposed AVA as "the Eastern Uplands or Highlands region."¹ The same web page also contains an article on the Air Line State Park Trail, which follows the rail bed of a rail line that formerly ran between Boston and New York City. This article states that in order for the rail line to be built, certain political and physical obstacles needed to be overcome, one of which was "Connecticut's eastern highlands."² In its entry on Connecticut, an online geography encyclopedia notes that, "The state is divided into two roughly equal sections, usually called the eastern highland and the western highland, which are separated by the Connecticut Valley lowland."³ As supporting name evidence, the petitioner provided a link to a hiking website with a page titled "Eastern Highlands Rock Climbing"⁴ that includes rock climbing locations within the proposed AVA. The petition included a map of the physical geology

¹ http://www.ct.gov/deep/lib/deep/wildlife/Pdf_files/nongame/ctwap/2005cwcs/CWCSch2.pdf.

² <http://www.ct.gov/deep/airlinetrail>.

³ <http://www.infoplease.com/encyclopedia/us/connecticut-state-united-states-geography.html>.

⁴ <https://www.mountainproject.com/v/eastern-highlands/10607668>.

of Connecticut, which shows the three regions of the State, including an area labeled "Eastern Highlands." Finally, the petition notes that a major healthcare organization that serves the region of the proposed AVA is named the Eastern Highlands Health District.

Boundary Evidence

The proposed Eastern Connecticut Highlands AVA encompasses the upland region of eastern Connecticut. According to the petition, the proposed boundary closely follows certain fault lines that lie along the geologic boundaries of the uplands region. The eastern and southern proposed boundaries approximate the Lake Char Fault and the Honey Hill Fault, respectively, and the western boundary follows the Eastern Border Fault of the Mesozoic Harford Basin. Beyond these boundaries, the topography and climate differ from within the proposed AVA. The Massachusetts-Connecticut State line forms the northern boundary of the proposed AVA because the climate and elevations of the region to the north of the proposed AVA differ slightly from the climate and elevations of the proposed AVA and because the proposed "Eastern Connecticut Highlands" name does not extend into Massachusetts.

Distinguishing Features

The distinguishing features of the proposed Eastern Connecticut Highlands AVA are its geology, topography, soils, and climate.

Geology

According to the petition, the varying resistance to erosion of the underlying rocks determines the topography and the physiographic provinces of Connecticut. The proposed Eastern Connecticut Highlands AVA is underlain by a Paleozoic formation generally referred to by geologists as Iapetus Terrane, named for the ancient ocean that once covered the region. The Iapetus Terrane is comprised largely of metamorphic rocks that are difficult to erode, resulting in the hills and mountains that characterize the landscape of the proposed AVA. The underlying geology also plays a major role in the formation of soils within the proposed AVA. The topography and soils of the proposed AVA will be discussed later in this document.

To the west of the proposed AVA, the region known as the Central Valley is underlain by younger, more easily eroded sandstone, shale, and basalt lava flows that have a significantly different chemical composition than the geological formations of the proposed

AVA. The regions to the east and south of the proposed AVA are part of the Avalonia Terrane, which consists of older, Pre-Cambrian rocks.

Topography

The proposed Eastern Connecticut Highlands AVA is characterized by hilly-to-mountainous terrain. Elevations within the proposed AVA range from about 200 feet in the valley floors between the hills to just more than 1,000 feet at the highest elevations in the northern portion. Along the eastern and western edges of the proposed AVA, the hills that run along the Eastern Border fault and the Lake Char Fault were formed from erosion-resistant metamorphic rocks. As a result, these hills tend to have sharp ridgelines and high elevations. In the central portion of the proposed AVA, the hills formed from metamorphic rocks that were less erosion-resistant than the rocks along the eastern and western edges. As a result, the hills in the central portion of the proposed AVA are more rounded and are "closely crammed together, almost nudging each other for more space."⁵ The petition states that the tops of these hills have concordant elevations, meaning that one hilltop will have about the same elevation as the neighboring hills. The hilltop elevations decrease as one moves from north to south. The petition states that if one were to imagine placing a gigantic sheet of plywood on top of the hills, the plywood would form a plane that gently slopes southward at about 10 to 20 feet per mile.

By contrast, the region to the west of the proposed AVA is a broad, flat valley. Elevations within the valley range from about 150 feet to 250 feet. South of the proposed AVA, within the region known as the Coastal Slope, elevations are also generally lower than within the proposed AVA, ranging from sea level to about 400 feet. The shoreline of this coastal region consists of rocky prominences separated by coves and tidal lands that may extend several miles inland. The highlands terrain of the proposed AVA extends north into Massachusetts and east into Rhode Island, but the elevations differ in those locations. The petition states that the highlands of Massachusetts have generally higher elevations than the proposed AVA. The petition also notes that the highlands of Rhode Island diminish as one moves eastward, and the elevations become lower.

⁵ Michael Bell, *The Face of Connecticut*. State Geological and Natural History Survey of Connecticut, Bulletin 100 (1985).

The petition states that topography affects viticulture within the proposed Eastern Connecticut Highlands AVA because topography impacts the climate of a region. Regions with higher elevations, such as the proposed AVA, generally have a colder climate than regions with lower elevations, such as the neighboring Central Valley. Additionally, regions that are closer to the coast, such as the Coastal Slope region south of the proposed AVA and the lower elevations of Rhode Island, are more significantly affected by maritime climate than higher inland regions like the proposed AVA. Temperatures affect the varieties of grapes that can be successfully grown in any given area, as will be discussed later in this document.

Soils

According to the petition, Connecticut was affected by the last Ice Age glacier, which covered all of the State with ice a mile or more thick. As the ice slowly flowed in a generally southerly direction, it scraped and eroded the underlying bedrock, which contains an abundance of mineral nutrients. Eroded debris deposited by glaciers is referred to as glacial till. Glacial till soils are generally fertile and well-suited for agriculture, including viticulture.

There are two main types of glacial till—lodgement (or basal) till, which is material deposited by glaciers as they move across the landscape, and ablation (or meltout) till, which is material deposited as a stagnant or slow moving glacier melts. The petition states that the soils of the proposed Eastern Connecticut Highlands AVA developed on lodgement till. These soils are thick sandy-to-silty loams and can range from well to poorly drained and are typically less permeable than soils formed from ablation till. According to the petition, the proposed AVA has the largest area of lodgement till soils in the State. By contrast, the Coastal Slope region of Connecticut, south of the proposed AVA, has the smallest amount of lodgement till soils. The southern and western regions of the State contain large areas of ablation soils. Soils in the Central Valley west of the proposed AVA formed in widespread glacial lake beds and are often poorly drained.

The petition also provided information on the concentrations of seven elements found in the soils of the proposed AVA and the regions to the east, south, and west that play important roles in vine nutrition: Calcium, iron, magnesium, potassium, phosphorous, sulfur, and zinc. The petition states that when compared to the Central Valley, the proposed AVA

has higher levels of calcium, iron, magnesium, and sulfur, and lower levels of potassium, phosphorus, and zinc. The petition states that these differences in soil chemistry are due to the very different chemical composition of the geological features underlying the Central Valley, which are formed primarily from sedimentary rocks and basalt. Compared to the regions to the east and south, the proposed AVA has similar levels of calcium, phosphorus, and sulfur, higher levels of iron, magnesium, and zinc, and lower levels of potassium. The petition states that there are fewer chemical differences between the soils of the proposed AVA and the regions to the east and south because similar metamorphic rocks comprise the underlying geological features of all three of these regions. However, the proposed AVA does contain some soils derived from mafic rocks, which are igneous rocks that are very rich in iron and magnesium and

contribute to the higher levels of those elements within the proposed AVA's soils.

The petition notes that calcium plays a role in a vine's ability to uptake iron, and too much calcium can inhibit iron uptake. Iron is necessary for plants, including grapevines, to undertake chlorophyll synthesis, which allows for the production of nutrients needed for grapevine growth.⁶ Lack of iron may lead to chlorosis—an iron deficiency that may cause yellowing on grapevines and ultimately lead to grapevine death.⁷ Magnesium is involved with carbohydrate metabolism, and a lack of magnesium may also lead to chlorosis.⁸ Phosphorous is involved with energy transport in the vines, and a phosphorous deficiency can reduce grapevine growth and cause premature grape ripening.⁹ Potassium helps maintain fruit acidity by exchange with hydrogen ions, and a potassium deficiency can harm grapevines and

cause grapes to unevenly ripen or fail to ripen.¹⁰ Higher levels of sulfur are generally known to increase soil acidity and provide grapevines with vitamins necessary for grapevine growth.¹¹

Finally, the petition included the following table listing the most common soil series of the proposed AVA, the Central Valley to the west, and the Avalon Terrane to the south and east. The table shows that the proposed AVA shares some of the same soils as the regions to the south and east but contains none of the soils found in the region to the west. The petition states that the greater difference in soils series between the proposed AVA and the Central Valley is due to the greater differences in the underlying geology. The proposed AVA and the regions to the east and south have similar underlying geologic structures, but the slight chemical differences contribute to the slight differences in soil series.

TABLE 1—SOIL SERIES

Proposed AVA	Central Valley (west)	Avalon Terrane (east and south)
Agawam-Merrimac-Hinckley, Brimfield-Brookfield, Broadbrook-Rainbow, Canton-Charlton-Hollis, Charlton-Hollis, Hinckley-Merrimac, Hollis-Charlton, Hollis-Woodbridge, Paxton-Woodbridge.	Branford-Manchester, Cheshire-Wethersfield-Manchester, Cheshire-Yalesville, Elridge-Bancroft-Scitico, Hadley-Winooski, Hartford-Manchester, Holyoke-Wethersfield-Cheshire, Penwood-Manchester, Rumney-Podunk, Wethersfield-Holyoke-Broadbrook, Wethersfield-Ludlow, Windsor-Ninigret-Merrimac.	Agawam-Merrimac-Hinckley, Broadbrook-Rainbow, Canton-Charlton-Hollis, Charlton-Hollis, Hollis-Charlton, Narragansett-Hollis, Paxton-Woodbridge.

Climate

The petition included information on the average annual temperatures,

growing degree days (GDDs)¹², coldest recorded temperature, average date of the latest spring frost, and average date of the earliest fall frost for the proposed

Eastern Connecticut Highlands AVA and the surrounding regions. The data was gathered from 1996 to 2015 and is included in the following table.

TABLE 2—CLIMATE

Location (direction from proposed AVA)	Average annual temperature (fahrenheit)	Growing degree days	Coldest temperature (fahrenheit)	Average date of last spring frost	Average date of first fall frost
Windham Airport (within)	50.1	2,780	-13	May 3	October 15.
Windsor Locks, CT (west)	51.3	3,036	-11	April 23	October 15.
Hartford, CT (west)	52.2	3,185	-4	April 12	October 23.
Groton, CT (south)	51.5	2,709	-5	April 18	October 26.
New Haven, CT (south)	52.5	3,057	-2	April 9	November 1.
Worcester, MA (north)	50.5	2,445	-16	April 20	October 21.
Fitchburg, MA (north)	49.7	2,667	-11	April 23	October 17.
Orange, MA (north)	47.2	2,409	-22	May 10	October 7.
Lincoln, RI (east)	50	2,577	-9	April 24	October 23.
Warwick, RI (east)	52.2	3,029	-6	April 12	October 31.

⁶ See James Schuster, *Focus on Plant Problems—Chlorosis*. University of Illinois. <http://extension.illinois.edu/focus/index.cfm?problem=chlorosis> (viewed June 5, 2018).

⁷ *Id.*; see also Albert J. Winkler et al., *General Viticulture* 425–426 (Berkeley: University of California Press, 2nd ed. 1974).

⁸ *General Viticulture* at 425.

⁹ *Id.*

¹⁰ *Id.* at 415–418.

¹¹ *Id.* at 426–427.

¹² In the Winkler climate classification system, annual heat accumulation during the growing

season, measured in annual growing degree days (GDDs), defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, the minimum temperature required for grapevine growth. *Id.* at 61–64.

The data shows that the proposed AVA has average annual temperatures that are generally similar to the surrounding locations. However, this data also shows more pronounced differences in other climate measurements. When compared to the region to the north, the proposed AVA has significantly higher GDD accumulations than all three northern locations, indicating warmer growing season temperatures. The proposed AVA also has a generally shorter growing season than two of the northern locations, as indicated by the later last-spring-frost date and earlier first-fall-frost date for the proposed AVA. Compared to the regions to the south and east, the proposed AVA has lower GDD accumulations than two of the locations. The proposed AVA also has a shorter growing season than all four of the southern and eastern comparison locations, which are closer to the Long Island Sound and thus benefit from temperature-moderating marine breezes. Finally, compared to the Central Valley region to the west, the proposed AVA has lower GDD accumulations and a shorter growing season than both western comparison locations.

The petition states that the GDD accumulations within the proposed Eastern Connecticut Highlands AVA and each of the surrounding regions are sufficient to ripen most *Vitis vinifera* varieties. However, the petition goes on to state that cold hardiness is the prime determinant of which varieties can be successfully grown in the proposed AVA. The proposed AVA has the lowest minimum temperature of all of the surrounding regions except for two locations to the north. Most *vinifera* varieties do poorly in climates with extreme cold winter temperatures, which can kill dormant vines, or late spring frosts, which can damage tender new vine growth. As a result, most vineyards in the proposed AVA plant cold-hardy non-*vinifera* hybrids such as St. Croix, Traminette, Vidal, Cayuga, Frontanec, and Vignoles. By contrast, vineyards planted to the south of the proposed AVA, within the warmer coastal region, plant more *vinifera* varieties including Cabernet franc, Merlot, Riesling, and Chardonnay.

Summary of Distinguishing Features

In summary, the geology, topography, soils, and climate of the proposed Eastern Connecticut Highlands AVA distinguish it from the surrounding regions. The proposed AVA is a region of hills and mountains with underlying geological features that are resistant to erosion. To the west of the proposed AVA in the Central Valley, the

topography is characterized by a broad, flat plain with underlying geological features that are easily eroded. North of the proposed AVA, the elevations are generally higher. To the east and south, the underlying geological features are older, and the elevation of the topography gradually descends to the coast.

The soils of the proposed AVA developed on the largest area of lodgement till in the State and consist of thick sandy-to-silty loams. The regions to the east and south of the proposed AVA share some of the same soil series of the proposed AVA, but the AVA has lower potassium levels and higher levels of iron, magnesium, and zinc than in these regions. Additionally, the soils to the south and east of the proposed AVA contain less lodgement till. To the west of the proposed AVA, the soils developed in glacial lake beds and are of different soil series than the soils of the proposed AVA. The soils to the west of the proposed AVA also contain lower levels of calcium, iron, magnesium, and sulfur than the soils of the proposed AVA.

The climate of the proposed AVA is generally cooler than most of the surrounding regions and is suitable for growing cold-hardy hybrid varieties of grapes. The regions to the south, east, and west all have warmer lowest-recorded temperatures and earlier last-spring-frost dates than the proposed AVA, making those regions more suitable to growing *vinifera* varieties that are less cold-hardy. The region to the north of the proposed AVA has GDD accumulations and lowest-recorded temperatures that are generally lower than for the proposed AVA.

TTB Determination

TTB concludes that the petition to establish the approximately 1,246 square-mile Eastern Connecticut Highlands AVA merits consideration and public comment, as invited in this notice of proposed rulemaking.

Boundary Description

See the narrative description of the boundary of the petitioned-for AVA in the proposed regulatory text published at the end of this proposed rule.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a

wine to be labeled with an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB establishes this proposed AVA, its name, "Eastern Connecticut Highlands," will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using the name "Eastern Connecticut Highlands" in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin if this proposed rule is adopted as a final rule. Accordingly, the proposed part 9 regulatory text set forth in this document specifies the full name "Eastern Connecticut Highlands" as a term of viticultural significance for the proposed AVA for the purposes of part 4 of the TTB regulations.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should establish the proposed AVA. TTB is also interested in receiving comments on the sufficiency and accuracy of the name, boundary, soils, climate, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Eastern Connecticut Highlands AVA on wine labels that include the term "Eastern Connecticut Highlands" as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed AVA name and currently used brand names.

If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the AVA.

Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- **Federal e-Rulemaking Portal:** You may send comments via the online comment form posted with this notice within Docket No. TTB–2018–0010 on “*Regulations.gov*,” the Federal e-rulemaking portal, at <https://www.regulations.gov>. A direct link to that docket is available under Notice No. 179 on the TTB website at <https://www.ttb.gov/wine/wine-rulemaking.shtml>. Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov*, visit the site and click on the “Help” tab.

- **U.S. Mail:** You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

- **Hand Delivery/Courier:** You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 179 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity’s name, as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity’s name in the “Organization” blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity’s comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this notice, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2018–0010 on the Federal e-rulemaking portal, *Regulations.gov*, at <http://www.regulations.gov>. A direct link to that docket is available on the TTB website at <https://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 179. You may also reach the relevant docket through the *Regulations.gov* search page at <http://www.regulations.gov>. For information on how to use *Regulations.gov*, click on the site’s “Help” tab.

All posted comments will display the commenter’s name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal by appointment at the TTB Public Reading Room, 1310 G Street NW, Washington, DC 20005. You may also obtain copies at 20 cents per 8.5 x 11-inch page. Please note that TTB is unable to provide copies of USGS maps or other similarly-sized documents that may be included as part of the AVA petition. Contact TTB’s Public Reading Room at the above address or by telephone at 202–822–9904 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural

area name would be the result of a proprietor’s efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this notice of proposed rulemaking.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9. ___ to read as follows:

§ 9. ___ Eastern Connecticut Highlands.

(a) *Name.* The name of the viticultural area described in this section is “Eastern Connecticut Highlands”. For purposes of part 4 of this chapter, “Eastern Connecticut Highlands” is a term of viticultural significance.

(b) *Approved maps.* The one United States Geological Survey (USGS) 1:125,000 scale topographic map used to determine the boundary of the Eastern Connecticut Highlands viticultural area is titled “State of Connecticut.”

(c) *Boundary.* The Eastern Connecticut Highlands viticultural area is located in Hartford, New Haven, Tolland, Windham, New London, and Middlesex Counties in Connecticut. The boundary of the Eastern Connecticut Highlands viticultural area is as described below:

(1) The beginning point is on the State of Connecticut map at the intersection of State Highway 83 and the Massachusetts-Connecticut State line in Somers. From the beginning point, proceed east along the Massachusetts-Connecticut State line approximately 33 miles to the intersection of the shared

State line and an unnamed road, known locally as Bonnette Avenue, in Thompson; then

(2) Proceed southeast along Bonnette Avenue approximately 0.38 mile to its intersection with an unnamed road known locally as Sand Dam Road; then

(3) Proceed southeast along Sand Dam Road approximately 1.5 miles to its intersection with an unnamed road known locally as Thompson Road; then

(4) Proceed south along Thompson Road approximately 1,000 feet to its intersection with an unnamed road known locally as Quaddick Town Farm Road; then

(5) Proceed east then south along Quaddick Town Farm Road approximately 5.5 miles into the town of Putnam, where the road becomes known as East Putnam Road, and continuing south along East Putnam Road approximately 1 mile to its intersection with U.S. Highway 44; then

(6) Proceed west along U.S. Highway 44 approximately 1 mile to its intersection with an unnamed road known locally as Tucker Hill Road; then

(7) Proceed south along Tucker Hill Road approximately 0.38 mile to its intersection with an unnamed road known locally as Five Mile River Road; then

(8) Proceed southwest then west along Five Mile River Road 1.75 miles to its intersection with State Highway 21; then

(9) Proceed south along State Highway 21 approximately 2 miles to its intersection with State Highway 12; then

(10) Proceed south along State Highway 12 approximately 1 mile to its intersection with Five Mile River; then

(11) Proceed west along Five Mile River approximately 0.13 mile to its intersection with the highway marked on the map State Highway 52 (also known as Interstate 395); then

(12) Proceed south along State Highway 52/Interstate 395 approximately 14.5 miles to its intersection with State Highway 201; then

(13) Proceed southeast along State Highway 201 approximately 5.25 miles to its intersection with State Highway 165; then

(14) Proceed southwest along State Highway 165 approximately 10 miles to its intersection with State Highway 2; then

(15) Proceed west along State Highway 2 approximately 1 mile to its intersection with State Highway 82; then

(16) Proceed southwest, then northwest, then southwest along State Highway 82 approximately 27.72 miles

to its intersection with State Highway 9; then

(17) Proceed southeast along State Highway 9 approximately 3.7 miles to its intersection with State Highway 80; then

(18) Proceed west along State Highway 80 approximately 15.7 miles to its intersection with State Highway 77; then

(19) Proceed north along State Highway 77 approximately 8.3 miles to its intersection with State Highway 17; then

(20) Proceed northeast along State Highway 17 approximately 6.8 miles to the point where it becomes concurrent with State Highway 9; then

(21) Proceed north along concurrent State Highway 17–State Highway 9 approximately 0.75 mile the point where State Highway 17 departs from State Highway 9; then

(22) Proceed east along State Highway 17 approximately 0.25 mile, crossing over the Connecticut River, to the highway's intersection with State Highway 17A; then

(23) Proceed north along State Highway 17A approximately 3 miles to its intersection with State Highway 17; then

(24) Proceed north along State Highway 17 approximately 8 miles to its intersection with State Highway 94; then

(25) Proceed east along State Highway 94 approximately 4 miles to its intersection with State Highway 83; then

(26) Proceed north along State Highway 83 approximately 25 miles, returning to the beginning point.

Signed: June 25, 2018.

John J. Manfreda,
Administrator.

Approved: December 4, 2018.

Timothy E. Skud,
Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2018–27016 Filed 12–12–18; 8:45 am]

BILLING CODE 4810–31–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Chapter I

RIN 3142–AA13

The Standard for Determining Joint-Employer Status; Extension of Comment Period

AGENCY: National Labor Relations Board.

ACTION: Proposed rule; second extension of comment period.

SUMMARY: The National Labor Relations Board (the Board) published a Notice of Proposed Rulemaking in the **Federal Register** of September 14, 2018, seeking comments from the public concerning the standard for determining joint-employer status under the National Labor Relations Act. The date to submit responses to the Notice of Proposed Rulemaking is again extended for 30 days.

DATES: The comment period for the notice of proposed rulemaking published at 83 FR 46681, and first extended at 83 FR 55329, is extended. Comments must be received by the Board on or before January 14, 2019. Comments replying to the comments submitted during the initial comment period must be received by the Board on or before January 21, 2019.

Dated: December 10, 2018.

Farah Z. Qureshi,
Associate Executive Secretary.

[FR Doc. 2018–27024 Filed 12–12–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE–2018–0005]

Pacific Ocean at Naval Base Guam Telecommunication Site, Finegayan Small Arms Range, on the Northwestern Coast of Guam; Danger Zone

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to revise the existing regulations to establish a danger zone at the U.S. Naval Base Guam Telecommunication Site in the Pacific Ocean, Guam. The Navy requested establishment of a danger zone extending over the Pacific Ocean adjacent to the Finegayan Small Arms Range. Establishment of a danger zone would intermittently restrict commercial, public, and private vessels from entering or lingering in the restricted safety zone to ensure public safety during small arms training activities. This danger zone is necessary to minimize potential conflicts between local populace activities and ongoing military training in the subject area.

DATES: Written comments must be submitted on or before January 14, 2019.

ADDRESSES: You may submit comments, identified by docket number COE-2018-0005, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Email: david.b.olson@usace.army.mil. Include the docket number, COE-2018-0005, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2018-0005. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](http://www.regulations.gov) or email. The [regulations.gov](http://www.regulations.gov) website is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through [regulations.gov](http://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, we recommend that you include your name and other contact information in the body of your comment and with any compact disc you may submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be

publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202-761-4922 or Ms. Karen Urelius, U.S. Army Corps of Engineers, Honolulu District, Regulatory Branch at 671-339-2108.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is proposing to revise the regulations at 33 CFR part 334 by establishing a danger zone in the Pacific Ocean. The amendment to this regulation will allow the Commanding Officer of the U.S. Naval Base Guam to restrict passage of persons, watercraft, and vessels in the waters within the danger zone during use of the Finegayan Small Arms Range. The establishment of a danger zone would intermittently restrict commercial, public, and private vessels from entering or lingering in the restricted safety zone to ensure public safety during small arms training activities at the Finegayan Small Arms Range. This danger zone will be in place as a precautionary measure to protect the public from any potential impacts in firing small arms to the west.

The proposed establishment of this danger zone was considered in the Final Mariana Islands Training and Testing/ Overseas Environmental Impact Statement prepared by the Navy. This location is an existing range and meets all of the landside requirements of a small arms range. With limited land on the island, it is not feasible to have the firing range and safety zone completely on land.

Military and Government of Guam law enforcement agencies are required to qualify with their assigned weapon prior to executing their duties. Additionally, other military forces (ships, submarines, expeditionary forces and other combat forces) are required to qualify and maintain their qualifications on the weapons needed to further the execution of their assigned mission. These ranges are not only used by forces assigned to the island, but also deployable military forces (Army, Navy, Air Force, and Marines). The Department of Defense requires frequent firing of assigned weapons to ensure proficiency in the use and operations of assigned weapons.

Currently there are two other ranges on Naval Base Guam that are being used

to support weapons qualifications. However, due to the number of units required to maintain weapon qualifications, the two ranges are insufficient. Both ranges are fully booked with commands having to be placed on a waiting list for range availability.

Procedural Requirements

a. *Review Under Executive Orders 12866 and 13563.* Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This proposed rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The Corps determined this proposed rule is not a significant regulatory action. This regulatory action determination is based on the proposed rule governing the danger zone, which allow any vessel that needs to transit the danger zone to expeditiously transit through the danger zone when the small arms range is in use. When the range is not in use, the danger zone will be open to normal maritime traffic and to all activities, include anchoring and loitering. The proposed rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The danger zone is necessary to protect public safety during use of the small arms range. Unless information is obtained to the contrary during the comment period, the Corps certifies that the proposed rule would have no significant economic impact on the public. After considering the economic impacts of this proposed danger zone

regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact on the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. *Unfunded Mandates Act.* This proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, this proposed rule is not subject to the requirements of Sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA). The proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed rule is not subject to the requirements of Section 203 of UMRA.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set forth in the summary above, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.1415 to read as follows:

§ 334.1415 Pacific Ocean, adjacent to the Finegayan Small Arms Range at Naval Base Guam Telecommunication Site, on the northwestern coast of Guam; danger zone.

(a) *The area.* Coordinates are bounded by the following four points: Point A (13°34'57" N; 144°49'53" E) following the high tide line to Point B (13°35'49" N; 144°47'59" E), Point C (13°34'57" N; 144°47'45" E), and Point D (13°34'48" N; 144°49'50" E). The datum for these coordinates is NAD-83.

(b) *The regulation.* (1) Vessels or persons shall expeditiously transit through the danger zone when the small arms range is in use. Vessels shall not be permitted to anchor or loiter within

the danger zone while the range is in use. Range activities shall be halted until all vessels are cleared from the danger zone. When the range is not in use, the danger zone shall be open to normal maritime traffic and all activities to include anchoring and loitering.

(2) When the range is in use, the person(s) or officer(s) in charge shall display a red flag from a conspicuous and easily-seen location along the nearby shore to signify that the range is in use and will post lookouts to ensure the safety of all vessels transiting through the area. If the range is in use at night, a strobe light shall be displayed from the same conspicuous and easily-seen location in lieu of flags. The range shall not be used when visibility is equal to or less than the maximum range of the weapons being used at the facility.

(c) *Enforcement.* The restrictions on public access in this section shall be enforced by the Commander, Joint Region Marianas, and such agencies as the Commander may designate in writing.

Dated: December 6, 2018.

Thomas P. Smith,

*Chief, Operations and Regulatory Division,
Directorate of Civil Works.*

[FR Doc. 2018-27028 Filed 12-12-18; 8:45 am]

BILLING CODE 3720-58-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2007-1092; FRL-9987-74-Region 5]

Air Plan Approval; Michigan; Michigan Minor New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the rescission of Michigan rule 221 from the Michigan state implementation plan (SIP). Rule 221 exempted sources that had significant net emission increases of sulfur dioxide, particulate matter, and carbon monoxide from offset requirements. Michigan rescinded this rule effective November 14, 1990.

DATES: Comments must be received on or before January 14, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-1092 at <https://www.regulations.gov>, or via email to Damico.genvieve@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov),

follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0671, Blathras.constantine@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

Section 110(a)(2)(C) of the Clean Air Act requires that the SIP include a program to provide for the “regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved.” This includes a program for permitting construction and modification of both major and minor sources that the State deems necessary to protect air quality. The State of Michigan’s minor source permit to install rules are contained in Part 2 (Air Use Approval) of the Michigan Administrative Code. Changes to the Part 2 rules were submitted on November 12, 1993; May 16, 1996; April 3, 1998; September 2, 2003; March 24, 2009; and February 28, 2017. EPA approved changes to the Part 2 rules most recently in a final approval dated August 31, 2018 (83 FR 44485).

Rule 336.1221 (Construction of sources of particulate matter, sulfur dioxide, or carbon monoxide in or near nonattainment areas; conditions for approval).

EPA published a proposed disapproval of the 1993, 1996, and 1996 submittals on November 9, 1999 (64 FR 61046), but never published a final disapproval. As part of that proposed disapproval, EPA conducted an evaluation of the State submittal and found that as one of the items, the State failed to rescind Michigan rule 336.1221. In that action, EPA stated, "Michigan rule 336.1221 impermissibly exempts sources that have significant net emissions increases of sulfur dioxide, particulate matter, and carbon monoxide from offset requirements. MDEQ rescinded Michigan rule 336.1221 effective November 14, 1990. However, the State never submitted the rule to USEPA for rescission. Because Michigan did not submit the rescission to the USEPA for removal of the rule from the SIP, the Michigan NSR rules are not approvable at this time."

On September 24, 2003, the State of Michigan submitted a SIP revision to EPA requesting full approval of Michigan's Clean Air Act New Source Review SIP. As part of that submittal requesting revisions to Parts 1 (General Provisions) and 2, Michigan specifically requested to rescind rule 336.1221. As part of its technical support document, Michigan stated that rule 336.1221 was rescinded from the State rules in 1990, and requests that EPA remove it from the SIP.

At the time of the 1999 proposed disapproval, the Part 2 rules also included the state's major nonattainment PTI permitting program. The major nonattainment provisions have been removed from Part 2, and are now covered by the Part 19 (New Source Review for Major Sources Impacting Nonattainment Areas) rules. The Part 19 rules were fully approved by EPA into the Michigan SIP on December 16, 2013, (78 FR 76064). The Federal nonattainment air quality permitting regulations are found in 40 CFR 51.165(a) and (b). The Federal rules found at 40 CFR 51.165(a) and (b) specify the elements necessary for approval of a State permit program for preconstruction review for nonattainment purposes under Part D of the Clean Air Act. A major source or major modification that would be located in an area designated as nonattainment and subject to the nonattainment area permitting rules must meet stringent conditions designed to ensure that the new source's emissions will be controlled to the

greatest degree possible; that more than equivalent offsetting emission reductions will be obtained from existing sources; and that there will be progress toward achieving the National Ambient Air Quality Standards. EPA has found that the rules as submitted by Michigan for inclusion into its SIP are at least as stringent as the Federal rules. By rescinding rule 221 from the Michigan SIP, the Michigan SIP is meeting the Federal statutory requirements for an approvable Part 2 and Part 19 air permitting program.

II. What action is EPA taking?

EPA is proposing to approve the rescission of Michigan rule 336.1221 from the Michigan SIP.

III. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Sulfur oxides.

Dated: November 27, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2018-26923 Filed 12-12-18; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2017-0741; FRL-9987-73-Region 5]

Air Plan Approval; Michigan; Revisions to Part 1 General Provisions Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a request submitted by the Michigan Department of Environmental Quality (MDEQ) on December 12, 2017, and supplemented on August 9, 2018, as a revision to Michigan's state implementation plan (SIP). The SIP submission incorporates several revisions to Michigan's Air Pollution Control Rules entitled "Part 1—General Provisions." The revisions include

administrative changes to the existing rule.

DATES: Comments must be received on or before January 14, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2017-0741 at <https://www.regulations.gov> or via email to blakley.pamela@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6031, hatten.charles@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What are the State rule revisions?
- II. What is EPA’s analysis of the State’s submittal?
- III. What action is EPA taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. What are the State rule revisions?

On December 12, 2017, and August 9, 2018, MDEQ submitted a request to EPA to incorporate revisions to Michigan’s Air Pollution Control Rules entitled Part 1—General Provisions (Part 1). The submission revises the following Michigan’s Air Pollution Control rules:

R 336.1101 to 1103, R 336.1106 to 1109, R 336.1112 to 1116, and R 336.1118 to 1123. The revisions are primarily administrative changes.

In the August 9, 2018, submission, MDEQ rescinded its request to modify Part 1 for the following definitions: R336.1101(a) “Act,” R336.1101(h) “Air pollution,” R336.1101(q) “Aqueous based parts washer,” and R336.1103(aa) “Cold cleaner.”

II. What is EPA’s analysis of the State’s submittal?

Rule Revisions for Which EPA Is Proposing To Approve

Part 1 is a compilation of the definitions used in Michigan’s rules. The revisions to Part 1 include a range of administrative changes, from grammatical corrections to language updates. Examples of these revisions include changing terminology such as “which” to “that,” or “commission” to “department.”

MDEQ revised the language in several rules to be consistent with rule R 336.1902, namely, requiring all of the “Adoption by reference” for various test methods be located in R 336.1902. For example, the definitions of “Heavy liquids,” “PM-10,” “PM 2.5,” “Reid vapor pressure,” “True vapor pressure,” and “Waxy, heavy pour crude oil,” the revised rule language shows that the applicable test method adopted by reference is in R 336.1902.

In rule R 336.1122(f) MDEQ updated the definition of “Volatile organic compound” (VOC) to reflect revisions made to the Federal definition at 40 CFR 51.100(s). MDEQ amended the list of compounds excluded from the definition of VOC to add the following six compounds: (1.) HCF₂OCF₂H (HFE-134), (2.) HCF₂OCF₂OCF₂H (HFE-236cal2), (3.) HCF₂OCF₂CF₂OCF₂H (HFE-338pcc13), (4.) HCF₂OCF₂OCF₂CF₂OCF₂H (H-Galden 1040X or H-Galden ZT 130 (or 150 or 180)), (5.) Trans 1-chloro-3,3,3-trifluoroprop-1-ene (Solstice™ 1233zd(E)), and (6.) 2-amino-2-methyl-1-propanol (AMP). These additional compounds were determined by EPA to have negligible photochemical reactivity, and therefore, EPA does not expect them to make a significant contribution to ozone formation.¹ MDEQ also updated an existing exemption for the compound t-butyl acetate to be consistent with EPA’s removal of the recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements

related to the use of t-butyl acetate as a VOC. See 81 FR 9339 (February 25, 2016).

Last, other modifications to Part 1 include the deletion and addition of several definitions. MDEQ revised Part 1 to remove definitions that are unclear, incorrect, redundant, or no longer used in Michigan’s rules. MDEQ removed “Allowed emissions,” “Federal land manager,” “Linearized multistage computer model,” “Offset ratio,” and “Very large precipitator.” In like manner, MDEQ revised Part 1 by adding the following definitions: “Adhesion prime,” “Air pollution control equipment,” “Applicant,” “Federally enforceable,” “Field gas,” “Field testing,” “Flexible coating,” and “Fog coat,” “Organic resin,” “Secondary emissions,” “Significant,” “Stencil coat,” “Styrene devolatilizer unit,” “Styrene recovery unit,” “Synthetic natural gas,” “Synthetic organic chemical and polymer manufacturing plant,” “Synthetic organic chemical and polymer manufacturing process unit,” “Used oil,” and “Wayne county permit.”

EPA finds these changes are acceptable and thus is proposing their approval into the Michigan SIP.

Rule Revision for Which EPA Is Taking No Action

R 336.1103 Definitions; C

In rule R 336.1103, MDEQ requested the removal of (pp) from the definition of “Creditable.” EPA is taking no action to remove this definition from Michigan’s SIP because EPA already removed the definition from Part 1 in a previous rulemaking. See 78 FR 76064 (December 16, 2013).

R 336.1119 Definitions; S

MDEQ amended this rule by adding (c) for the definition “Secondary risk screening level,” and (q) for the definition “State-only enforceable.” Secondary risk screening level means “the concentration of a possible, probable, or known human carcinogen in ambient air which has been calculated, for regulatory purposes, according to the risk assessment procedures in R 336.1229(1), to produce an estimated upper-bound lifetime cancer risk of 1 in 100,000.” State-only enforceable means “that the limitation or condition is derived solely from the act and the air pollution control rules and is not federally enforceable. State-only enforceable requirements include R 336.1224, R 336.1225, R 336.1901, any permit requirement established solely pursuant to R 366.1201(1)(b), or any other regulation that is enforceable

¹ See 78 FR 9823, February 12, 2013; 78 FR 53029, August 28, 2013; 79 FR 17037, March 27, 2014.

solely under the act and is not federally enforceable.” EPA is taking no action on these State-only provisions.

R 336.1120 Definitions; T

In rule 336.1120(f), “‘Toxic air contaminant’ or ‘TAC’” is defined as “any air contaminant for which there is no National Ambient Air Quality Standard (NAAQS) and which is or may become harmful to public health or the environment when present in the outdoor atmosphere in sufficient quantities and duration.” This definition includes a list of exempt substances that are not considered TACs. MDEQ amended the list of exempt substances to add the following: “animal or plant materials, including extracts and concentrates thereof, used as ingredients in food products or dietary supplements in accordance with applicable regulations of the United States Food and Drug Administration.” EPA is taking no action on this amendment to rule R 336.1120(f).

Other Revisions to Part 1

MDEQ revised Part 1 to add the following definitions: R 336.1115(d) for “‘Oral reference dose’ or ‘RfD,’” R 336.1119(x) for “‘Sufficient evidence,’” and R 336.1123(c) for “‘Weight of evidence.’” EPA is taking no action on these definitions.

Section 110(l) Analysis of the State’s Submittal

EPA is proposing to approve the revisions to Part 1 discussed above because the revisions meet all applicable requirements under the Clean Air Act (CAA), consistent with section 110(k)(3) of the CAA. Furthermore, MDEQ has shown that the revisions to Part 1 do not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirement, consistent with section 110(l) of the CAA.

Under Section 110(l) of the CAA, EPA shall not approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the CAA) or any other applicable requirement of the CAA. The proposed SIP revision would not interfere with any applicable CAA requirements based on technical analysis submitted by MDEQ. Part 1 rules are definitions and are not meant to affect any sources. The changes to the definitions in Part 1 rules will have no effect on actual or allowable emissions as they only clarify words and phrases within other rules.

MDEQ has shown there is no impact of revising Part 1 rule that would hinder Michigan’s ability to maintain and meet the NAAQS for nitrogen dioxide, ozone, lead, particulate matter, sulfur dioxide, and carbon monoxide. Therefore, these revisions to Part 1 are approvable as they are merely administrative changes. The revisions will not increase any emissions to the atmosphere because they do not impact on any source applicability or emissions.

III. What action is EPA taking?

EPA is proposing to approve revisions to Michigan’s Part 1 Rule submitted by MDEQ on December 12, 2017, and supplemented on August 9, 2018, as a revision to the Michigan SIP.

Michigan requested that EPA approve the following rules: R 336.1101 Definitions; A (except for (a) Act, (h) Air pollution, and (q) Aqueous based parts washer), R 336.1102 Definitions: B, R 336.1103 Definitions C (except for (aa) Cold cleaner), R 336.1106 Definitions; F, R 336.1107 Definitions; G, R 336.1108 Definitions; H, R 336.1109 Definitions; I, R 336.1112 Definitions; L, R 336.1113 Definitions; M, R 336.1114 Definitions; N, R 336.1115 Definitions; O (except for (d) “‘Oral reference dose’ or ‘RfD’”), R 336.1116 Definitions; P, R 336.1118 Definitions; R, R 336.1119 Definitions; S (except for (c) Secondary risk screening level, (q) State-only enforceable, and (x) Sufficient evidence), R 336.1120 Definitions; T (except for (f) “‘Toxic air contaminant’ or ‘TAC’”), R 336.1121 Definitions; U, R 336.1122 Definitions; V, R 336.1123 Definitions; W (except for (c) Weight of evidence). We are also proposing approval of a revision removing the following definitions from Part 1: “‘Allowed emissions,’” “‘Federal land manager,’” “‘Linearized multistage computer model,’” “‘Offset ratio,’” and “‘Very large precipitator.’”

EPA is not taking any action on R 336.1103(pp) “‘Creditable,’” R 336.1115(d) “‘Oral reference dose’ or ‘RfD,’” R 336.1119(c) “‘Secondary risk screening level,’” R 336.1119(q) “‘State-only enforceable,’” R 336.1119(x) “‘Sufficient evidence,’” R 336.1120(f) “‘Toxic air contaminant’ or ‘TAC,’” and R 336.1123(c) “‘Weight of evidence.’”

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA proposes to incorporate by reference Michigan Administrative Code R 336.1101 Definitions; A (except for (a) Act, (h) Air pollution, and (q) Aqueous

based parts washer), R 336.1102 Definitions: B, R 336.1103 Definitions C (except for (aa) Cold cleaner), R 336.1106 Definitions; F, R 336.1107 Definitions; G, R 336.1108 Definitions; H, R 336.1109 Definitions I, R 336.1112 Definitions; L, R 336.1113 Definitions; M, R 336.1114 Definitions; N, R 336.1115 Definitions; O (except for (d) “‘Oral reference dose’ or ‘RfD’”), R 336.1116 Definitions; P, R 336.1118 Definitions; R, R 336.1119 Definitions; S (except for (c) Secondary risk screening level, (q) State-only enforceable, and (x) Sufficient evidence), R 336.1120 Definitions; T (except for (f) “‘Toxic air contaminant’ or ‘TAC’”), R 336.1121 Definitions; U, R 336.1122 Definitions; V, R 336.1123 Definitions; W (except for (c) Weight of evidence), effective December 20, 2016. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Dated: November 27, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2018-26924 Filed 12-12-18; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA-HQ-OW-2018-0056; FRL-9987-61-OW]

RIN 2040-AF79

Water Quality Standards; Establishment of a Numeric Criterion for Selenium for the State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to establish a federal Clean Water Act (CWA) selenium water quality criterion applicable to California that protects aquatic life and aquatic-dependent wildlife in the fresh waters of California. In 2016, the EPA published a revised recommended aquatic life selenium criterion for freshwater based on the latest scientific knowledge. The EPA is proposing to amend the California Toxics Rule to include a revised statewide chronic selenium water quality criterion for California fresh waters to protect aquatic life and aquatic-dependent wildlife which builds upon the science in the EPA's 2016 *Final Aquatic Life Ambient Water Quality Criteria for Selenium—Freshwater*.

DATES: *Comments date:* Comments must be received on or before February 11, 2019.

Public hearing dates: Tuesday, January 29, 2019 from 9 a.m.–11 a.m. PT, Wednesday, January 30, 2019 from 4 p.m.–6 p.m. PT.

ADDRESSES: *Comments:* Submit your comments, identified by Docket ID No. EPA-HQ-OW-2018-0056, at <https://www.regulations.gov> (our preferred method), or the other methods identified at <https://www.epa.gov/dockets/commenting-epa-dockets>. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: All 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 material, such as copyrighted material, will be publicly

available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at two Docket Facilities. The Office of Water (“OW”) Docket Center is open from 8:30 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566-2426 and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

Public Hearings: The EPA is offering two online public hearings so that interested parties may provide oral comments on this proposed rulemaking. For more details on the public hearings and a link to register, please visit <https://www.epa.gov/wqs-tech/water-quality-standards-establishment-numeric-criterion-selenium-fresh-waters-california>.

FOR FURTHER INFORMATION CONTACT:

Julianne McLaughlin, Office of Water, Standards and Health Protection Division (4305T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566-2542; email address: mclaughlin.julianne@epa.gov; or Diane E. Fleck, P.E., Esq., Water Division (WTR-2-1), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105; telephone number: (415) 972-3527; email address: Fleck.Diane@EPA.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is organized as follows:

- I. General Information
- II. Background
 - A. Statutory and Regulatory Authority
 - B. National Toxics Rule
 - C. California Toxics Rule
 - D. Litigation
 - E. Selenium and Sources of Selenium
- III. Proposed Criterion
 - A. Approach
 - B. Administrator's Determination of Necessity
 - C. Proposed Criterion
 - D. Implementation
 - E. Incorporation by Reference
- IV. Endangered Species Act
- V. Applicability of the EPA Promulgated Water Quality Standards When Final
- VI. Implementation and Alternative Regulatory Approaches
- II. Economic Analysis
 - A. Identifying Affected Entities
 - B. Method for Estimating Costs
 - C. Results
- VIII. Statutory and Executive Orders
 - A. Executive Order 12866 (Regulatory Planning and Review) and Executive

- Order 13563 (Improving Regulation and Regulatory Review)
- B. Executive Order 13771 (Reducing Regulations and Controlling Regulatory Costs)
- C. Paperwork Reduction Act (PRA)
- D. Regulatory Flexibility Act (RFA)
- E. Unfunded Mandates Reform Act (UMRA)
- F. Executive Order 13132 (Federalism)
- G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
- H. Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks)

- I. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)
- J. National Technology Transfer and Advancement Act of 1995
- K. Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations)

I. General Information

Applicability

Entities such as industries, stormwater management districts, or publicly owned treatment works

(POTWs) that directly or indirectly discharge selenium to the fresh waters of California could be indirectly affected by this rulemaking because federal water quality standards (WQS) promulgated by the EPA would apply to CWA regulatory programs, such as National Pollutant Discharge Elimination System (NPDES) permitting. Citizens concerned with water quality in California could also be interested in this rulemaking. Categories and entities that could be affected include the following:

Category	Examples of potentially-affected entities
Industry	Industries discharging pollutants to fresh waters of California.
Municipalities	Publicly owned treatment works or other facilities discharging pollutants to fresh waters of California.
Stormwater Management Districts ..	Entities responsible for managing stormwater discharges to fresh waters of California.
Agriculture	Entities with agriculture drainage to fresh waters of California.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that could be affected by this action. Any parties or entities who depend upon or contribute to the water quality of California waters where the freshwater criterion would apply could be indirectly affected by this proposed rule. To determine whether your facility or activities could be affected by this action, you should carefully examine this proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. Statutory and Regulatory Authority

CWA section 101(a)(2) (33 U.S.C. 1251(a)(2)) establishes a national goal, wherever attainable, of “water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water . . .” In this proposal, the relevant goals are the protection and propagation of fish, shellfish, and wildlife.

CWA section 303(c) (33 U.S.C. 1313(c)) directs states to adopt WQS for their waters subject to the CWA. CWA section 303(c)(2)(A) ¹ requires that

whenever a state revises or adopts a new standard that the state’s WQS specify designated uses of the waters and water quality criteria based on those uses. The EPA’s regulations at 40 CFR 131.11(a)(1) provide that “[s]uch criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use [and] [f]or waters with multiple use designations, the criteria shall support the most sensitive use.” In addition, 40 CFR 131.10(b) provides that “[i]n designating uses of a water body and the appropriate criteria for those uses, the [s]tate shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.”

States are required to review applicable WQS at least once every three years and, if appropriate, revise or adopt new WQS (CWA section 303(c)(1) ² and 40 CFR 131.20). Any new or revised WQS must be submitted to the EPA for review and approval or disapproval (CWA section 303(c)(2)(A) and (c)(3) ³ and 40 CFR 131.20 and

agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

² CWA 303(c)(1): The Governor of a State or the state water pollution control agency of such State shall from time to time (but at least once each three year period beginning with October 18, 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

³ CWA 303(c)(3): If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this chapter, such standard shall thereafter be the water quality

standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this chapter, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection.

Under CWA section 304(a), the EPA periodically publishes criteria recommendations for states to consider when adopting water quality criteria for particular pollutants to meet the CWA section 101(a)(2) goals. In establishing numeric criteria, states should adopt water quality criteria based on the EPA’s CWA section 304(a) criteria, section 304(a) criteria modified to reflect site-specific conditions, or other scientifically defensible methods (40 CFR 131.11(b)(1)). CWA section 303(c)(2)(B) ⁵ requires states to adopt

standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this chapter, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection.

⁴ CWA 303(c)(4): The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved—(A) if a revised or new water quality standard submitted by such State under paragraph (3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this chapter, or (B) in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this chapter. The Administrator shall promulgate any revised or new standard under this paragraph not later than ninety days after he publishes such proposed standards, unless prior to such promulgation, such State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with this chapter.

⁵ CWA 303(c)(2)(B): Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new

¹ CWA 303(c)(2)(A): Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and

numeric criteria for all toxic pollutants listed pursuant to CWA section 307(a)(1) for which the EPA has published 304(a) criteria, as necessary to support the states' designated uses.

B. National Toxics Rule

On December 22, 1992, the EPA promulgated *Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance* at 57 FR 60848 (hereafter referred to as the National Toxics Rule or NTR).⁶ The NTR established chemical-specific numeric criteria for priority toxic pollutants for states that the EPA Administrator had determined were not in compliance with the requirements of CWA section 303(c)(2)(B). The NTR included selenium water quality criteria for the protection of aquatic life in the waters of the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta; and waters of Salt Slough, Mud Slough (north) and the San Joaquin River, Sack Dam to Vernalis. The NTR established the following criteria: For waters of the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta, a chronic criterion of 5 micrograms per liter ($\mu\text{g/L}$) and an acute criterion of 20 $\mu\text{g/L}$; for Salt Slough and Mud Slough (north), a chronic criterion of 5 $\mu\text{g/L}$ and an acute criterion of 20 $\mu\text{g/L}$; for the San Joaquin River from Sack Dam to the mouth of Merced River, an acute criterion of 20 $\mu\text{g/L}$; and for the San Joaquin River from Sack Dam to Vernalis, a chronic criterion of 5 $\mu\text{g/L}$. All criteria are expressed in the total recoverable form of selenium.

The selenium criteria in the NTR were based on the EPA's CWA section 304(a) recommended criteria values that existed at the time. These recommendations are documented in

standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 1317(a)(1) of this title for which criteria have been published under section 1314(a) of this title, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants. Where such numerical criteria are not available, whenever a State reviews water quality standards pursuant to paragraph (1) or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 1314(a)(8) of this title. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.

⁶ The NTR is codified at 40 CFR 131.36.

the EPA's *Ambient Water Quality Criteria for Selenium—1987*, Office of Water, EPA-440/5-87-008, September 1987.

The EPA derived the 1987 freshwater aquatic life recommended criteria values for selenium from observed impacts on fish populations at a contaminated lake, Belews Lake, in North Carolina. The lake, a cooling water reservoir, had been affected by selenium loads from a coal-fired power plant. Since aquatic life was exposed to selenium from both the water column and diet, the criteria reflect both types of exposure in Belews Lake. The EPA derived the 1987 saltwater aquatic life recommended criteria values for selenium using data from lab studies. The EPA calculated the criteria in accordance with the EPA's *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses*, Office of Research and Development, 1985. The 1987 recommended freshwater criteria values for total recoverable selenium are 5 $\mu\text{g/L}$ (chronic) and 20 $\mu\text{g/L}$ (acute), and the saltwater criteria values for total recoverable selenium are 71 $\mu\text{g/L}$ (chronic) and 290 $\mu\text{g/L}$ (acute).

In the NTR, the EPA promulgated acute and chronic selenium criteria for the San Francisco Bay and Delta based on the 1987 freshwater recommended criteria values for selenium, even though the San Francisco Bay and Delta are marine and estuarine waters. The EPA used the more stringent freshwater values because of a concern that the saltwater criteria were not sufficiently protective "based on substantial evidence that there are high levels of selenium bioaccumulation in San Francisco Bay and the saltwater criteria fail to account for food chain effects" and "utilization of the saltwater criteria for selenium in the San Francisco Bay/Delta would be inappropriate." (57 FR 60898).

Since the NTR promulgation, the EPA has revised the 1987 CWA section 304(a) recommended criteria for selenium to better account for bioaccumulation through the food chain in different ecosystems. The EPA recently published a revised CWA section 304(a) freshwater recommended criterion for selenium: *Final Aquatic Life Ambient Water Quality Criterion for Selenium—Freshwater 2016*, US EPA, Office of Water, EPA 822-R-16-006, June 2016. The 2016 recommended chronic freshwater criterion is comprised of four criterion elements, two of which are based on the concentration of selenium in fish tissue and two of which are based on the

concentration of selenium in the water column. The recommended elements are: (1) A fish egg-ovary element of 15.1 mg/kg dry weight; (2) a fish whole-body element of 8.5 mg/kg dry weight and/or a muscle element of 11.3 mg/kg dry weight; (3) a water column element of 3.1 $\mu\text{g/L}$ in lotic aquatic systems and 1.5 $\mu\text{g/L}$ in lentic aquatic systems; and (4) a water column intermittent element derived from the chronic water column element to account for potential chronic effects from short-term exposures (one value for lentic and one value for lotic aquatic systems).

The EPA considered the methodology and information used to derive the 2016 CWA section 304(a) recommended selenium criterion, along with additional information specific to aquatic-dependent wildlife in California, in developing a revised selenium criterion for the fresh waters of California in this proposed rule.

C. California Toxics Rule

On May 18, 2000, the EPA promulgated *Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California* at 65 FR 31681 (hereafter referred to as the California Toxics Rule or CTR).⁷ The CTR established numeric water quality criteria for priority toxic pollutants for inland surface waters and enclosed bays and estuaries within California. As referenced earlier, CWA section 303(c)(2)(B) requires states to adopt numeric water quality criteria for priority toxic pollutants for which the EPA has issued CWA section 304(a) recommended criteria reflecting the latest scientific knowledge (referred to as CWA 304(a) recommended criteria), the presence or discharge of which could reasonably be expected to interfere with maintaining designated uses. The EPA promulgated the CTR to fill a gap in California WQS that was created in 1994 when a State court overturned the State's water quality control plans which contained water quality criteria for priority toxic pollutants including selenium. The CTR included water quality criteria for priority toxic pollutants for inland surface waters and enclosed bays and estuaries within California. For the authority to promulgate the 2000 CTR, the EPA relied on an EPA Administrator's determination under section 303(c)(4) of the CWA, included in the 1997 CTR proposal, that numeric criteria are necessary in California to meet the requirements of section 303(c)(2)(B) to protect the State's

⁷ The CTR is codified at 40 CFR 131.38.

designated uses.⁸ The criteria that the EPA previously promulgated for California in the NTR,⁹ together with the criteria promulgated in the CTR and California's designated uses and antidegradation provisions, established WQS for priority toxic pollutants for inland surface waters and enclosed bays and estuaries in California.

As required by section 7 of the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*), the EPA had consulted with the U.S. Fish and Wildlife Service (FWS) and the U.S. National Marine Fisheries Service (NMFS) (collectively, the Services) concerning the EPA's rulemaking actions for California. The EPA initiated consultation in 1994, and in March 2000, the Services issued a final Joint Biological Opinion. The final Joint Biological Opinion¹⁰ recorded commitments by the EPA to withhold promulgation of (*i.e.*, reserve) the EPA's proposed acute¹¹ freshwater aquatic life criterion for selenium in the final CTR and revise the CWA section 304(a) recommended acute and chronic aquatic life criteria for selenium and later update the criteria for California consistent with the revised recommendations. Subsequently, the EPA reserved the acute freshwater selenium criterion and finalized the chronic freshwater selenium criterion in the May 2000 CTR, as well as the acute and chronic saltwater selenium criteria.

Because a distinct separation generally does not exist between freshwater and saltwater aquatic communities, the EPA further established the following rule in the CTR¹² for determining which criteria to

apply in certain situations: (1) The freshwater criteria apply at salinities of 1 part per thousand¹³ and below at locations where this occurs 95% or more of the time; (2) the saltwater criteria apply at salinities of 10 parts per thousand and above at locations where this occurs 95% or more of the time; and (3) at salinities between 1 and 10 parts per thousand, the more stringent of the two apply.

In addition to the NTR and CTR acute and chronic criteria for selenium discussed in the preceding paragraphs, California had also adopted site-specific acute and chronic criteria (objectives) in the lower San Joaquin River area. In 1990, prior to the NTR, the Central Valley Regional Water Quality Control Board (CVRWQCB) adopted, and the EPA approved, an acute selenium objective of 12 µg/L maximum concentration for the San Joaquin River, mouth of Merced River to Vernalis, and a chronic site-specific objective for the Grassland Water District, the San Luis National Wildlife Refuge, and the Los Banos State Wildlife Refuge of 2 µg/L monthly mean. Therefore, the State acute criterion is effective for the San Joaquin River, mouth of Merced River to Vernalis.

In addition, the EPA did not promulgate a chronic criterion for the Grassland Water District, the San Luis National Wildlife Refuge, and the Los Banos State Wildlife Refuge in the CTR. The CVRWQCB subsequently amended its Basin Plan, to apply the chronic 2 µg/L monthly mean selenium objective (and an acute 20 µg/L maximum concentration objective) only to "Salt Slough and constructed and reconstructed water supply channels in the Grassland watershed listed in Appendix 40 [of the CVRWQCB Basin Plan]" (The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board Central Valley Region, Fourth Edition, July 2016). The EPA approved this change to California's WQS under CWA section 303(c) in a letter dated May 24, 2000. The Basin Plan amendment also included a chronic site-specific objective of 5 µg/L (4-day average) for Mud Slough (north) and for the San Joaquin River from Sack Dam to Vernalis, and an acute objective of 20 µg/L for Mud Slough (north) and the San Joaquin River from Sack Dam to the

mouth of the Merced River, to be consistent with the previously promulgated criteria in the NTR.

This proposed rule does not apply to the San Joaquin River from Sack Dam to Vernalis, Mud Slough, or Salt Slough because they have applicable selenium criteria from the NTR and/or approved CVRWQCB site-specific criteria (objectives). This proposed rule also does not apply to the constructed and reconstructed water supply channels in the Grassland watershed listed in Appendix 40 of the CVRWQCB's Basin Plan. The CVRWQCB's Staff Report for the Basin Plan amendment indicates that the existing chronic 2 µg/L monthly mean objective is intended to protect both aquatic life and waterfowl from the toxic effects of selenium. This proposed rule does apply the revised chronic criterion to the waters of the San Luis National Wildlife Refuge and the Los Banos State Wildlife Refuge to protect aquatic life and wildlife from short-term and long-term exposures of selenium.

The proposed rule also does not apply to surface waters that are tributaries to the Salton Sea. The Colorado River Regional Water Quality Control Board adopted, and the EPA approved on May 29, 2000, site-specific selenium water quality objectives "for all surface waters that are tributaries to the Salton Sea." The site-specific objectives consist of an acute objective of 20 µg/L one-hour average and a chronic objective of 5 µg/L four-day average (The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board Colorado River Basin Region, August 2017).

The State of California has nine Regional Water Quality Control Boards (Regional Boards), each located in and overseeing different areas of the State. Each Regional Board has a regional water quality control plan (Basin Plan) that sets forth the EPA-approved designated (beneficial) uses for the waterbodies it oversees. Once the EPA finalizes the proposed criterion, the criterion becomes the applicable CWA-effective criterion for CWA implementation purposes by each of the Regional Boards.

D. Litigation

In 2013, two organizations filed a legal complaint against the EPA in the United States District Court for the Northern District of California. The complaint was based in part on the fact that the EPA had previously determined, in the proposed CTR, that an acute criterion was necessary to implement section 303(c)(2)(B) of the CWA (62 FR 42160, August 5, 1997) and the work to update the reserved

⁸ See the CTR preamble at section E. Rationale and Approach for Developing the Final Rule, 1. Legal Basis, "EPA is using section 303(c)(4)(B) as the legal basis for today's final rule." 65 FR 31687, May 18, 2000.

⁹ The CTR Criteria Table at 40 CFR 131.38(b)(1) includes all water quality criteria previously promulgated in the NTR, so that readers can find all federally promulgated water quality criteria for California in one place. All criteria previously promulgated in the NTR are footnoted as such in the CTR.

¹⁰ Final Joint Biological Opinion dated March 24, 2000, from the National Marine Fisheries Service, Long Beach, California, and the U.S. Fish and Wildlife Service, Sacramento, California, concerning the EPA's final rule for the Promulgation of Water Quality Standards: Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California (CTR).

¹¹ The proposed freshwater acute selenium criterion in the CTR was as follows: The CMC = $1 / [(f1/CMC1) + (f2/CMC2)]$ where f1 and f2 are the fractions of total selenium that are treated as selenite and selenate respectively, and $f1 + f2 = 1$. CMC1 and CMC2 are the CMCs for selenite and selenate, respectively, or 185.9 µg/L and 12.83 µg/L, respectively. This criterion was in the total recoverable form. CMC is the continuous maximum concentration.

¹² See the CTR at 40 CFR 131.38 (c)(3).

¹³ In previous federal rules, including the NTR and the CTR, salinity was referred to using the units of parts per thousand (ppt). Since these rules were published, the scientific community has started referring to salinity in practical salinity units (psu). This proposed rule will stay consistent with the CTR terminology, but it should be noted that ppt is generally no longer used to describe salinity.

freshwater acute selenium criterion from the 2000 CTR had not yet been completed. The EPA ultimately entered into a consent decree resolving these claims in 2014 (*Our Children's Earth Foundation and Ecological Rights Foundation v. U.S. Environmental Protection Agency, et al.*, 13-cv-2857 (N.D. Cal., August 22, 2014)).

Under the terms of the consent decree, the EPA committed to proposing selenium criteria for California fresh waters covered by the original CTR to protect aquatic life and aquatic-dependent wildlife by November 30, 2018. The consent decree also requires that the EPA request initiation of any necessary ESA section 7(a)(2) consultation with the Services on the proposed selenium criteria no later than nine months after the date the EPA proposes the criteria. Further, under the consent decree, the EPA is required to finalize its proposal of selenium criteria within six months of the later of either making a "no effect" determination, receiving written concurrence from the Services, or concluding formal consultation with the Services. In the event that the EPA approves selenium criteria for the protection of aquatic life and aquatic-dependent wildlife submitted by California for all or any portion of fresh waters in the rest of California (*i.e.*, all fresh waters not part of the San Francisco Bay and Delta) the EPA would no longer be obligated to propose or finalize criteria for such waters.

E. Selenium and Sources of Selenium

Selenium is an element that occurs naturally in sediments of marine origin and enters the aquatic environment when rainwater comes into contact with deposits. Selenium is mobilized through anthropogenic activities such as agriculture irrigation, mining, and petroleum refining. It also comes into contact with the environment due to releases from holding ponds associated with mining. Selenium is emitted from power plants that burn coal or oil, selenium refineries, smelters, milling operations, and end-product manufacturers (*e.g.* semiconductor manufacturers).¹⁴ Once inorganic selenium is converted into a bioavailable form, it enters the food chain and can bioaccumulate. Depending on environmental conditions, one or another form of selenium such as selenate, selenite or organo-selenium, which differ in

transformation rates and bioavailability, may predominate in the aquatic environment.

Selenium is an essential micronutrient and low levels of selenium in the diet are required for normal cellular function in almost all animals. However, selenium at amounts not much above the required nutritional levels can have toxic effects on aquatic life and aquatic-dependent wildlife, making it one of the most toxic of the biologically essential elements. Egg-laying vertebrates have a lower tolerance than do mammals, and the transition from levels of selenium that are biologically essential to those that are toxic for these species occurs across a relatively narrow range of exposure concentrations. (see *Final Aquatic Life Ambient Water Quality Criteria for Selenium—Freshwater 2016*, US EPA, Office of Water, EPA 822-R-16-006, June 2016). Elevated selenium levels above what is nutritionally required in fish and other wildlife inhibit normal growth and reduce reproductive success through effects that lower embryo survival, most notably teratogenesis (*i.e.*, embryo/larval deformities). The deformities associated with exposure to elevated selenium in fish may include skeletal, craniofacial, and fin deformities, and various forms of edema that result in mortality. Elevated selenium exposure in birds can reduce reproductive success including decreased fertility, reduced egg hatchability (embryo mortality), and increased incidence of deformities in embryos.

Scientific studies¹⁵ indicate that selenium toxicity to aquatic life and aquatic-dependent wildlife is driven by diet (*i.e.*, the consumption of selenium-contaminated prey) rather than by direct exposure to dissolved selenium in the water column. Unlike other bioaccumulative contaminants such as mercury, the single largest step in selenium accumulation in aquatic environments occurs at the base of the food web where algae and other microorganisms accumulate selenium from water. The vulnerability of a species to selenium toxicity is determined by a number of factors in addition to the amount of contaminated prey consumed. A species' sensitivity to selenium, its population status, and the duration, timing and life stage of exposure are all factors to consider. In addition, the hydrologic conditions and water chemistry of a water body affect

bioaccumulation; in general, slow-moving, calm waters or lentic waters enhance the production of bioavailable forms of selenium (selenite), while faster-moving waters or lotic waters limit selenium uptake given the rapid movement and predominant form of selenium (selenate). The EPA considered these and other factors in determining the proposed selenium criterion for California.

Sources of Selenium in California

Selenium is found in the upper Cretaceous and Tertiary marine and sedimentary deposits that form the California Coast Ranges and inland Central Valley basin. Sedimentary rocks, particularly shales, have the highest naturally occurring selenium content and the natural weathering of geologic strata containing selenium can lead to selenium leaching into groundwater and surface water. Two major categories of anthropogenic activities are known to cause increased selenium mobilization and introduction into aquatic systems. The first is human disturbances to the geological sedimentary deposits; the second is irrigation of selenium-rich soils. Additional sources include five oil refineries along the San Francisco Bay, which are not included in the scope of this proposal.

In California, areas with Tertiary and Cretaceous marine sedimentary deposits are known to have elevated selenium. Watersheds in these areas may have elevated selenium levels in water, especially if human disturbances to the geological sedimentary deposits in these areas are high. For instance, human disturbances have included expanding the width and depth of open drainage channels for flood control purposes in agricultural and urbanized areas and conducting construction activities in the upland hills that contain marine shales. These activities have disrupted and exposed the underlying selenium-bearing marine sedimentary deposits subjecting them to erosion, weathering, and transport to downslope areas in the watershed.

Irrigation of selenium-rich soils for crop production in arid and semi-arid regions of California can mobilize selenium and move it off-site in drainage water that has leached through soil. Where deposits of Cretaceous marine shales occur, they can weather to produce high selenium soils. In semi-arid areas of California, irrigation water applied to soils containing soluble selenium can leach selenium. The excess water (from tile drains to irrigation return flow) containing selenium can be discharged into basins, ponds, or streams. For example,

¹⁴ U.S. Department of Health and Human Services. Public Health Service. Agency for Toxic Substances and Disease Registry. *Toxicological Profile for Selenium*. September 2003 (<https://www.atsdr.cdc.gov/toxprofiles/tp92.pdf>).

¹⁵ Scientific studies used in the development of this rulemaking can be found in this proposed rule's docket, as well as dockets EPA-HQ-OW-2004-0019 and EPA-HQ-OW-2015-0392.

elevated selenium levels at the Kesterson Reservoir in California originated from agricultural irrigation return flow collected in tile drains that discharged into the reservoir.

III. Proposed Criterion

A. Approach

In 2016, the EPA updated its CWA section 304(a) recommendation for a chronic aquatic life criterion for selenium for freshwater, based on the latest scientific knowledge on selenium toxicity and bioaccumulation (*Final Aquatic Life Ambient Water Quality Criteria for Selenium—Freshwater 2016*, US EPA, Office of Water, EPA 822-R-

16–006, June 2016). This information was not available when the EPA finalized the NTR or the CTR in 1992 and 2000, respectively. The EPA is now proposing a revised chronic selenium criterion to protect aquatic life and aquatic-dependent wildlife for the fresh waters of California based on this latest scientific knowledge and consistent with its obligation under the consent decree.

This chronic freshwater selenium criterion will apply to California waters in a manner consistent with the CTR. The freshwater and saltwater aquatic life criteria listed in the CTR apply as follows: (1) The freshwater criteria apply at salinities of 1 part per thousand

and below at locations where this occurs 95% or more of the time; (2) saltwater criteria apply at salinities of 10 parts per thousand and above at locations where this occurs 95% more of the time; and (3) at salinities between 1 and 10 parts per thousand the more stringent of the two apply.

The proposed criterion would establish levels of selenium that protect California’s aquatic life and aquatic-dependent wildlife designated (beneficial) uses for fresh waters of California consistent with California’s implementation of the CTR. California’s applicable designated uses for the protection of aquatic life and aquatic-dependent wildlife are listed in Table 2.

TABLE 2—APPLICABLE DESIGNATED (BENEFICIAL) USES FOR CALIFORNIA ¹⁶

Use	Abbreviation	Definition
Warm Freshwater Habitat	WARM	Uses of water that support warm water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.
Cold Freshwater Habitat	COLD	Uses of water that support cold water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.
Migration of Aquatic Organisms	MIGR	Uses of water that support habitats necessary for migration or other temporary activities by aquatic organisms, such as anadromous fish.
Spawning, Reproduction, and/or Early Development.	SPWN	Uses of water that support high quality aquatic habitats suitable for reproduction and early development of fish.
Estuarine Habitat	EST	Uses of water that support estuarine ecosystems including, but not limited to, preservation or enhancement of estuarine habitats, vegetation, fish, shellfish, or wildlife (e.g., estuarine mammals, waterfowl, shorebirds).
Wildlife Habitat	WILD	Uses of water that support terrestrial ecosystems including, but not limited to, preservation or enhancement of terrestrial habitats, vegetation, wildlife (e.g., mammals, birds, reptiles, amphibians, invertebrates), or wildlife water and food sources.
Rare, Threatened, or Endangered Species.	RARE	Uses of water that support habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened or endangered.

B. Administrator’s Determination of Necessity

As noted above, as part of the prior CTR rulemaking, the EPA invoked its authority under CWA section 303(c)(4)(B) when it proposed acute and chronic selenium criteria for fresh waters in California not subject to numeric criteria. The basis for that 303(c)(4)(B) determination was California’s lack of numeric criteria, including selenium criteria as required by CWA section 303(c)(2)(B), which directs states to adopt numeric criteria for those toxic pollutants for which the EPA has published CWA 304(a) recommended criteria. In 1997, the EPA proposed acute and chronic aquatic life criteria for selenium based on the EPA’s

then-current CWA 304(a) recommended criteria. Through the course of that rulemaking, the EPA consulted with the Services pursuant to section 7(a) of the Endangered Species Act. As part of that consultation process, the EPA committed to reserving (not promulgating) the proposed acute criterion. Because the EPA did not finalize the proposed acute criterion, nor did it reconsider the accompanying section 303(c)(4)(B) determination, the EPA remained subject to a statutory duty to promulgate an acute selenium criterion for California. The EPA did promulgate chronic selenium criteria in 2000, but also committed to proposing revised chronic criteria by 2003. The Services incorporated the EPA’s commitments as Terms and Conditions

in the final biological opinion on the effects of the final promulgation of the CTR.

Today’s proposal of a revised chronic selenium criterion is necessary to complete actions initiated pursuant to the Administrator’s 1997 and 2000 CTR determinations. The EPA is proposing a revised numeric selenium criterion, to comply with CWA section 303(c)(2)(B). The EPA is proposing a chronic criterion for California based on the EPA’s current CWA 304(a) recommended criterion for selenium, which only includes a chronic criterion. The current science shows that an acute criterion is not necessary to protect from the lethal effects of selenium if a protective chronic criterion is in place, which by definition protects against

¹⁶ Refer to document titled, “Applicable Designated (Beneficial) Uses for California,” in the

docket associated with this rulemaking, to find designated uses captured in the California Regional

Water Quality Control Boards’ Water Quality Control Plans (*i.e.*, Regional Boards’ Basin Plans).

sublethal effects and effects of short-term elevations of selenium that are introduced into the food web and could result in chronic effects. Therefore, if a protective chronic selenium criterion, such as the EPA is proposing today, is ultimately promulgated, an acute criterion would no longer be necessary to meet the requirements of the CWA, and so the Administrator's determinations contained in the 1997 and 2000 preambles to the CTR will be negated insofar as they called for the promulgation of an acute selenium criterion.

C. Proposed Criterion

Water quality criteria establish the maximum allowable pollutant level that is protective of the designated uses of a water body. States adopt or, as in this case, the EPA may promulgate criteria as part of WQS. Under the CWA, WQS are used to derive water quality-based effluent limitations (WQBELs) in permits for point source dischargers, thereby limiting the amount of pollutants that may be discharged into a water body to maintain its designated uses. The EPA is proposing a selenium water quality criterion for California comprised of criterion elements of fish tissue, bird tissue, and a performance-based approach to be used by California to translate the tissue criterion elements into protective water column elements on a site-specific basis. The EPA is proposing selenium fish and bird tissue elements because they reflect biological uptake through diet, the predominant pathway for selenium toxicity, and because they are most predictive of the observed biological endpoint of concern: Reproductive toxicity.

The EPA is proposing the freshwater selenium criterion in California that is

depicted in Table 3. The EPA is proposing its recommended 2016 CWA section 304(a) selenium criterion for freshwater with the addition of a bird tissue criterion element and the replacement of the 304(a) selenium monthly average exposure water column criterion element with a performance-based approach¹⁷ for translating the tissue elements into corresponding water-column elements on a site-specific basis. This performance-based approach maximizes the flexibility for the State to develop water-column translations specifically tailored to each individual waterbody. The available data indicate that applying the criterion in Table 3 would protect aquatic life and aquatic-dependent wildlife from the toxic effects of selenium, recognizing that fish tissue elements and the bird tissue element supersede any translated site-specific water column elements and that the fish egg-ovary element supersedes all other fish tissue elements. The proposed tissue criterion elements consist of a bird egg criterion element of 11.2 mg/kg dry weight, a fish egg-ovary criterion element of 15.1 mg/kg dry weight, a fish whole-body criterion element of 8.5 mg/kg dry

¹⁷ A performance-based approach relies on the state or authorized tribe adopting a process (*i.e.*, a criterion derivation methodology, with associated implementation procedures) rather than a specific outcome (*e.g.*, numeric criterion or concentration of a pollutant) in its water quality standards regulation. In instances where the EPA promulgates a water quality standard (including a performance-based approach) for a state or authorized tribe, the EPA is held to the same requirements and expectations for that water quality standard as the state or authorized tribe. The concept of a performance-based approach was first described in the **Federal Register** Notice *EPA Review and Approval of State and Tribal Water Quality Standards—Final Rule* (65 FR 24641–24653; April 27, 2000).

weight or a fish muscle criterion element of 11.3 mg/kg dry weight. The fish tissue and bird tissue criterion elements were developed to protect aquatic and aquatic-dependent wildlife populations from impacts caused by selenium. Tissue data provide instantaneous point measurements that reflect integrative accumulation of selenium over time and space in fish or birds at a given site. California will have flexibility in how they interpret a discrete fish sample to represent a given species' population at a site. Generally, fish and bird tissue samples collected to calculate average tissue concentrations (often in composites) for a species at a site are collected in one sampling event, or over a short interval due to logistical constraints and cost for obtaining samples. The proposed performance-based approach consists of a methodology, *Draft Translation of Selenium Tissue Criterion Elements to Site-Specific Water Column Criterion Elements for California Version 1, August 8, 2018*, available in the docket for this rulemaking, to translate the tissue criterion elements to site-specific water column criterion elements (discussed in greater detail below Table 3). The EPA is also proposing an intermittent exposure water column element that would be derived from the site-specific water column criterion elements. The EPA is proposing that the bird tissue element be independently applicable from and equivalent to the fish tissue elements, but that all tissue elements will supersede translated water column elements for the specific taxon when both are measured.

The EPA is proposing the following criterion:

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Table 3: Proposed California Freshwater Selenium Ambient Chronic Water Quality Criterion for Protection of Aquatic Life and Aquatic-Dependent Wildlife.

Media Type	Bird Tissue	Fish Tissue ¹		Water Column ⁴	
Criterion Element	Bird Egg ²	Egg-Ovary ²	Fish Whole Body or Muscle ³	Monthly Average Exposure	Intermittent Exposure ⁵
Magnitude	11.2 mg/kg dw	15.1 mg/kg dw	8.5 mg/kg dw whole body or 11.3 mg/kg dw muscle (skinless, boneless filet)	Derived on a site-specific basis using the methodology described in <i>Draft Translation of Selenium Tissue Criterion Elements to Site-Specific Water Column Criterion Elements for California Version 1, August 8, 2018</i>	Derived on a site-specific basis from Monthly Average Exposure element using the following equation: $WQC_{int} = \frac{WQC_{30-day} - C_{bkgnd}(1 - f_{int})}{f_{int}}$
Duration	Instantaneous measurement ⁶	Instantaneous measurement ⁶	Instantaneous measurement ⁶	30 days	Number of days/month with an elevated concentration
Frequency	Not to be exceeded	Not to be exceeded	Not to be exceeded	Not more than once in three years on average	Not more than once in three years on average

1. Fish tissue elements are expressed as steady-state.
2. Fish Egg-Ovary supersedes any whole-body, muscle, or translated water column element for that taxon when fish egg-ovary are measured. Bird Egg supersedes translated water column elements for that taxon when both are measured.
3. Fish whole-body or muscle tissue supersedes the translated water column element when both fish tissue and water concentrations are measured.
4. Translated water column values will be based on dissolved total selenium in water and will be derived using the methodology described in *Draft Translation of Selenium Tissue Criterion Elements to Site-Specific Water Column Criterion Elements for California Version 1, August 8, 2018*.
5. Where WQC_{30-day} is the water column monthly element derived using the methodology described in *Draft Translation of Selenium Tissue Criterion Elements to Site-Specific Water Column Criterion Elements for California Version 1, August 8, 2018*, C_{bkgnd} is the average background selenium concentration, and f_{int} is the fraction of any 30-day period during which elevated selenium concentrations occur, with f_{int} assigned a value ≥ 0.033 (corresponding to 1 day).
6. Fish tissue and bird tissue data provide instantaneous point measurements that reflect integrative accumulation of selenium over time and space in bird or fish population(s) at a given site.

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Performance-Based Approach for Translating Tissue Criterion Elements to Site-Specific Water Column Criterion Elements

As part of the proposed criterion depicted in Table 3, the EPA is including a methodology, incorporated by reference, to translate the fish tissue criterion elements' concentrations and

the bird tissue criterion element's concentration into site-specific water column concentrations. This is considered a *performance-based approach* to developing site-specific water column elements consistent with other elements of the criterion. This set of binding procedures for translating fish and bird tissue criterion elements is detailed in the *Draft Translation of Selenium Tissue Criterion Elements to*

Site-Specific Water Column Criterion Elements for California, Version 1, August 8, 2018 and is located in the docket for this rulemaking. The performance-based approach provides two methodologies for deriving site-specific water column criterion elements: The mechanistic modeling approach and the empirical bioaccumulation factor (BAF) approach.

The mechanistic modeling approach uses scientific knowledge of the physical and chemical processes underlying bioaccumulation to establish a relationship between the concentrations of selenium in the water column and the concentration of selenium in the tissue of aquatic and aquatic-dependent organisms. The mechanistic modeling approach enables formulation of site-specific models of trophic transfer of selenium through aquatic food webs and translation of the tissue elements into an equivalent site-specific water column selenium element. It is also the approach used to develop the 2016 CWA 304(a) recommended selenium criterion water column elements.

The empirical BAF approach establishes a site-specific relationship between water column selenium concentrations and fish (or bird) tissue selenium concentrations by measuring both directly and using the relationship between them to determine a site-specific water column criterion element.

If, after soliciting comment, the EPA finalizes a selenium criterion that includes the proposed performance-based approach as part of the federal promulgation, each resulting site-specific water column criterion element would be applicable for CWA purposes, without the need for EPA approval under CWA section 303(c). Importantly, for public transparency, the EPA recommends that California maintain a list of the resulting site-specific water column criterion elements and the underlying data used for their respective derivation on their publicly accessible website.

The proposed chronic selenium criterion applies to the entire aquatic community, including fish, amphibians, invertebrates, and aquatic-dependent wildlife. Based on the analysis in the accompanying Technical Support Document (TSD) to this proposed rule (*Aquatic Life and Aquatic-Dependent Wildlife Selenium Water Quality Criterion for Fresh Waters of California*) and the EPA's previous work (*Final Aquatic Life Ambient Water Quality Criteria for Selenium—Freshwater 2016*, US EPA, Office of Water, EPA 822-R-16-006, June 2016), as well as currently available data, fish and birds are considered the most sensitive taxa to selenium effects. Selenium criterion elements based on fish tissue (egg-ovary, whole body, and/or muscle) or bird egg tissue data will override the performance-based translated water column concentrations because fish and bird tissue concentrations provide the most robust and direct information on

potential selenium effects in fish and birds.

Although selenium may cause acute toxicity at high concentrations, *i.e.*, toxicity from a brief but highly elevated concentration of selenium in the water, chronic dietary exposure poses the highest risk to aquatic life and aquatic-dependent wildlife. Chronic toxicity occurs primarily through maternal transfer of selenium to eggs and causes subsequent reproductive effects, such as larval and embryo structural deformity, edema, and mortality. Because chronic effects of selenium are observed at much lower concentrations than acute effects, the chronic criterion is also expected to protect aquatic and aquatic-dependent communities from any potential acute effects of selenium. However, some high concentration, short-term exposures could be detrimental by causing significant long-term, residual, bioaccumulative effects (*i.e.*, by the introduction of a significant selenium load into the system). Therefore, the EPA is also proposing the performance-based approach be used to address intermittent exposure criterion to selenium to prevent long-term detrimental effects from these high concentration, short-term exposures. The EPA's proposed intermittent exposure criterion element should be derived mathematically, from the performance-based site-specific monthly water column elements for lentic and/or lotic waters using the equation shown in Table 3. The equation expresses the intermittent exposure water criterion element in terms of the 30-day average chronic water criterion element, for a lentic or lotic system, as appropriate, while accounting for the fraction in days of any 30-day period the intermittent spikes occur and for the background concentration occurring during the remaining time. The intermittent exposure criterion calculation is consistent with the EPA's national 304(a) recommended freshwater aquatic life criterion for selenium (see Section 3.3.) and is meant to be used in situations where a noncontinuous discharge is present in the water body of interest.

The EPA solicits comment on the *Draft Translation of Selenium Tissue Criterion Elements to Site-Specific Water Column Criterion Elements for California, Version 1, August 8, 2018* and how it has been applied in this proposed rule and requests any additional information for consideration by the EPA. The EPA specifically solicits comment on whether it would be appropriate to include a method for a larger scale (*e.g.*, ecoregional or state-wide) water column translation from

fish or bird egg tissue in a performance-based approach, and if so, what methods are available and appropriate for this large scale translation. Such an approach would need, for example, methods for selecting sites from a larger area and would need to specify in the performance-based approach how decisions will be made using information from multiple sites.

Additionally, the EPA is soliciting public comment on an alternative to the proposed criterion whereby the criterion would be expressed in the same manner as in this proposed rule (same bird tissue, fish tissue, and intermittent exposure criterion elements as presented in Table 3), however, in addition to the performance-based approach to translate site-specific water column criterion elements, the EPA would include the water column criterion elements from the Agency's 2016 CWA section 304(a) selenium criterion for freshwater: A lotic water column criterion element of 3.1 µg/L and a lentic water column criterion element of 1.5 µg/L. The derivation of these water column criterion elements is described in detail in the accompanying TSD to this proposed rule and the EPA's previous work in its 2016 CWA section 304(a) selenium criterion for freshwater. The EPA also solicits comment on an alternative that would be expressed in the same manner as the proposed criterion (same bird tissue, fish tissue, and intermittent exposure criterion elements as presented in Table 3), and include the EPA water column criterion elements from the Agency's 2016 CWA section 304(a) selenium criterion for freshwater, instead of including the performance-based approach.

The EPA also solicits comment on the criterion structure whereby rather than proposing one criterion that protects applicable aquatic life and wildlife designated uses, the rule, if finalized, would consist of two separate criteria with one intended to protect the applicable aquatic life designated uses and one intended to protect the applicable wildlife designated uses. The two separate criteria would be structured as follows: (1) An aquatic life criterion, consisting of the same fish tissue elements and performance-based approach presented in Table 3, to protect the applicable aquatic life designated uses; and (2) an aquatic-dependent wildlife criterion, consisting of the same bird tissue element and performance-based approach presented in Table 3, to protect the applicable wildlife designated uses. The EPA solicits comment on the criterion structure and whether one criterion or two separate criteria are preferred for

implementation reasons. This approach could also utilize either the performance-based approach to translate tissue elements to site-specific water-column elements or the water-column elements from the Agency's 2016 CWA section 304(a) selenium criterion for freshwater. If the proposed rule is finalized as currently written, one criterion (as shown in Table 3) would be used to protect both aquatic life and aquatic-dependent wildlife designated uses in the waters covered by this proposed rule, as opposed to two separate criteria, each intended to protect a separate designated use.

D. Implementation

The EPA is proposing that for purposes of assessing attainment of the criterion, the bird tissue element be independently applicable from the fish tissue elements (*i.e.*, if the bird tissue element is exceeded, the criterion is not being attained for the applicable wildlife designated use), but that all tissue elements will supersede translated water column elements for the specific taxon when both are measured (*i.e.*, if both of the tissue elements are being met, the criterion is being attained even if the water column element is exceeded). Additionally, fish egg-ovary data supersedes any whole-body, muscle, or translated water column element data for that taxon when fish-egg ovary are measured (*i.e.*, if the fish egg-ovary element is being met, the criterion is being attained even if the whole-body, muscle, or water column elements are not being met). Similarly, the bird tissue element supersedes translated water column elements for that taxon when both are measured. California has flexibility in how to evaluate individual and composite samples for each taxon. The State's assessment methodology should make its decision-making process in this situation clear. This construct is equivalent to the EPA's CWA 304(a) recommended selenium criterion in that tissue criterion elements have primacy over water column criterion elements.

Selenium concentrations in fish and bird tissue are primarily a result of selenium bioaccumulation via dietary exposure. Because of this, fish and bird tissue concentrations in waters with new inputs of selenium may not fully represent potential effects on fish, birds, and the aquatic ecosystem. New inputs are defined as new anthropogenic activities resulting in the release of selenium into a lentic or lotic aquatic system. New inputs do not refer to seasonal variability of selenium that occurs naturally within a system (*e.g.* spring run-off events or precipitation-

driven pulses). In this circumstance fish tissue data and bird tissue data may not fully represent potential effects on the aquatic ecosystem, making the use of a translated water column element derived using the mechanistic model portion of the performance-based approach more appropriate to protect the entire aquatic ecosystem.

Because tissue concentrations alone may present challenges when attempting to incorporate them directly in NPDES permits, the EPA is also proposing a performance-based approach for California to use to translate tissue elements to site-specific water column concentrations. These translated water column criterion concentrations would not prevent California from also using the tissue criterion elements for monitoring and regulation of pollutant discharges. In implementing the water quality criterion for selenium under the NPDES permits program, California may need to establish additional procedures due to the unique components of the selenium criterion. Where California uses a translated selenium water column concentration only (as opposed to using both the water column and fish tissue or bird tissue elements) for conducting reasonable potential (RP) determinations and establishing WQBELs per 40 CFR 122.44(d), existing implementation procedures used for other aquatic life protection criteria may be appropriate. However, if California also decides to use the selenium fish tissue criterion elements and bird tissue criterion element for NPDES permitting purposes, additional state WQS implementation procedures (IPs) will likely be needed to determine the need for and development of WQBELs necessary to ensure that the tissue criterion element(s) are met.

E. Incorporation by Reference

The EPA is proposing that the final EPA regulatory text will incorporate one EPA document by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the final version of the EPA's current *Draft Translation of Selenium Tissue Criterion Elements to Site-Specific Water Column Criterion Elements for California, Version 1, August 8, 2018*, discussed in Section III.C. of this preamble. The EPA has made, and will continue to make, this document available electronically through www.regulations.gov at the docket associated with this rulemaking and at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

IV. Endangered Species Act

Pursuant to section 7(a)(2) of the Endangered Species Act (ESA), the EPA is consulting with the FWS and NMFS concerning the EPA's rulemaking action for the selenium water quality criterion in California. The EPA will transmit to the Services documentation that supports the selenium water quality criterion in this proposed rule. As a result of this consultation, the EPA may modify some provisions of this proposed rule.

V. Applicability of the EPA Promulgated Water Quality Standards When Final

Under the CWA, Congress gave states primary responsibility for developing and adopting WQS for their waters (CWA section 303(a)-(c)). Although the EPA is proposing a selenium criterion for the protection of aquatic life and aquatic-dependent wildlife for the fresh waters of California, California continues to have the option to adopt and submit to the EPA selenium criteria (objectives) for the State's waters consistent with CWA section 303(c) and the EPA's implementing regulations at 40 CFR part 131. The EPA encourages California to expeditiously adopt selenium criteria. Consistent with CWA section 303(c)(4) and the terms of the consent decree, if California adopts and submits selenium criteria for the protection of aquatic life and aquatic-dependent wildlife, and the EPA approves such criteria before finalizing this proposed rule, the EPA would not proceed with the promulgation for those waters for which the EPA approves California's criteria. Under those circumstances, federal promulgation would no longer be necessary to meet the requirements of the Act.

If the EPA finalizes this proposed rule and California subsequently adopts and submits selenium criteria for the protection of aquatic and aquatic-dependent wildlife for California, the EPA would approve California's criteria if those criteria meet the requirements of section 303(c) of the CWA and the EPA's implementing regulation at 40 CFR part 131. If the EPA's federally-promulgated criteria are more stringent than the State's criteria, the EPA's federally-promulgated criteria are and will be the applicable water quality standard for purposes of the CWA until the Agency withdraws those federally-promulgated standards. The EPA would expeditiously undertake such a rulemaking to withdraw the federal criteria if and when California adopts and the EPA approves corresponding criteria. After the EPA's withdrawal of

federally promulgated criteria, the State's EPA-approved criteria would become the applicable criteria for CWA purposes. If the State's adopted criteria are as stringent or more stringent than the federally-promulgated criteria, then the State's criteria would become the CWA applicable WQS upon the EPA's approval (40 CFR 131.21(c)).

VI. Implementation and Alternative Regulatory Approaches

The federal WQS regulation at 40 CFR part 131 provides several tools that California has available to use at its discretion when implementing or deciding how to implement these aquatic life criteria, once finalized. Among other things, the EPA's WQS regulation: (1) Specifies how states and authorized tribes establish, modify or remove designated uses, (2) specifies the requirements for establishing criteria to protect designated uses, including criteria modified to reflect site-specific conditions, (3) authorizes and provides regulatory guidelines for states and authorized tribes to adopt WQS variances that provide time to achieve the applicable WQS, and (4) allows states and authorized tribes to authorize the use of compliance schedules in NPDES permits to meet WQBELs derived from the applicable WQS. Each of these approaches are discussed in more detail in the next sections.

Designated Uses

The EPA's proposed selenium criterion applies to fresh waters of California where the protection of aquatic life and aquatic-dependent wildlife are designated uses. The federal regulations at 40 CFR 131.10 provide information on establishing, modifying, and removing designated uses. If California removes designated uses such that no aquatic life or aquatic-dependent wildlife uses apply to any particular water body segment affected by this rule and adopts the highest attainable use,¹⁸ the State must also adopt criteria to protect the newly designated highest attainable use consistent with 40 CFR 131.11. It is possible that criteria other than the federally promulgated criteria

¹⁸ If a state or authorized tribe adopts a new or revised WQS based on a required use attainability analysis, then it must also adopt the highest attainable use (40 CFR 131.10(g)). Highest attainable use is the modified aquatic life, wildlife, or recreation use that is both closest to the uses specified in section 101(a)(2) of the Act and attainable, based on the evaluation of the factor(s) in 40 CFR 131.10(g) that preclude(s) attainment of the use and any other information or analyses that were used to evaluate attainability. There is no required highest attainable use where the state demonstrates the relevant use specified in section 101(a)(2) of the Act and sub-categories of such a use are not attainable (see 40 CFR 131.3(m)).

would protect the highest attainable use. If the EPA finds removal or modification of the designated use and the adoption of the highest attainable use and criteria to protect that use to be consistent with CWA section 303(c) and the implementing regulation at 40 CFR part 131, the Agency would approve the revised WQS. The EPA would then undertake a rulemaking to withdraw the corresponding federal WQS for the relevant water(s).

Site-Specific Criteria

The regulations at 40 CFR 131.11 specify requirements for modifying water quality criteria to reflect site-specific conditions. In the context of this rulemaking, a site-specific criterion (SSC) is an alternative value to the federal selenium criterion that would be applied on an area-wide or water body-specific basis that meets the regulatory test of protecting the designated uses, being scientifically defensible, and ensuring the protection and maintenance of downstream WQS. A SSC may be more or less stringent than the otherwise applicable federal criterion. A SSC may be called for when further scientific data and analyses indicate that a different selenium concentration (*e.g.*, a different fish tissue or bird tissue criterion element) may be needed to protect the aquatic life and aquatic-dependent wildlife-related designated uses in a particular water body or portion of a water body.

WQS Variances

California's WQS provide sufficient authority to apply WQS variances when implementing a federally promulgated criterion for selenium, as long as such WQS variances are adopted consistent with 40 CFR 131.14 and submitted to the EPA for review and approval under CWA section 303(c). Federal regulations at 40 CFR 131.14 define a WQS variance as a time-limited designated use and criterion, for a specific pollutant or water quality parameter, that reflects the highest attainable condition during the term of the WQS variance. WQS variances adopted in accordance with 40 CFR 131.14 (including a public hearing consistent with 40 CFR 25.5) provide a flexible but defined pathway for states and authorized tribes to meet their NPDES permit obligations by allowing dischargers the time they need (as demonstrated by the state or authorized tribe) to make incremental progress toward meeting WQS that are not immediately attainable but may be in the future. When adopting a WQS variance, states and authorized tribes specify the interim requirements of the WQS variance by identifying a

quantitative expression that reflects the highest attainable condition (HAC) during the term of the WQS variance, establishing the term of the WQS variance, and describing the pollutant control activities expected to occur over the specified term of the WQS variance. WQS variances help states and authorized tribes focus on improving water quality, rather than pursuing a downgrade of the underlying water quality goals through modification or removal of a designated use, as a WQS variance cannot lower currently attained water quality. WQS variances provide a legal avenue by which NPDES permit limits can be written to comply with the WQS variance rather than the underlying WQS for the term of the WQS variance. If dischargers are still unable to meet the WQBELs derived from the applicable WQS once a WQS variance term is complete, the regulation allows the state and authorized tribe to adopt a subsequent WQS variance if it is adopted consistent with 40 CFR 131.14. The EPA is proposing a criterion that applies to use designations that California has already established. California's WQS currently include the authority to use WQS variances when implementing criteria, as long as such WQS variances are adopted consistent with 40 CFR 131.14. California may use EPA-approved WQS variance procedures when adopting such WQS variances.

Compliance Schedules

The EPA's regulations at 40 CFR 122.47 and 40 CFR 131.15 address how permitting authorities can use permit compliance schedules in NPDES permits if dischargers need additional time to undertake actions like facility upgrades or operation changes to meet their WQBELs based on the applicable WQS. The EPA's regulation at 40 CFR 122.47 allows permitting authorities to include compliance schedules in their NPDES permits, when appropriate and where authorized by the state or authorized tribe, in order to provide a discharger with additional time to meet its WQBELs implementing applicable WQS. The EPA's regulation at 40 CFR 131.15 requires that states and authorized tribes that choose to allow the use of NPDES permit compliance schedules adopt specific provisions authorizing their use and obtain the EPA approval under CWA section 303(c) to ensure that a decision to allow permit compliance schedules is transparent and allows for public input (80 FR 51022, August 21, 2015). The EPA's approval of the state's or authorized tribe's permit compliance schedule authorizing provision (CSAP)

as a WQS pursuant to 40 CFR 131.15 ensures that any NPDES permit that contains a compliance schedule meets the requirement that the WQBEL derive from and comply with all applicable WQS (40 CFR 122.44(d)(1)(vii)(A)).

California is authorized to administer the NPDES program and has adopted several mechanisms to authorize compliance schedules in NPDES permits. In 2008, California adopted a statewide CSAP that the EPA subsequently approved under CWA section 303(c), the *Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits*, SWRCB Resolution No. 2008–0025, April 15, 2008. This EPA-approved regulation authorizes the use of permit compliance schedules consistent with 40 CFR 131.15, and is not affected by this rule. The CSAP will allow California, as the permitting authority, to use permit compliance schedules, as appropriate, for the purpose of achieving compliance with a WQBEL based on a final federal selenium criterion that is more stringent than the existing criteria for California, as soon as possible.

VII. Economic Analysis

The proposed criterion would serve as a basis for development of new or revised NPDES permit conditions for point source dischargers and additional best management practice (BMP) controls on nonpoint sources of pollutant loadings. The EPA cannot be certain of whether a particular discharger would change their operations if this proposed criterion were finalized and the discharger were found to have reasonable potential to cause or contribute to an exceedance of a WQS. Moreover, the EPA cannot anticipate how California would implement the criterion. California is authorized to administer the NPDES program and retains discretion in implementing WQS. In addition to examples laid out in Section VI—any of which would be consistent with the regulatory requirement at 40 CFR 122.44(d)(1)(i) to ensure that State NPDES permits comply with the applicable CWA WQS—the State can calculate water column criterion elements on a site-specific basis relying on the performance-based approach. Despite this discretion, if California determines that a permit is necessary, such permit would need to comply with the EPA's regulations at 40 CFR 122.44(d)(1)(i). Still, to best inform the public of the potential impacts of this proposed rule, the EPA made some assumptions to evaluate the potential costs associated with State

implementation of the EPA's proposed criterion. The EPA chose to evaluate the expected costs associated with State implementation of the Agency's proposed selenium criterion based on available information. This analysis is documented in *Economic Analysis for Proposed Selenium Water Quality Standards Applicable to the State of California*, which can be found in the docket for this rulemaking. The EPA seeks public comment on all aspects of the economic analysis including, but not limited to, its assumptions relating to the baseline criteria, affected entities, implementation, and compliance costs.

For the economic analysis, the EPA assumed the baseline to be full implementation of existing water quality criteria (*i.e.*, “baseline criteria”) and then estimated the incremental impacts for compliance with the selenium criterion in this proposed rule. Aside from the freshwater chronic criterion of 5 µg/L established under the CTR, the EPA assumed that the following sites have site-specific criteria: The San Joaquin River from Sack Dam to Vernalis, Mud Slough, Salt Slough, the constructed and reconstructed water supply channels in the Grassland watershed, the surface water tributaries to the Salton Sea, and the San Francisco Bay Delta. There are approximately 76 existing selenium impairments pursuant to the existing baseline freshwater criterion of 5 µg/L. The EPA assumes that the California Regional Water Quality Control Boards will develop total maximum daily loads (TMDLs) and implementation plans to bring all these waters into compliance with baseline criteria. Therefore, any incremental costs identified by the economic analysis to comply with the proposed criterion above and beyond the baseline are attributable to this proposed rule.

For point source costs, any NPDES-permitted facility that discharges selenium could potentially incur compliance costs. The types of affected facilities could include industrial facilities and publicly owned treatment works (POTWs) discharging wastewater to fresh surface waters.

To facilitate this analysis, the EPA interpreted the proposed criterion as the lentic and lotic water-column elements from the Agency's 2016 CWA section 304(a) selenium criterion for freshwater, and refer to this as the economic analysis criterion. Using the proposed performance-based approach detailed in *Draft Translation of Selenium Tissue Criterion Elements to Site-Specific Water Column Criterion Elements for California Version 1, August 8, 2018*, site-specific water-column translations

of tissue elements may be more or less stringent than the economic analysis criterion for lentic and lotic waters. Because the economic analysis criterion reflects the 20th percentile of a national set of tissue element translations (see Figure 3.9 on page 92 of the EPA's 2016 selenium criterion document), the use of these values as proxies for the site-specific translations using the performance-based approach may be more or less conservative with respect to estimating potential associated costs of implementation. Hereafter in this section, the term “economic analysis criterion” refers to the lentic value of 1.5 µg/L and the lotic value of 3.1 µg/L as proxies for the performance-based approach water-column translations of the tissue elements.

A. Identifying Affected Entities

The EPA estimated costs to municipal, industrial, and other dischargers under the proposed criterion. The EPA used its Integrated Compliance Information System National Pollutant Discharge Elimination System (ICIS–NPDES) database to identify individually permitted facilities in California whose NPDES permits contain effluent limitations and/or monitoring requirements for selenium. The EPA excluded facilities that discharge to saltwater, as well as the facilities discharging to waters where SSC are in place for selenium (listed above). Based on this review, the EPA identified 110 facilities to evaluate for reasonable potential to cause or contribute to an exceedance of the applicable proposed criterion (*i.e.*, the lentic or lotic water column value applicable based on the receiving water). Nineteen facilities demonstrated reasonable potential to exceed the applicable proposed criterion that results in the need for water quality-based effluent limits that could be lower than current limits. Even though the EPA only had sufficient data to analyze 110 facilities for reasonable potential to exceed the proposed criterion, the EPA identified 249 potentially affected facilities. See the Economic Analysis for more details.

B. Method for Estimating Costs

The EPA estimated costs for point source dischargers that receive more stringent limits based on the proposed criterion and existing effluent concentrations. The EPA reviewed facility permits, existing treatment systems, and available treatment technologies to develop likely compliance scenarios and associated incremental costs for each permittee to meet their proposed effluent limitations.

After the EPA costed for the facilities that demonstrated reasonable potential to exceed the proposed criterion, it extrapolated those costs to the remaining potentially affected facilities, when possible.

To estimate costs for nonpoint source controls, the EPA compared available water quality measurements for selenium against the economic analysis criterion to identify lentic and lotic fresh waters that might be incrementally impaired under the proposed criterion. Although the State of California's implementation procedures may result in different waters identified as impaired for selenium and the State may choose a different approach to achieving water quality criteria, the EPA assumed, for the purpose of its cost analysis, that nonpoint dischargers of agricultural drainage return flows to impaired waters in regions with a high percentage of irrigated cropland would need to implement BMPs to reduce irrigation drainage. To estimate the potential incremental impact of the rule on nonpoint sources, the EPA identified the incrementally impaired waters with high proportions of cropland. The EPA's estimate for incremental BMPs costs included annualized costs for implementing drip irrigation to replace a less efficient type of irrigation to reduce the return flow from agricultural areas surrounding the impaired waters. The EPA also estimated the potential administrative costs to government

entities to develop TMDLs for the potentially impaired waters.

C. Results

The EPA provides estimated costs to point source dischargers by type, based on capital and operation and maintenance costs, reported on an annual basis as the sum of annual O&M costs and capital costs annualized at a 3% discount rate over the 20-year life of the capital equipment. Total costs, if all controls were implemented in the first year, range from \$34.1 to 50.2 million per year; when reflecting a 5-year phase-in due to NPDES permit cycle, total costs range from \$31.0 to 45.7 million per year. Deferring some cost to later years reduces the total amount and is likely given the 5-year NPDES permit renewal cycle and staggered TMDL development.

The estimated costs to nonpoint sources that may result from state implementation of the proposed criterion range from \$9.9 to \$11.0 million per year, using a 13-year TMDL phase-in period. The EPA annualized BMP capital costs over the expected useful life of the BMPs using a 3% discount rate and added annual operation and maintenance costs to derive annual cost estimates. See the Economic Analysis for more details.

If there are incrementally impaired waters under the proposed criterion, then the California Regional Water Quality Control Boards may need to develop TMDLs for these waters,

thereby incurring incremental government regulatory costs. If there is a separate TMDL for each of the 28 incrementally impaired waterbodies, and each TMDL costs between \$37,000 and \$40,000 to complete,¹⁹ then the cumulative costs for doing all of them in a single year may be \$1.0 million to \$1.1 million. Distributing this cost uniformly over 13 years results in annual costs of \$0.08 to \$0.09 million.

Note that, while this analysis is based on the best publicly available data, it may not fully reflect the impact of the proposed criterion. If additional monitoring data were available, or if the California Regional Water Quality Control Boards increase monitoring of ambient conditions in future assessment periods, additional impairments may be identified under the baseline and/or proposed criteria. Conversely, there may be fewer waters identified as impaired for selenium after California has fully implemented baseline activities to address sources of existing impairments for selenium or other contaminants (e.g., planned baseline BMPs for stormwater discharges from urban or industrial sources for metals TMDLs).

Table 4 shows aggregate costs for point source controls, nonpoint source BMPs, and administrative costs for the 3% discount rate, where the total annual cost ranges from \$41 million to \$57 million. The 7% discount rate estimates of total annual costs range from \$45 million to \$61 million. See the economic analysis for full derivation.

TABLE 4—SUMMARY OF TOTAL ANNUAL COST ESTIMATES
[Millions; 2017\$]

Cost type	Low cost	High cost
Point Sources ¹	\$31.0	\$45.7
Nonpoint Sources ¹	9.9	11.0
Government Administration ²	0.04	0.04
Total	40.9	56.7

¹ Annual costs include capital costs annualized over the 20-year expected life of the equipment at 3% plus annual operating and maintenance costs. Annual costs also reflect a 5-year implementation period for point sources and a 13-year implementation period for nonpoint source BMPs.

² Total TMDL development costs are uniformly distributed over 13 years.

VIII. Statutory and Executive Orders

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

As determined by the Office of Management and Budget (OMB), this action is a significant regulatory action and was submitted to OMB for review. Any changes made during OMB's

review have been documented in the docket. The EPA evaluated the potential costs to NPDES dischargers associated with State implementation of the EPA's proposed criteria. This analysis, *Economic Analysis for Proposed Selenium Water Quality Standards Applicable to the State of California*, is summarized in Section VII of the preamble and is available in the docket.

B. Executive Order 13771 (Reducing Regulations and Controlling Regulatory Costs)

This action is expected to be an Executive Order 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the EPA's analysis of the potential costs and benefits associated with this action.

¹⁹ These unit cost estimates derive from values provided in a U.S. EPA draft report from 2001, entitled *The National Costs of the Total Maximum*

Daily Load Program (EPA 841-D-01-003), escalated to \$2017. These unit costs per TMDL represent practices from nearly 20 years ago, and therefore

may not reflect increased costs of analysis using more sophisticated contemporary methods.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. While actions to implement these WQS could entail additional paperwork burden, this action does not directly contain any information collection, reporting, or record-keeping requirements.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The EPA-promulgated WQS are implemented through various water quality control programs including the NPDES program, which limits discharges to navigable waters except in compliance with a NPDES permit. CWA Section 301(b)(1)(C)²⁰ and the EPA's implementing regulations at 40 CFR 122.44(d)(1) and 122.44(d)(1)(A) provide that all NPDES permits shall include any limits on discharges that are necessary to meet applicable WQS. Thus, under the CWA, the EPA's promulgation of WQS establishes standards that the state implements through the NPDES permit process. While the state has discretion in developing discharge limits, as needed to meet the WQS, those limits, per regulations at 40 CFR 122.44(d)(1)(i), "must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality." As a result of this action, the State of California will need to ensure that permits it issues include any limitations on discharges necessary to comply with the WQS established in the final rule. In doing so, the State will have a number of choices associated with permit writing. While California's implementation of the rule may ultimately result in new or revised permit conditions for some dischargers, including small entities, the EPA's action, by itself, does not impose any of

²⁰ 301(b) Timetable for Achievement of Objectives. In order to carry out the objective of this chapter there shall be achieved—(1)(C): Not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

these requirements on small entities; that is, these requirements are not self-implementing.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandates as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. As these water quality criteria are not self-implementing, the action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132 (Federalism)

Under the technical requirements of Executive Order 13132, the EPA has determined that this proposed rule may not have federalism implications but believes that the consultation requirements of the Executive Order have been satisfied in any event. On several occasions over the course of February 2018 through September 2018, the EPA discussed with the California State Water Quality Control Board and several Regional Water Quality Control Boards the Agency's development of the federal rulemaking and clarified early in the process that if and when the State decided to develop and establish its own selenium standards, the EPA would instead assist the State in its process. During these discussions, the EPA explained the scientific basis for the fish and bird tissue elements of the selenium criterion and the methodologies for translating the tissue elements to water column values; the external peer review process and the comments the Agency received on the derivation of the criterion; the Agency's consideration of those comments and responses; possible alternatives for a criteria or criterion matrix; and the overall timing of the federal rulemaking effort. The EPA coordinated with the State and considered the State's initial feedback in making the Agency's decision to propose and solicit comment on the criterion matrix and the various options described in Section III. Proposed Criterion of this proposed rulemaking.

The EPA specifically solicits comments on this proposed action from state and local officials.

G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This action does not have tribal implications as specified in Executive Order 13175. This proposed rule does not impose substantial direct compliance costs on federally recognized tribal governments, nor does

it substantially affect the relationship between the federal government and tribes, or the distribution of power and responsibilities between the federal government and tribes. Thus, Executive Order 13175 does not apply to this action.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials during the development of this action. The EPA will continue to communicate with the tribes prior to its final action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

J. National Technology Transfer and Advancement Act of 1995

This proposed rulemaking does not involve technical standards.

K. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

The human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The criteria in this proposed rule would support the health and abundance of aquatic life and aquatic-dependent wildlife in California and would, therefore, benefit all communities that rely on these ecosystems.

List of Subjects in 40 CFR Part 131

Environmental protection, Incorporation by reference, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: November 29, 2018.
Andrew R. Wheeler,
Acting Administrator.

PART 131—WATER QUALITY STANDARDS

■ 2. Amend § 131.38 by revising the table in paragraph (b)(1) and paragraphs (c)(3)(ii) and (iii) to read as follows:

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR part 131 as follows:

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.38 Establishment of numeric criteria for priority toxic pollutants for the State of California.

* * * * *
 (b)(1) * * *

A		B Freshwater		C Saltwater		D Human health (10 ⁻⁶ risk for carcinogens) for consumption of:	
Number compound	CAS No.	Criterion maximum conc. ^d (µg/L) B1	Criterion continuous conc. ^d (µg/L) B2	Criterion maximum conc. ^d (µg/L) C1	Criterion continuous conc. ^d (µg/L) C2	Water and organisms (µg/L) D1	Organisms only (µg/L) D2
1. Antimony	7440360					as 14	at 4300
2. Arsenic ^b	7440382	im w 340	im w 150	im 69	im 36		
3. Beryllium	7440417					(n)	(n)
4. Cadmium ^b	7440439	eim w x 4.3	eim w 2.2	im 42	im 9.3	(n)	(n)
5a. Chromium (III)	16065831	eim o 550	eim o 180			(n)	(n)
5b. Chromium (VI) ^b	18540299	im w 16	im w 11	im 1100	im 50	(n)	(n)
6. Copper ^b	7440508	eim w x 13	eim w 9.0	im 4.8	im 3.1	1300	
7. Lead ^b	7439921	eim z 65	eim z 2.5	im 210	im 8.1	(n)	(n)
8. Mercury ^b	7439976	[Reserved]	[Reserved]	[Reserved]	[Reserved]	a 0.050	a 0.051
9. Nickel ^b	7440020	eim w 470	eim w 52	im 74	im 8.2	a 610	a 4600
10. Selenium ^b	7782492	(p)	(q aa)	im 290	im 71	(n)	(n)
11. Silver ^b	7440224	eim 3.4		im 1.9			
12. Thallium	7440280					as 1.7	at 6.3
13. Zinc ^b	7440666	eim w x 120	eim w 120	im 90	im 81		
14. Cyanide ^b	57125	o 22	o 5.2	r 1	r 1	a 700	aj 220,000
15. Asbestos	1332214					ks 7,000,000 fibers/L	
16. 2,3,7,8-TCDD (Dioxin)	1746016					c 0.000000013	c 0.000000014
17. Acrolein	107028					s 320	t 780
18. Acrylonitrile	107131					acs 0.059	act 0.66
19. Benzene	71432					ac 1.2	ac 71
20. Bromoform	75252					ac 4.3	ac 360
21. Carbon Tetra- chloride	56235					acs 0.25	act 4.4
22. Chlorobenzene	108907					as 680	ajt 21,000
23. Chlorodibromomethane	124481					acy 0.41	ac 34
24. Chloroethane	75003						
25. 2-Chloroethylvinyl Ether	110758						
26. Chloroform	67663					[Reserved]	[Reserved]
27. Dichlorobromomethane	75274					acy 0.56	ac 46
28. 1,1-Dichloroethane	75343						
29. 1,2-Dichloroethane	107062					acs 0.38	act 99
30. 1,1-Dichloroethylene	75354					acs 0.057	act 3.2
31. 1,2-Dichloropropane	78875					a 0.52	a 39
32. 1,3-Dichloropropylene	542756					as 10	at 1,700
33. Ethylbenzene	100414					as 3,100	at 29,000
34. Methyl Bromide	74839					a 48	a 4,000
35. Methyl Chloride	74873					(n)	(n)
36. Methylene Chloride	75092					ac 4.7	ac 1,600
37. 1,1,2,2-Tetrachloroethane	79345					acs 0.17	act 11
38. Tetrachloroethylene	127184					cs 0.8	ct 8.85
39. Toluene	108883					a 6,800	a 200,000
40. 1,2-Trans-Dichloroethylene	156605					a 700	a 140,000
41. 1,1,1-Trichloroethane	71556					(n)	(n)
42. 1,1,2-Trichloroethane	79005					acs 0.60	act 42

A		B Freshwater		C Saltwater		D Human health (10 ⁻⁶ risk for carcinogens) for consumption of:	
Number compound	CAS No.	Criterion maximum conc. ^d (µg/L) B1	Criterion continuous conc. ^d (µg/L) B2	Criterion maximum conc. ^d (µg/L) C1	Criterion continuous conc. ^d (µg/L) C2	Water and organisms (µg/L) D1	Organisms only (µg/L) D2
43. Trichloroethylene ...	79016					cs 2.7	ct 81
44. Vinyl Chloride	75014					cs 2	ct 525
45. 2-Chlorophenol	95578					a 120	a 400
46. 2,4-Dichlorophenol	120832					as 93	at 790
47. 2,4-Dimethylphenol	105679					a 540	a 2,300
48. 2-Methyl-4,6-Dinitrophenol	534521					s 13.4	t 765
49. 2,4-Dinitrophenol	51285					as 70	at 14,000
50. 2-Nitrophenol	88755						
51. 4-Nitrophenol	100027						
52. 3-Methyl-4-Chlorophenol	59507						
53. Pentachlorophenol	87865	fw 19	fw 15	13	7.9	ac 0.28	acj 8.2
54. Phenol	108952					a 21,000	ajt 4,600,000
55. 2,4,6-Trichlorophenol	88062					ac 2.1	ac 6.5
56. Acenaphthene	83329					a 1,200	a 2,700
57. Acenaphthylene	208968						
58. Anthracene	120127					a 9,600	a 110,000
59. Benzidine	92875					acs 0.00012	act 0.00054
60. Benzo(a)Anthracene	56553					ac 0.0044	ac 0.049
61. Benzo(a)Pyrene	50328					ac 0.0044	ac 0.049
62. Benzo(b)Fluoranthene	205992					ac 0.0044	ac 0.049
63. Benzo(ghi)Perylene	191242						
64. Benzo(k)Fluoranthene	207089					ac 0.0044	ac 0.049
65. Bis(2-Chloroethoxy)Methane	111911						
66. Bis(2-Chloroethyl)Ether	111444					acs 0.031	act 1.4
67. Bis(2-Chloroisopropyl)Ether	108601					a 1,400	at 170,000
68. Bis(2-Ethylhexyl)Phthalate	117817					acs 1.8	act 5.9
69. 4-Bromophenyl Phenyl Ether	101553						
70. Butylbenzyl Phthalate	85687					a 3,000	a 5,200
71. 2-Chloronaphthalene	91587					a 1,700	a 4,300
72. 4-Chlorophenyl Phenyl Ether	7005723						
73. Chrysene	218019					ac 0.0044	ac 0.049
74. Dibenz(o(a,h)Anthracene	53703					ac 0.0044	ac 0.049
75. 1,2-Dichlorobenzene	95501					a 2,700	a 17,000
76. 1,3-Dichlorobenzene	541731					400	2,600
77. 1,4-Dichlorobenzene	106467					400	2,600
78. 3,3'-Dichlorobenzidine	91941					acs 0.04	act 0.077
79. Diethyl Phthalate	84662					as 23,000	at 120,000
80. Dimethyl Phthalate	131113					s 313,000	t 2,900,000
81. Di-n-Butyl Phthalate	84742					as 2,700	at 12,000
82. 2,4-Dinitrotoluene	121142					cs 0.11	ct 9.1
83. 2,6-Dinitrotoluene	606202						
84. Di-n-Octyl Phthalate	117840						
85. 1,2-Diphenylhydrazine	122667					acs 0.040	act 0.54
86. Fluoranthene	206440					a 300	a 370
87. Fluorene	86737					a 1,300	a 14,000

A		B Freshwater		C Saltwater		D Human health (10 ⁻⁶ risk for carcinogens) for consumption of:	
Number compound	CAS No.	Criterion maximum conc. ^d (µg/L) B1	Criterion continuous conc. ^d (µg/L) B2	Criterion maximum conc. ^d (µg/L) C1	Criterion continuous conc. ^d (µg/L) C2	Water and organisms (µg/L) D1	Organisms only (µg/L) D2
88. Hexachlorobenzene	118741	.....	.....	.....	.....	a c 0.00075	a c 0.00077
89. Hexachlorobutadiene	87683	.....	.....	.....	.....	a c s 0.44	a c t 50
90. Hexachlorocyclopentadiene	77474	.....	.....	.....	.....	a s 240	a j t 17,000
91. Hexachloroethane	67721	.....	.....	.....	.....	a c s 1.9	a c t 8.9
92. Indeno(1,2,3-cd) Pyrene	193395	.....	.....	.....	.....	a c 0.0044	a c 0.049
93. Isophorone	78591	.....	.....	.....	.....	c s 8.4	c t 600
94. Naphthalene	91203	.....	.....	.....	.....	.....	.....
95. Nitrobenzene	98953	.....	.....	.....	.....	a s 17	a j t 1,900
96. N-Nitrosodimethylamine	62759	.....	.....	.....	.....	a c s 0.00069	a c t 8.1
97. N-Nitrosodi-n-Propylamine	621647	.....	.....	.....	.....	a 0.005	a 1.4
98. N-Nitrosodiphenylamine	86306	.....	.....	.....	.....	a c s 5.0	a c t 16
99. Phenanthrene	85018	.....	.....	.....	.....	.....	.....
100. Pyrene	129000	.....	.....	.....	.....	a 960	a 11,000
101. 1,2,4-Trichlorobenzene	120821	.....	.....	.....	.....	.....	.....
102. Aldrin	309002	g 3	.....	g 1.3	.....	a c 0.00013	a c 0.00014
103. alpha-BHC	319846	.....	.....	.....	.....	a c 0.0039	a c 0.013
104. beta-BHC	319857	.....	.....	.....	.....	a c 0.014	a c 0.046
105. gamma-BHC	58899	w 0.95	.....	g 0.16	.....	c 0.019	c 0.063
106. delta-BHC	319868	.....	.....	.....	.....	.....	.....
107. Chlordane	57749	g 2.4	g 0.0043	g 0.09	g 0.004	a c 0.00057	a c 0.00059
108. 4,4'-DDT	50293	g 1.1	g 0.001	g 0.13	g 0.001	a c 0.00059	a c 0.00059
109. 4,4'-DDE	72559	.....	.....	.....	.....	a c 0.00059	a c 0.00059
110. 4,4'-DDD	72548	.....	.....	.....	.....	a c 0.00083	a c 0.00084
111. Dieldrin	60571	w 0.24	w 0.056	g 0.71	g 0.0019	a c 0.00014	a c 0.00014
112. alpha-Endosulfan	959988	g 0.22	g 0.056	g 0.034	g 0.0087	a 110	a 240
113. beta-Endosulfan	33213659	g 0.22	g 0.056	g 0.034	g 0.0087	a 110	a 240
114. Endosulfan Sulfate	1031078	.....	.....	.....	.....	a 110	a 240
115. Endrin	72208	w 0.086	w 0.036	g 0.037	g 0.0023	a 0.76	a j 0.81
116. Endrin Aldehyde	7421934	.....	.....	.....	.....	a 0.76	a j 0.81
117. Heptachlor	76448	g 0.52	g 0.0038	g 0.053	g 0.0036	a c 0.00021	a c 0.00021
118. Heptachlor Epoxide	1024573	g 0.52	g 0.0038	g 0.053	g 0.0036	a c 0.00010	a c 0.00011
119–125. Polychlorinated biphenyls (PCBs)	.....	.....	u 0.014	.....	u 0.03	c v 0.00017	c v 0.00017
126. Toxaphene	8001352	0.73	0.0002	0.21	0.0002	a c 0.00073	a c 0.00075
Total Number of Criteria ^h	.....	22	21	22	20	92	90

Footnotes to Table In Paragraph (b)(1):

^aCriteria revised to reflect the Agency q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of October 1, 1996. The fish tissue bioconcentration factor (BCF) from the 1980 documents was retained in each case.

^bCriteria apply to California waters except for those waters subject to objectives in Tables III–2A and III–2B of the San Francisco Regional Water Quality Control Board's (SFRWQCB) 1986 Basin Plan that were adopted by the SFRWQCB and the State Water Resources Control Board, approved by the EPA, and which continue to apply. For copper and nickel, criteria apply to California waters except for waters south of Dumbarton Bridge in San Francisco Bay that are subject to the objectives in the SFRWQCB's Basin Plan as amended by SFRWQCB Resolution R2–2002–0061, dated May 22, 2002, and approved by the State Water Resources Control Board. The EPA approved the aquatic life site-specific objectives on January 21, 2003. The copper and nickel aquatic life site-specific objectives contained in the amended Basin Plan apply instead.

^cCriteria are based on carcinogenicity of 10 (–6) risk.

^dCriteria Maximum Concentration (CMC) equals the highest concentration of a pollutant to which aquatic life can be exposed for a short period of time without deleterious effects. Criteria Continuous Concentration (CCC) equals the highest concentration of a pollutant to which aquatic life can be exposed for an extended period of time (4 days) without deleterious effects. µg/L equals micrograms per liter.

^eFreshwater aquatic life criteria for metals are expressed as a function of total hardness (mg/L) in the water body. The equations are provided in matrix at paragraph (b)(2) of this section. Values displayed above in the matrix correspond to a total hardness of 100 mg/l.

^fFreshwater aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows: Values displayed above in the matrix correspond to a pH of 7.8. CMC = exp(1.005(pH) – 4.869). CCC = exp(1.005(pH) – 5.134).

⁹This criterion is based on 304(a) aquatic life criterion issued in 1980, and was issued in one of the following documents: Aldrin/Dieldrin (EPA 440/5-80-019), Chlordane (EPA 440/5-80-027), DDT (EPA 440/5-80-038), Endosulfan (EPA 440/5-80-046), Endrin (EPA 440/5-80-047), Heptachlor (440/5-80-052), Hexachlorocyclohexane (EPA 440/5-80-054), Silver (EPA 440/5-80-071). The Minimum Data Requirements and derivation procedures were different in the 1980 Guidelines than in the 1985 Guidelines. For example, a "CMC" derived using the 1980 Guidelines was derived to be used as an instantaneous maximum. If assessment is to be done using an averaging period, the values given should be divided by 2 to obtain a value that is more comparable to a CMC derived using the 1985 Guidelines.

^hThese totals simply sum the criteria in each column. For aquatic life, there are 23 priority toxic pollutants with some type of freshwater or saltwater, acute or chronic criteria. For human health, there are 92 priority toxic pollutants with either "water + organism" or "organism only" criteria. Note that these totals count chromium as one pollutant even though the EPA has developed criteria based on two valence states. In the matrix, the EPA has assigned numbers 5a and 5b to the criteria for chromium to reflect the fact that the list of 126 priority pollutants includes only a single listing for chromium.

ⁱCriteria for these metals are expressed as a function of the water-effect ratio, WER, as defined in paragraph (c) of this section. CMC = column B1 or C1 value \times WER; CCC = column B2 or C2 value \times WER.

^jNo criterion for protection of human health from consumption of aquatic organisms (excluding water) was presented in the 1980 criteria document or in the 1986 Quality Criteria for Water. Nevertheless, sufficient information was presented in the 1980 document to allow a calculation of a criterion, even though the results of such a calculation were not shown in the document.

^kThe CWA 304(a) criterion for asbestos is the MCL.

^l[Reserved].

^mThese freshwater and saltwater criteria for metals are expressed in terms of the dissolved fraction of the metal in the water column. Criterion values were calculated by using the EPA's Clean Water Act 304(a) guidance values (described in the total recoverable fraction) and then applying the conversion factors in § 131.36(b)(1) and (2).

ⁿThe EPA is not promulgating human health criteria for these contaminants. However, permit authorities should address these contaminants in NPDES permit actions using the State's existing narrative criteria for toxics.

^oThese criteria were promulgated for specific waters in California in the National Toxics Rule ("NTR"), at § 131.36. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays or estuaries and waters of the State defined as inland, *i.e.*, all surface waters of the State not ocean waters. These waters specifically include the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta. This section does not apply instead of the NTR for this criterion.

^pNo acute criterion applies except as follows. A criterion of 20 $\mu\text{g/L}$ was promulgated for specific waters in California in the NTR in the total recoverable form and still applies to waters of the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta; waters of Salt Slough; Mud Slough (north); and the San Joaquin River, Sack Dam to the mouth of Merced River. The State of California adopted and the EPA approved site-specific acute criteria that still apply to the San Joaquin River, mouth of Merced to Vernalis; Salt Slough; constructed and reconstructed water supply channels in the Grassland watershed listed in Appendix 40 of the State of California Central Valley Regional Water Quality Control Board Basin Plan; and all surface waters that are tributaries to the Salton Sea.

^qThe chronic criterion specified in footnote ^{aa} applies except as follows. A chronic criterion of 5 $\mu\text{g/L}$ was promulgated for specific waters in California in the NTR in the total recoverable form and still applies to waters of the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta; waters of Salt Slough; Mud Slough (north); and the San Joaquin River, Sack Dam to Vernalis. Footnote ^{aa} does not apply instead of the NTR for these waters. The State of California adopted and the EPA approved a site-specific criterion for the Salt Slough, constructed and reconstructed water supply channels in the Grassland watershed listed in appendix 40 of the State of California Central Valley Regional Water Quality Control Board Basin Plan, and all surface waters that are tributaries to the Salton Sea; therefore, footnote ^{aa} does not apply to these waters.

^rThese criteria were promulgated for specific waters in California in the NTR. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays or estuaries including the Sacramento-San Joaquin Delta within California Regional Water Board 5, but excluding the San Francisco Bay. This section does not apply instead of the NTR for these criteria.

^sThese criteria were promulgated for specific waters in California in the NTR. The specific waters to which the NTR criteria apply include: Waters of the Sacramento-San Joaquin Delta and waters of the State defined as inland (*i.e.*, all surface waters of the State not bays or estuaries or ocean) that include a MUN use designation. This section does not apply instead of the NTR for these criteria.

^tThese criteria were promulgated for specific waters in California in the NTR. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays and estuaries including San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta; and waters of the State defined as inland (*i.e.*, all surface waters of the State not bays or estuaries or ocean) without a MUN use designation. This section does not apply instead of the NTR for these criteria.

^uPCBs are a class of chemicals which include aroclors 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825, and 12674112, respectively. The aquatic life criteria apply to the sum of this set of seven aroclors.

^vThis criterion applies to total PCBs, *e.g.*, the sum of all congener or isomer or homolog or aroclor analyses.

^wThis criterion has been recalculated pursuant to the 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water, Office of Water, EPA-820-B-96-001, September 1996. See also Great Lakes Water Quality Initiative Criteria Documents for the Protection of Aquatic Life in Ambient Water, Office of Water, EPA-80-B-95-004, March 1995.

^xThe State of California has adopted and the EPA has approved site specific criteria for the Sacramento River (and tributaries) above Hamilton City; therefore, these criteria do not apply to these waters.

^yThe State of California adopted and the EPA approved a site-specific criterion for New Alamo Creek from Old Alamo Creek to Ulatis Creek and for Ulatis Creek from Alamo Creek to Cache Slough; therefore, this criterion does not apply to these waters.

^zThe State of California adopted and the EPA approved a site-specific criterion for the Los Angeles River and its tributaries; therefore, this criterion does not apply to these waters.

^{aa}Proposed California Freshwater Selenium Ambient Chronic Water Quality Criterion for Protection of Aquatic Life and Aquatic-Dependent Wildlife

Media Type	Bird Tissue	Fish Tissue ¹		Water Column ⁴	
Criterion Element	Bird Egg ²	Egg-Ovary ²	Fish Whole Body or Muscle ³	Monthly Average Exposure	Intermittent Exposure ⁵
Magnitude	11.2 mg/kg dw	15.1 mg/kg dw	8.5 mg/kg dw whole body or 11.3 mg/kg dw muscle (skinless, boneless filet)	Derived on a site-specific basis using the methodology described in <i>Draft Translation of Selenium Tissue Criterion Elements to Site-Specific Water Column Criterion Elements for California Version 1, August 8, 2018</i>	Derived on a site-specific basis from Monthly Average Exposure element using the following equation: $WQC_{int} = \frac{WQC_{30-day} - C_{bkgnd}(1 - f_{int})}{f_{int}}$
Duration	Instantaneous measurement ⁶	Instantaneous measurement ⁶	Instantaneous measurement ⁶	30 days	Number of days/month with an elevated concentration
Frequency	Not to be exceeded	Not to be exceeded	Not to be exceeded	Not more than once in three years on average	Not more than once in three years on average

1. Fish tissue elements are expressed as steady-state.
2. Fish Egg-Ovary supersedes any whole-body, muscle, or translated water column element for that taxon when fish egg-ovary are measured. Bird Egg supersedes translated water column elements for that taxon when both are measured.
3. Fish whole-body or muscle tissue supersedes the translated water column element when both fish tissue and water concentrations are measured.
4. Translated water column values will be based on dissolved total selenium in water and will be derived using the methodology described in *Draft Translation of Selenium Tissue Criterion Elements to Site-Specific Water Column Criterion Elements for California Version 1, August 8, 2018*. This standard is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 5.1. All approved material is available at EPA, OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20004, (202) 566-2426. It is also available for inspection 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 www.archives.gov/federal-register/cfr/ibr-locations.html.
5. Where WQC_{30-day} is the water column monthly element derived using the methodology described in *Draft Translation of Selenium Tissue Criterion Elements to Site-Specific Water Column Criterion Elements for California Version 1, August 8, 2018*, C_{bkgnd} is the average background selenium concentration, and f_{int} is the fraction of any 30-day period during which elevated selenium concentrations occur, with f_{int} assigned a value ≥ 0.033 (corresponding to 1 day).
6. Fish tissue and bird tissue data provide instantaneous point measurements that reflect integrative accumulation of selenium over time and space in bird or fish population(s) at a given site.

General Notes to Table in Paragraph (b)(1)

1. The table in this paragraph (b)(1) lists all of the EPA's priority toxic pollutants whether or not criteria guidance are available. Blank spaces indicate the absence of national section 304(a) criteria guidance. Because of variations in chemical nomenclature systems, this listing of toxic pollutants

does not duplicate the listing in appendix A to 40 CFR part 423-126 Priority Pollutants. The EPA has added the Chemical Abstracts Service (CAS) registry numbers, which provide a unique identification for each chemical.

2. The following chemicals have organoleptic-based criteria recommendations that are not included

on this chart: Zinc, 3-methyl-4-chlorophenol.

3. Freshwater and saltwater aquatic life criteria apply as specified in paragraph (c)(3) of this section.

* * * * *

(c) * * *

(3) * * *

(ii) For waters in which the salinity is equal to or greater than 10 parts per

thousand 95% or more of the time, the applicable criteria are the saltwater criteria in Column C, except for selenium in waters of the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta where the applicable criteria are the freshwater criteria in Column B of the National Toxic Rule (“NTR”) at § 131.36.

(iii) For waters in which the salinity is between 1 and 10 parts per thousand as defined in paragraphs (c)(3)(i) and (ii) of this section, the applicable criteria are the more stringent of the freshwater or saltwater criteria, except for selenium in waters of the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta where the applicable criteria are the freshwater criteria in Column B of the NTR. However, the Regional Administrator may approve the use of the alternative freshwater or saltwater criteria if scientifically defensible information and data demonstrate that on a site-specific basis the biology of the water body is dominated by freshwater aquatic life and that freshwater criteria are more appropriate; or conversely, the biology of the water body is dominated by saltwater aquatic life and that saltwater criteria are more appropriate. Before approving any change, the EPA will publish for public comment a document proposing the change.

* * * * *

[FR Doc. 2018-26781 Filed 12-12-18; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 180411364-8364-01]

RIN 0648-BH90

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to National Park Service’s Research and Monitoring Activities in Southern Alaska National Parks

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the National Park Service (NPS) for authorization to take marine mammals incidental to research and monitoring activities in southern Alaska over the

course of five years (2019–2024). These activities include glaucous-winged gull and climate monitoring activities in Glacier Bay National Park (GLBA NP), Alaska and marine bird and mammal survey activities conducted by the Southwest Alaska Inventory and Monitoring Network (SWAN) in national parks and adjacent lands. As required by the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take and requests comments on the proposed regulations.

DATES: Comments and information must be received no later than January 14, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2018-0059, by any of the following methods:

- **Electronic submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0059, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 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), 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Gray Redding, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of NPS’s application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other->

activities. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

National Environmental Policy Act (NEPA)

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an incidental take authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed rule and subsequent Letters of Authorization qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the request.

Purpose and Need for Regulatory Action

This proposed rule, to be issued under the authority of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*), would establish a framework for authorizing the take of marine mammals incidental to NPS’s gull and climate monitoring activities within GLBA NP and marine bird and mammal surveys in the SWAN region. Researchers conducting these surveys may cause behavioral disturbance (Level B harassment) of harbor seals and Steller sea lions.

We received an application from NPS requesting five-year regulations and authorization to take harbor seals and Steller sea lions. Take would occur by Level B harassment incidental to research and monitoring activities due to behavioral disturbance of pinnipeds. The regulations would be valid from 2019 to 2024. Please see “Background” below for definitions of harassment.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of

marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity, as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule containing five-year regulations, and for any subsequent Letters of Authorization. As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Proposed Rule

The following provides a summary of some of the major provisions within the proposed rulemaking for NPS's research and monitoring activities in southern Alaska. We have preliminarily determined that NPS's adherence to the proposed mitigation, monitoring, and reporting measures listed below would achieve the least practicable adverse impact on the affected marine mammals. They include:

- Measures to minimize the number and intensity of incidental takes during monitoring activities and to minimize the duration of disturbances.
- Measures designed to eliminate startling reactions.
- Eliminating or altering research activities on GLBA NP beaches when pups are present, and setting limits on the frequency and duration of events during pupping season.

Background

Paragraphs 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1371 (a)(5)(A) and (D)) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant); and if the permissible methods of taking and requirements

pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 as an impact resulting from the specified activity:

- That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by:
 - Causing the marine mammals to abandon or avoid hunting areas;
 - Directly displacing subsistence users; or
 - Placing physical barriers between the marine mammals and the subsistence hunters; and
- That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On February 6, 2018, we received an adequate and complete request from NPS for authorization to take marine mammals incidental to gull and climate monitoring activities in GLBA NP. On February 22, 2018 (83 FR 7699), we published a notice of receipt of NPS's application in the **Federal Register**, requesting comments and information related to the request for 30 days. We did not receive any comments. NPS provided a revised application incorporating minor revisions on April 23, 2018. Subsequently, NPS has identified additional research and monitoring projects in southern Alaska (SWAN region) with similar sources of marine mammal disturbance and potential effects. On October 29, 2018, NMFS received an adequate and complete revised application including these additional research and monitoring activities. These additional activities were determined to be similar in scope and impact to the original proposed activities, and NMFS

determined that publication of a revised notice of receipt was not necessary for the updated application.

Prior to this request for incidental take regulations and subsequent Letters of Authorization (LOA), we issued five consecutive incidental harassment authorizations (IHA) to NPS for incidental take associated with the GLBA NP ongoing gull and climate monitoring activities. NPS was first issued an IHA, valid for a period of one year, effective on September 18, 2014 (79 FR 56065), and was subsequently issued one-year IHAs for incidental take associated with the same activities, effective on March 24, 2015 (80 FR 28229), June 1, 2016 (77 FR 24471), May 20, 2017 (82 FR 24681), and February 15, 2018 (83 FR 6842). NPS has abided by all of NMFS's mitigation and monitoring requirements in previous activities for which take was authorized.

Description of the Specified Activity

Glacier Bay

NPS is proposing to conduct two research projects within the GLBA NP in southeast Alaska: (1) Glaucous-winged gull monitoring, and (2) the maintenance of a weather station operation for long-term climate monitoring. NPS would conduct ground and vessel surveys at six study sites within GLBA NP for gull monitoring: South Marble Island, Boulder Island, Lone Island, Geikie Rock, Flapjack Island, and Tlingit Point Islet. These sites will be accessed up to five times per year. In addition, NPS is requesting permission to access Lone Island an additional three times per year for weather station maintenance and operation bringing the total number of site visits to Lone Island to eight. This includes adding one additional trip for any emergency repairs that may be needed. Researchers accessing the islands for gull monitoring and weather station operation may cause behavioral disturbance (Level B harassment) of harbor seals. NPS expects that the disturbance to harbor seals from both projects will be limited to Level B harassment.

The purpose for the above-mentioned research activities are as follows. Gull monitoring studies are mandated by a Record of Decision of a Legislative Environmental Impact Statement (LEIS) (NPS 2010) which states that NPS must initiate a monitoring program for glaucous-winged gulls (*Larus glaucescens*) to inform future native egg harvest by the Hoonah Tlingit in Glacier Bay, Alaska. Installation of a new weather station on Lone Island was conducted by the NPS in the spring of

2018 as one of several installations intended to fill coverage gaps among existing weather stations in GLBA NP (NPS 2015a). In order to properly maintain the newly installed weather station, researchers must access the Lone Island weather station site at least twice a year for annual maintenance and repairs.

SWAN

NPS is applying for an LOA to conduct the SWAN marine bird and mammal multi-species nearshore surveys along the coastlines of Katmai National Park and Preserve (KATM), Kenai Fjords National Park (KEFJ), and in Kachemak Bay (KBAY) in support of long-term monitoring programs in these regions of southwest Alaska. Occasional disturbance of Steller sea lions and harbor seals may occur during surveys. Steller sea lion and harbor seal habitat coincides with surveyed nearshore transects. Please see NPS's application for established transect locations for KATM and KEFJ and proposed transect locations for KBAY. NPS expects that the disturbance will be limited to Level B harassment and will not result in serious injury or death. SWAN also seeks to foster further collaborations with NOAA and share monitoring data in the future.

Dates and Duration

Glacier Bay

The specified activity would be valid during the five-year period of validity for these proposed regulations (March 1, 2019 through February 29, 2024). Ground and vessel surveys for nesting gulls will be conducted from May through September on bird nesting islands in GLBA NP (see Figure 1 of LOA Application) and other suspected gull colonies. There will be 1–3 ground visits and 1–2 vessel surveys at each site for a maximum of five visits per site. Duration of surveys will be 30 minutes to two hours each.

Maintenance of the Lone Island weather station may begin March 1, 2019. To avoid the gull-nesting period, all maintenance and emergency repair-related site visits to this location are planned to occur between March and April during the first year, and October to April in following years, but visits could occur outside of this time period if necessary with authorization from the park Superintendent to ensure protection of park resources and values. Possible unanticipated station failures requiring emergency repair will require up to eight hours. Two planned maintenance visits will require approximately two hours per visit.

SWAN

NPS's activities in the SWAN region would be valid during the five year period of validity for these proposed regulations (March 1, 2019 through February 29, 2024). Standardized surveys of marine birds are proposed in KATM and KEFJ between late June and early July and are generally conducted by two survey crews on independent small vessels (5–8 m length) traveling at speeds of 8–12 knots along randomly selected sections of coastline that represent independent transects. The two crews operate independently and do not survey the same transects. Winter surveys are conducted in March and consist of the same set of transects surveyed in the summer months. Only one region, either KATM or KEFJ, per winter season is surveyed. Regions surveyed in the winter are on a rotation. Similar annual surveys are proposed in KBAY, with summer surveys occurring in June or July and no winter survey proposed. The survey of each area takes 3–4 days to complete with both crews operating.

Specified Geographical Region

Glacier Bay

The proposed study sites would occur in the vicinity of the following locations: South Marble, Boulder, Lone, and Flapjack Islands, Tlingit Point Islet, and Geikie Rock in GLBA NP in southeast Alaska (see Figure 1 of LOA application). Each of these study sites are located on the eastern side of the park situated near Geikie Inlet and all provide harbor seal habitat throughout the year, however the highest presence of seals occurs during the breeding and molting season (May to October) (Lewis *et al.*, 2017). On Boulder and Flapjack islands, the proposed gull monitoring study sites are located on the north side whereas harbor seal haulouts are positioned on the south (Lewis *et al.*, 2017). Also, on Lone Island, harbor seals are sited near tidal rocks off the northeast tip of the island (ADEC, 2014), whereas on Geikie Rock they are known to be found throughout the entire site due to its small size (Lewis 2017). NPS will also conduct studies at South Marble Island and Tlingit Point Islet; however, there are no reported harbor seal haulout sites at those locations. South Marble Island is regularly occupied by hauled out Steller sea lions, but GLBA NP researchers have been able to access the island previously while maintaining 100 m minimum distance from the Steller sea lions and avoiding disturbance.

SWAN

The proposed surveys will occur at two national parks, KATM and KEFJ, as well as the nearby KBAY, in southwest AK. Detailed maps of the survey transects are available in the NPS's LOA application. Transects are conducted 100 or 150 m from shore and have a total width of approximately 200 to 300 m centered on the vessel.

Detailed Description of Activities

Glacier Bay's Glaucous-Winged Gull Monitoring

Gull monitoring will be conducted using a combination of ground and vessel surveys by landing at specific access points on the islands. NPS proposes to conduct: (1) Ground-based surveys at a maximum frequency of three visits per site; and (2) vessel-based surveys at a maximum frequency of two visits per site during the period of May through September.

Ground-based surveys for gull monitoring will involve two trained observers conducting complete nest counts of the gull colonies. The survey will encompass all portions of the gull colony accessible to humans and thus represent a census of the harvestable nests. GPS locations of nests and associated vegetation along with the number of live and predated eggs will be collected during at least one visit to obtain precise nest locations to characterize nesting habitat. On subsequent surveys, nest counts will be tallied on paper so observers can move through the colony more quickly and minimize disturbance. Ground surveys will be discontinued after the first hatched chick is detected to minimize disturbance and mortalities of gulls. During ground surveys, observers will also record other bird and marine mammal species in proximity to colonies.

The observers would access each island using a kayak, a 32.8 to 39.4-foot (ft) (10 to 12 meter (m)) motorboat, or a 12 ft (4 m) inflatable rowing dinghy. The landing craft's transit speed would not exceed 4 knots (kn) (4.6 miles per hour (mph)). Ground surveys generally last 30 minutes (min) to two hours (hrs) each depending on the size of the island and the number of nesting gulls. During ground surveys, Level B harassment of harbor seals can occur from either acoustic disturbance from motorboat sounds or visual disturbance from the presence of observers. Past monitoring reports show that most takes (flushes or movements greater than one meter) from ground surveys occurred as vessels approached a study site to perform a survey. Takes usually occurred while

the vessel was 50–100 meters from the island (NPS 2015b; NPS 2016).

Vessel-based surveys for gull monitoring will be conducted from the deck of a motorized vessel (10 to 12 meters) and will be used to count the number of adult and fledgling gulls that are visible from the water (Zador, 2001; Arimitsu *et al.*, 2007). Vessel surveys provide a more reliable estimate of the numbers of gulls in the colony than ground surveys because NPS can count nesting birds in areas that are inaccessible by foot and because the birds do not flush from the researchers' presence. GLBA NP would conduct these surveys by circling the islands at approximately 100 m from shore while counting the number of adult and chick gulls as well as other bird and mammal species present. Surveys can be from 30 min to two hrs in duration. During vessel surveys, Level B harassment of harbor seals can occur from either acoustic disturbance from motorboat sounds or visual disturbance from the presence of observers. Past monitoring reports show that most takes (flushes or movements greater than one meter) from vessel surveys occurred as the vessel was 100 m from the island (NPS 2015b; NPS 2016).

Glacier Bay's Climate Monitoring (Weather Station Maintenance)

To conduct climate monitoring and weather station maintenance activities, Lone Island will be accessed by a 10–20 m motor vessel. Materials will be carried by hand to the weather station location. Station configuration and maintenance is typical of Remote Automated Weather Stations (RAWS) operated by land management agencies for weather and climate monitoring, fire weather observation, and other uses. The weather station consists of an 8-ft monopole and associated guy lines. In addition, there is a fuel cell and sealed 12V battery housed in a watertight enclosure that provides power to the station. Standard meteorological sensors for measuring precipitation, wind, temperature, solar radiation, and snow depth are used. Data is housed in internal memory and communicated via satellite telemetry to the Wildland Fire

Management Institute where it is relayed to a variety of repositories such as the Western Regional Climate Center in near real-time. It is possible that the weather station can be accessed in a fashion that will not disturb hauled out harbor seals. However NPS is requesting authorization to ensure its ability to perform yearly maintenance of the weather station.

SWAN Marine Bird and Marine Mammal Surveys

SWAN standardized surveys of marine birds are conducted in KATM and KEFJ between late June and early July and are generally conducted from small vessels (5–8 m length) traveling at speeds of 8–12 knots along randomly selected sections of coastline that represent independent transects. SWAN is also proposing similar surveys be implemented in KBAY in cooperation with USGS and Gulf Watch Alaska. The survey design consists of a series of transects along shorelines such that a minimum of 20 percent of an NPS park shoreline is surveyed. Transects are systematically selected beginning at a random starting point from the pool of contiguous 2.5–5 km transects that are adjacent to the mainland or islands. The transect width is 200–300 m, depending on the elevation of the observer platform, and the survey boat represents the midpoint. There are two survey teams, and each transect is surveyed by one team of three. The boat operator generally surveys the 100–150 m offshore area of the transect, while a second observer surveys the 100–150 m nearshore area. The third team member enters the observations into a laptop running software specifically designed for this type of surveying, and the third team member can assist with observations when needed. All marine birds and mammals within the 200–300 m transect swath are identified and counted. Detailed descriptions of methods and procedures can be found in the Marine Bird and Mammal Survey SOP (Bodkin 2011).

Description of Marine Mammals in the Area of the Specified Activity

Sections 3 and 4 of the LOA application summarize available

information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (*e.g.*, physical and behavioral descriptions) may be found on NMFS's website (<https://www.fisheries.noaa.gov/find-species>).

Table 1 lists all species with expected potential for occurrence within the survey areas and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow the Committee on Taxonomy (2017). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats. Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Alaska SARs (Muto *et al.*, 2018). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2017 SARs (Muto *et al.*, 2018).

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	<i>Eumetopias jubatus</i>	Eastern U.S.	-/-; N	41,638 (n/a, 41,638, 2015) ⁴ ..	306	236

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE PROJECT AREA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Family Phocidae (earless seals): Harbor seal	<i>Phoca vitulina richardii</i>	Western U.S.	E/D; Y	54,267 (n/a; 54,267; 2017) ⁴ ..	326	252
		Glacier Bay/Icy Strait	-/-; N	7,210 (n/a; 5,647; 2011) ⁴	169	104
		Cook Inlet/Shelikof Strait	-/-; N	27,386 (n/a; 25,651; 2011) ⁴ ..	770	234
		Prince William Sound	-/-; N	29,889 (n/a; 27,936; 2011) ⁴ ..	838	279

¹ Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable (n/a).

³ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

⁴ CV value not reported in SARs.

All marine mammal species that could potentially occur in the proposed survey areas are included in Table 1. While cetaceans, including humpback, beluga, and killer whales, may be present in nearby waters, NPS's activities are expected to result in harassment only for hauled out pinnipeds. Therefore, cetaceans are not considered further in this analysis. However, NPS does propose cetacean avoidance measures as described in the "Proposed Mitigation" section below. Finally, sea otters may be found throughout the proposed project area. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Steller Sea Lions

The Steller sea lion is the largest of the eared seals, ranging along the North Pacific Rim from northern Japan to California, with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands. Steller sea lions were listed as threatened range-wide under the ESA on November 26, 1990 (55 FR 49204). Subsequently, NMFS published a final rule designating critical habitat for the species as a 20 nautical mile buffer around all major haulouts and rookeries, as well as associated terrestrial, air and aquatic zones, and three large offshore foraging areas (58 FR 45269; August 27, 1993). In 1997, NMFS reclassified Steller sea lions as two distinct population segments (DPS), or stocks, based on genetic studies and other information (62 FR 24345; May 5, 1997). Steller sea lion populations that primarily occur west of 144° W (Cape Suckling, Alaska) comprise the western stock, while all others comprise the eastern stock; however, there is regular movement of both stocks across this boundary (Jemison *et al.*, 2013). Upon this reclassification, the western DPS, or

stock, was listed as endangered while the eastern DPS, or stock, remained as threatened (62 FR 24345; May 5, 1997) and in November 2013, the eastern DPS was delisted (78 FR 66140).

Steller sea lions are not known to migrate, but individuals may disperse widely outside the breeding season (late May to early July). At sea, Steller sea lions are commonly found from nearshore habitats to the continental shelf and slope. The western stock breeds on rookeries in Alaska from Prince William Sound west through the Aleutian Islands. Steller sea lions use 38 rookeries and hundreds of haulouts within their range in western Alaska (Allen and Angliss 2013). The eastern stock originates from rookeries east of Cape Suckling, Alaska, and can be found between southeast Alaska and California.

SWAN

SWAN's activities all occur west of the 144° W line that splits the two Steller sea lion stocks, but there is some mixing across that boundary. Steller sea lions impacted by NPS' research and monitoring activities could belong to either stock, and it is not possible to determine which stock a Steller sea lion belongs to by simple observation. Both stocks of Steller sea lions are therefore considered in this analysis.

SWAN surveys occur in areas with known Steller sea lion haulouts and there are two rookeries in KEFJ (see application). KATM and KEFJ shorelines are both within Steller sea lion critical habitat including the aquatic zone (or buffer) that extends 37 kilometers (20 nautical miles) seaward in all directions from each rookery and major haulout. Critical habitat also includes three large offshore foraging areas: The Shelikof Strait area, the Bogoslof area, and the Seguam Pass area (58 FR 45269) with only the Shelikof

Strait area relevant to this action. Steller sea lions are sometimes present in KBAY, but the area is not critical habitat. Regulations prevent approach by vessel to within three nautical miles of major rookeries (50 CFR 224.103).

Glacier Bay

The temporal and/or spatial occurrence of Steller sea lions is such that take is not expected to occur in GLBA NP research sites and researchers would not approach Steller sea lions. Steller sea lions which occur in GLBA NP are generally found on South Marble Island (see Figure 1 in the Application). No disturbance of Steller sea lions is expected from GLBA NP activities, so their presence in the area is not discussed beyond the information provided here.

A total of five Steller sea lions have been observed during the 2015, 2016, and 2017 GLBA NP gull survey seasons (climate monitoring did not take place during these years) (NPS 2015b; NPS 2016; NPS 2017). However, all Steller sea lions that were spotted were observed outside the study area. Steller sea lions are present in GLBA NP, but are not generally seen on the islands being researched. NPS has proposed mitigation, including staying at least 100 m away from all Steller sea lions (see Proposed Mitigation), which has been found to be sufficient to avoid take by Level B harassment due to Steller sea lions' tolerance of vessels and lack of response to humans from a distance.

Harbor Seals

Harbor seals are the most abundant marine mammal species found within the action area and are present year-round. Harbor seals range from Baja California north along the west coasts of Washington, Oregon, California, British Columbia, and Southeast Alaska; west through the Gulf of Alaska, Prince

William Sound, and the Aleutian Islands; and north in the Bering Sea to Cape Newenham and the Pribilof Islands. The current statewide abundance estimate for Alaskan harbor seals is 205,090 (Muto *et al.*, 2017), based on aerial survey data collected during 1998–2011. In 2010, harbor seals in Alaska were partitioned into 12 separate stocks based largely on genetic structure (Allen and Angliss, 2010). Harbor seals have declined dramatically in some parts of their range over the past few decades, while in other parts their numbers have increased or remained stable over similar time periods.

Harbor seals haul out on rocks, reefs, beaches, and drifting glacial ice (Allen and Angliss, 2014). They are non-migratory; their local movements are associated with tides, weather, season, food availability, and reproduction, as well as sex and age class (Allen and Angliss, 2014; Boveng *et al.*, 2012; Lowry *et al.*, 2001; Swain *et al.*, 1996). Pupping in Alaska generally takes place in May and June; while molting generally occurs from June to October.

Glacier Bay Stock/Icy Strait Stock

Harbor seals of Glacier Bay range from Cape Fairweather southeast to Column Point, extending inland to Glacier Bay, Icy Strait, and from Hanus Reef south to Tenakee Inlet (Muto *et al.*, 2017). This is the only stock that would be impacted by research and monitoring activities in GLBA NP. The Glacier Bay/Icy Strait stock showed a negative population trend from 1992 to 2008 in June and August for glacial (–7.7 percent/year; –8.2 percent/year) and terrestrial sites (–12.4 percent/year, August only)

(Womble *et al.*, 2010 as cited in Muto *et al.*, 2017). Trend estimates by Mathews and Pendleton (2006) were similarly negative for both glacial and terrestrial sites. Prior to 1993, seal counts were up to 1,347 in the East Arm of Glacier Bay; 2008 counts were fewer than 200 (Streveler, 1979; Molnia, 2007 as cited in Muto *et al.*, 2017). These observed declines in harbor seals resulted in new research efforts which were initiated in 2004 and were aimed at trying to further understand the biology and ecology of seals and possible factors that may have contributed to the declines (*e.g.*, Herreman *et al.* 2009, Blundell *et al.* 2011, Hueffer *et al.* 2012, Womble and Gende 2013a, Womble *et al.* 2014), with an emphasis on possible factors that may have contributed to the declines. The recent studies suggest that (1) harbor seals in Glacier Bay are not significantly stressed due to nutritional constraints (Blundell *et al.* 2011), (2) the clinical health and disease status of seals within Glacier Bay is not different than seals from stable or increasing populations (Hueffer *et al.* 2012), and (3) disturbance by vessels does not appear to be a primary factor driving the decline (Young 2009).

Long-term monitoring of harbor seals on glacial ice has occurred in Glacier Bay since the 1970s (Mathews and Pendleton, 2006) and has shown this area to support one of the largest breeding aggregations in Alaska (Steveler, 1979; Calambokidis *et al.*, 1987 as cited in Muto *et al.*, 2015). After a large scale retreat of the Muir Glacier (more than 7 km), in the East Arm of Glacier Bay, between 1973 and 1986 and the subsequent grounding and cessation

of calving in 1993, floating glacial ice was greatly reduced as a haulout substrate for harbor seals and ultimately resulted in the abandonment of upper Muir Inlet by harbor seals (Calambokidis *et al.*, 1987; Hall *et al.*, 1995; Mathews, 1995 as cited in Muto *et al.*, 2017). The most recent long-term trend estimate for harbor seals at terrestrial sites in Glacier Bay for the 22-year period from 1992–2013 is –6.91 percent/year (SE = 0.40, 95% CI = –7.69, –6.13) (Womble *et al.* 2015). This trend is less negative than previous estimates stated in the paragraph above. In addition, from 2004–2013, there was a 10-year trend estimate of 9.64 percent increase per year (SE = 1.66, 95% CI = 6.40, 12.89) (Womble *et al.*, 2015).

Results from satellite telemetry studies suggest that harbor seals travel extensively beyond the boundaries of Glacier Bay during the post-breeding season (September–April); however, harbor seals demonstrated a high degree of inter-annual site fidelity (93 percent) to Glacier Bay the following breeding season (Womble and Gende 2013b). Spatial and temporal regulations, for vessels transiting in and near harbor seal breeding areas, and operating regulations, for vessels operating within those areas, are all aimed at reducing the impacts of human visitation.

Harbor seals from the Glacier Bay/Icy Strait stock can be found hauled out at four of the gull monitoring study sites (Table 2). Seal counts from gull monitoring surveys likely represent a minimum estimate due to difficulty observing marine mammals from a vessel. Counts from gull monitoring surveys are conducted during high tide so fewer seals may be present.

TABLE 2—NUMBER OF OBSERVED HARBOR SEALS AND TAKEN BY LEVEL B HARASSMENT FOR THE SPECIES UNDER IHAS AT GULL STUDY SITES FROM 2015–2017 IN GLBA NP

Site name	Latitude (dd)	Longitude (dd)	2015 Observed/taken	2016 Observed/taken	2017 Observed/taken
Boulder	58.55535	– 136.01814	13/11	21/0	4/0
Flapjack	58.58698	– 135.98251	0/0	101/41	0/0
Geikie	58.69402	– 136.31291	45/14	37/0	33/33
Lone	58.72102	– 136.29470	98/32	58/39	49/0
Total .....	.....	.....	156/57	217/80	86/33

As alluded to, there can be greater numbers of seals on the survey islands than what is detected by the NPS during the gull surveys. Aerial survey maximum counts show that harbor seals sometimes haul out in large numbers at all four locations (see Table 2 of the application). However, harbor seals hauled out at Flapjack Island are

generally on the southern end whereas the gull colony is on the northern end. Similarly, harbor seals on Boulder Island tend to haul out on the southern end while the gull colony is located and can be accessed on the northern end without causing disturbance of harbor seals. Aerial survey counts for harbor seals are conducted during low tide

while ground and vessel surveys are conducted during high tide which, along with greater visibility during aerial surveys, may also contribute to the greater numbers of seals observed during the aerial surveys because there is more land available to use as a haulout during low tide.

Prince William Sound Stock

The Prince William Sound stock includes harbor seals both within and adjacent to Prince William Sound proper from approximately Cape Fairweather to Elizabeth Island, including the KEFJ survey area. Within Prince William Sound proper, harbor seals declined in abundance by 63 percent between 1984 and 1997 (Frost *et al.* 1999). In Aialik Bay, adjacent to Prince William Sound proper, there has been a decline in pup production by 4.6 percent annually from 40 down to 32 pups born from 1994 to 2009 (Hoover-Miller *et al.* 2011). The current (2007–2011) estimate of the Prince William Sound population trend over a 5-year period is +26 seals per year with a probability that the stock is decreasing of 0.56. The presence of an increasing trend with a greater than .5 probability of decreasing is due to skewness impacting statistical estimates. This occurrence is discussed further in Muto *et al.* (2018).

From 1992–1997, results from a satellite telemetry study showed Prince William Sound harbor seals tended to remain in or near Prince William Sound. Juvenile seals were occasionally found to range up to 300 to 500 km east and west into the Gulf of Alaska. In June and July, when SWAN region surveys would occur, harbor seals tended to have their smallest home range sizes, remaining nearer to their haulout than other times of year (Lowry *et al.* 2001).

Cook Inlet/Shelikof Strait Stock

The Cook Inlet/Shelikof Strait stock includes harbor seals from approximately Elizabeth Island to Unimak Island, as well as those within Cook Inlet. Multiple harbor seal haulouts exist in KBAY and KATM (London *et al.* 2015; Montgomery *et al.* 2007). This stock of harbor seals would be found in the KATM and KBAY survey areas of SWAN's activities. A multi-year study of seasonal movements and abundance of harbor seals in Cook Inlet was conducted between 2004 and 2007. This study involved multiple aerial surveys throughout the year, and the data indicated a stable population of harbor seals during the August molting period (Boveng *et al.* 2011). Aerial surveys along the Alaska Peninsula present greater logistical challenges and have therefore been conducted less frequently. The current (2007–2011) estimate of the Cook Inlet/Shelikof Strait population trend is +313 seals per year, with a probability of 0.38 that the stock is decreasing (Muto *et al.* 2018).

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The “Estimated Take” section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The “Negligible Impact Analysis and Determination” section considers the content of this section, the “Estimated Take” section, and the “Proposed Mitigation” section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

As previously stated, acoustic and visual stimuli generated by motorboat operations and the presence of researchers have the potential to cause Level B harassment of harbor seals hauled out on Boulder, Lone, and Flapjack Islands, and Geikie Rock within GLBA NP. These same stimuli generated by motorboat operations have the potential to cause Level B harassment of harbor seals and Steller sea lions in KATM, KEFJ, and KBAY. The following discussion provides further detail on the potential visual and acoustic disturbances harbor seals and Steller sea lions may encounter during the NPS' research and monitoring activities.

Human and Vessel Disturbance

Harbor seals and Steller sea lions may potentially experience behavioral disruption rising to the level of harassment from monitoring and research activities, which may include brief periods of airborne noise from research vessels and visual disturbance due to the presence and activity of the researchers both on vessels and on land during ground surveys. Disturbed pinnipeds are likely to experience any or all of these stimuli, and take may occur due to any in both isolation or combined with one another. Due to the likely constant combination of visual and acoustic stimuli resulting from the presence of vessels and researchers, we do not consider impacts from acoustic and visual stimuli separately.

Disturbances resulting from human activity can impact short- and long-term pinniped haul out behavior (Renouf *et al.*, 1981; Schneider and Payne, 1983; Terhune and Almon, 1983; Allen *et al.*, 1984; Stewart, 1984; Suryan and Harvey, 1999; and Kucey and Trites,

2006). Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on the species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.*, 1995; Wartzok *et al.*, 2004; Southall *et al.*, 2007; Weilgart, 2007). These behavioral reactions from marine mammals are often shown as: changing durations of surfacing and dives, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior; avoidance of areas; and/or flight responses (*e.g.*, pinnipeds flushing into the water from haulouts or rookeries). If a marine mammal does react briefly to human presence by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if visual stimuli from human presence displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007).

Visual stimuli resulting from the presence of researchers and vessels have the potential to result in take of harbor seals and Steller sea lions on the research islands and coasts where these pinnipeds haul out. The characteristics of these stimuli differ between the GLBA NP and SWAN activities. In SWAN's activities, vessels move at faster speeds (8–12 kn, vs 2–3 kn for GLBA NP) but are present for a short time period transiting through an area and at a consistent distance. Alternatively, while GLBA NP vessels are slower, they must approach islands where pinnipeds may be hauled out, and both the vessel and researchers will be present for a longer period of time. As noted, harbor seals and Steller sea lions can exhibit a behavioral response (*e.g.*, including alert behavior, movement, vocalizing, or flushing) to visual stimuli. NMFS does not consider the lesser reactions (*e.g.*, alert behavior such as raising a head) to constitute harassment. Table 3 displays NMFS's three-point scale that categorizes pinniped disturbance reactions by severity. Observed behavior falling within categories two and three would be considered level B harassment. GLBA NP is able to record these behaviors for all observed pinnipeds. Because of the nature of their survey, SWAN

researchers will only be able to record the total number of observed pinnipeds, and those which show an easily observable level 3 response (flushing).

With these numbers and previous monitoring information from GLBA NP, NPS and NMFS should be able to estimate the total number of takes by

Level B harassment resulting from SWAN monitoring.

TABLE 3—THREE-POINT SCALE
[Seal response to disturbance]

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length. Alerts would be recorded, but not counted as a 'take'.
2	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach or, if already moving, a change of direction of greater than 90 degrees. These movements would be recorded and counted as a 'take'.
3	Flush	All retreats (flushes) to the water. Flushing into the water would be recorded and counted as a 'take'.

Upon the occurrence of low-severity disturbance (*i.e.*, the approach of a vessel or person as opposed to an explosion or sonic boom), pinnipeds typically exhibit a continuum of responses, beginning with alert movements (*e.g.*, raising the head), which may then escalate to movement away from the stimulus and possible flushing into the water. Flushed pinnipeds typically re-occupy the same haulout within minutes to hours of a stimulus (Allen *et al.*, 1984 (Johnson and Acevedo-Gutierrez, 2007). As a result, a minimal number of animals may be taken more than once during the proposed survey activities so the number of takes likely represents exposures. In the case of GLBA NP, because there will be no more than five annual visits to three gull study sites and no more than eight annual visits to one other survey site, it is expected that individual harbor seals at Boulder Island, Flapjack Island, and Geike Rock will be disturbed no more than five times per year and no more than eight times per year on Lone Island. For SWAN's activities, KATM, KEFJ, and KBAY are each visited during the summer. There is a winter survey conducted each year at either KATM or KEFJ. Therefore individual harbor seals and Stellar sea lions at these locations will be disturbed no more than two times per year.

Numerous studies have shown that human activity can flush pinnipeds off haulout sites and beaches (Kenyon, 1972; Allen *et al.*, 1984; Calambokidis *et al.*, 1991; Suryan and Harvey, 1999; and Mortenson *et al.*, 2000, Mathews, 2000). In 1997, Henry and Hammill (2001) conducted a study to measure the impacts of small boats (*i.e.*, kayaks, canoes, motorboats and sailboats) on harbor seal haul out behavior in Métis

Bay, Quebec, Canada. During that study, the authors noted that the most frequent disturbances (n=73) were caused by lower speed, lingering kayaks and canoes (33.3 percent) as opposed to motorboats (27.8 percent) conducting high speed passes. The seals flight reactions could be linked to a surprise factor by kayaks-canoes, which approach slowly, quietly and low on water making them look like predators. However, the authors note that once the animals were disturbed, there did not appear to be any significant lingering effect on the recovery of numbers to their pre-disturbance levels. In conclusion, the study showed that boat traffic at current levels has only a temporary effect on the haul out behavior of harbor seals in the Métis Bay area.

In 2004, Johnson and Acevedo-Gutierrez (2007) evaluated the efficacy of buffer zones for watercraft around harbor seal haulout sites on Yellow Island, Washington State. The authors estimated the minimum distance between the vessels and the haulout sites; categorized the vessel types; and evaluated seal responses to the disturbances. During the course of the seven-weekend study, the authors recorded 14 human-related disturbances, which were associated with stopped powerboats and kayaks. During these events, hauled out seals became noticeably active and moved into the water. The flushing occurred when stopped kayaks and powerboats were at distances as far as 453 and 1,217 ft (138 and 371 m) respectively. The authors note that the seals were unaffected by passing powerboats, even those approaching as close as 128 ft (39 m), possibly indicating that the animals had become tolerant of the brief presence of the vessels and ignored

them. The authors reported that on average, the seals quickly recovered from the disturbances and returned to the haulout site in less than or equal to 60 minutes. Seal numbers did not return to pre-disturbance levels within 180 minutes of the disturbance less than one quarter of the time observed. The study concluded that the return of seal numbers to pre-disturbance levels and the relatively regular seasonal cycle in abundance throughout the area counter the idea that disturbances from powerboats may result in site abandonment (Johnson and Acevedo-Gutierrez, 2007). Specific reactions from past NPS gull monitoring surveys are detailed in this proposed rule's Estimated Take Section.

Vessel Strike

Glacier Bay

The probability of vessel and marine mammal interactions (*i.e.*, motorboat strike) occurring during the proposed research activities is unlikely due to the motorboat's slow operational speed, which is typically 2 to 3 kn (2.3 to 3.4 mph) and the researchers continually scanning the water for marine mammals presence during transit to the islands. Thus, NMFS does not anticipate that strikes or collisions would result from the movement of the motorboat.

SWAN

SWAN's survey vessels move at higher speeds, 8 to 12 kn, than those used in the proposed GLBA NP activities, but vessel and marine mammal interactions are still unlikely because the on board researchers are constantly scanning the water for marine mammal presence. For SWAN's activities, NMFS does not anticipate any strikes or collisions between vessels and marine mammals.

Harbor Seal Pupping

Glacier Bay

During the harbor seal breeding (May-June) and molting (August) periods, ~66 percent of seals in Glacier Bay inhabit the primary glacial ice site and ~22

percent of seals are found in and adjacent to a group of islands in the southeast portion of Glacier Bay. At the proposed GLBA NP study sites, in 2016 only one pup was observed and no pups were observed during project activities in 2017 and 2015. Pups have been

observed during NPS aerial surveys during the pupping seasons (conducted during low tide), but in few numbers (see Table 4). NMFS does not anticipate that the proposed activities would result in separation of mothers and pups as pups are rarely seen at the study sites.

TABLE 4—AVERAGE AND MAXIMUM COUNTS OF HAULED OUT HARBOR SEAL PUPS AT GLAUCOUS-WINGED GULL STUDY SITES DURING HARBOR SEAL MONITORING AERIAL SURVEYS FROM 2007–2016
[Womble unpublished data]

Site	Average of pup count	Std. dev. of pup count ¹	Max. of pup count
Boulder Island	0.8	1.3	5
Flapjack Island	14.9	11.5	43
Geikie Rock	0.1	0.4	2
Lone Island	0.8	0.9	4
Total	4.74	9	43

¹ A quantity calculated to indicate the extent of deviation for a group of pups as a whole.

SWAN

Based on aerial surveys between 2003 and 2005, the upper portions of KBAY had high harbor seal pup abundance during the peak pupping season (June) (Boveng et al, 2011). Proposed KBAY survey transects occur in this area of high abundance (See Figure 5 in LOA application). Boveng et al (2011) found that within Cook Inlet, June harbor seal pup abundance in an individual survey unit correlated positively with June adult abundance in that unit. Therefore, based on the anticipated presence of adult harbor seals, there are also likely pups present at sites in KATM and KEFJ during the pupping season (June). Despite the presence of pups, SWAN’s research and monitoring activities are expected to result in minimal disturbance to the hauled out harbor seals of all life stages due to the distance and duration of the vessel’s presence (see Proposed Mitigation), and NMFS does not anticipate that the proposed activities would result in separation of mothers and pups.

Steller Sea Lion Pupping

SWAN

During the Steller sea lion pupping season (May–July), mothers spend time both on land with their pups and at sea foraging. Because SWAN’s proposed surveys avoid transects that pass Steller sea lion rookeries, NMFS does not anticipate any impacts on hauled out Steller sea lion mothers and their pups.

Summary

Based on studies described here and previous monitoring reports from GLBA NP (Discussed further in the Estimated Take Section), we anticipate that any

pinnipeds found in the vicinity of the proposed projects in both GLBA NP and the SWAN region could have short-term behavioral reactions (*i.e.*, may result in marine mammals avoiding certain areas) due to noise and visual disturbance generated by: (1) Motorboat approaches and departures and (2) human presence during research and monitoring activities. We would expect the pinnipeds to return to a haulout site within minutes to hours of the stimulus based on previous research (Allen *et al.*, 1984). Pinnipeds may be temporarily displaced from their haulout sites, but we do not expect that the pinnipeds would permanently abandon a haulout site during the conduct of the proposed research as activities are short in duration (brief transit through an area to up to two hours), and previous surveys have demonstrated that pinnipeds have returned to their haulout sites and have not permanently abandoned the sites.

NMFS does not anticipate that the proposed activities would result in the injury, serious injury, or mortality of pinnipeds. NMFS does not anticipate that vessel strikes would result from the movement of the motorboat. The proposed activities will not result in any permanent impact on habitats used by marine mammals, including prey species and foraging habitat.

Marine Mammal Habitat

NMFS does not anticipate that the proposed operations in GLBA NP or the SWAN region would result in any effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (*i.e.*, fish and invertebrates). The main impact associated with the proposed activity will be temporarily elevated noise levels

from motorboats and human disturbance on marine mammals potentially leading to temporary displacement from a site, previously discussed in this proposed rule. NPS’ LEIS for gull monitoring surveys in GLBA NP concluded that the activities do not result in the loss or modification to marine mammal habitat (NPS 2010). Additionally, any minor habitat alterations stemming from the maintenance of NPS’ weather station will be located in an area that will not impact marine mammals. SWAN’s activities in KATM and KEFJ do occur in Steller sea lion critical habitat, but will have minimal impact due to the nature of the disturbance and explicit avoidance of the most sensitive areas (rookeries). In all, the proposed activities in both GLBA NP and the SWAN region will not result in any permanent impact on habitats used by marine mammals, including prey species and foraging habitat.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS’s consideration of whether the number of takes is “small” and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the

wild by causing disruption of behavioral patterns, including, but not limited to, migration, sheltering, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to motorboats and the presence of NPS personnel. Based on the nature of the activity and proposed mitigation measures, Level A harassment is neither anticipated nor proposed to be authorized. As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Glacier Bay

In GLBA NP, harbor seals may be disturbed when vessels approach or researchers go ashore for the purpose of monitoring gull colonies and for the maintenance of the Lone Island weather tower. Harbor seals tend to haul out in

small numbers at study sites. Using monitoring report data from 2015 to 2017 (see raw data from Tables 1 of the 2017, 2016 and 2015 Monitoring Reports, which are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>), the average number of harbor seals per survey visit was calculated to estimate the approximate number of seals observers would find on any given survey day. As a result, the following averages were determined for each island: Boulder Island—average 3.45 seals, Flapjack Island—average 10.10 seals, Geikie Rock—average 9.58 seals, and Lone Island average of 18.91 seals (See Table 5). Estimated take for gull and climate monitoring was calculated by multiplying the average number of seals observed during past gull monitoring surveys (2015–2017) by the number of total site visits. This includes five annual visits to Boulder Island, Flapjack Island, and Geikie Rock and eight

annual visits to Lone Island (to include three site visits for climate monitoring activities). Therefore, the total estimated annual incidents of harassment equals 267 which totals to 1,335 takes during the entire five years of the proposed activities (See Table 5).

During climate monitoring, which is expected to take place from March to April and October to February, seal numbers are expected to dramatically decline within the action area. Although harbor seal survey data within GLBA NP is lacking for the months of October through February, results from satellite telemetry studies suggest that harbor seals travel extensively beyond the boundaries of GLBA NP during the post-breeding season (September–April) (Womble and Gende, 2013b). Therefore, using the latest observation data from past gull monitoring activities (that occurred from May to September) is applicable when estimating take for climate monitoring activities, as it will provide the most conservative estimates.

TABLE 5—PROPOSED TAKES BY LEVEL B HARASSMENT DURING NPS GULL AND CLIMATE MONITORING SURVEYS

Site proposed for survey	Average number of seals observed per visit ¹	Number of proposed site visits	Proposed Level B harassment ¹	Percentage of population ³
Boulder Island	3.45 seals	5	17.27	0.24
Flapjack Island	10.10 seals	5	50.50	0.70
Geikie Rock	9.58 seals	5	47.92	0.66
Lone Island	18.91 seals	28	151.27	2.10
Annual Total .....	.....	.....	267	3.70

¹ Data from 2015–2017 NPS gull surveys (NPS 2015b; NPS 2016; NPS 2017).

² Number includes three additional days for climate monitoring activities.

³ Based on the percentage of the Glacier Bay/Icy Strait stock of harbor seals that are proposed to be taken by Level B harassment during the NPS's proposed gull and climate monitoring activities.

SWAN

Harbor seals and Steller sea lions may be disturbed by vessel presence, movement, or noise during the execution of SWAN's survey transects. The estimated number of takes by Level B harassment included in Table 6 are based on numbers of pinnipeds observed from a similar survey of KATM and KEFJ in 2013. In this survey, researchers observed an estimated 100 harbor seals and 100 Steller sea lions during each of the KATM and KEFJ surveys. Data from 2013 surveys were used to estimate take because in 2013, most of the transects were able to be completed. Thus, 2013 data offers the most conservative count-based estimate.

Based on pinnipeds observed in 2013, NPS estimates that each year, across the three survey sites, SWAN's activities will result in take by Level B harassment of 300 harbor seals and 200 Steller sea lions. The observed number of harbor seals has been increased by 100 to account for the previously not surveyed KBAY, resulting in an estimated 1500 harbor seal and 1000 Steller sea lion takes by Level B harassment across the five years. For harbor seals, NPS estimates that 100 individuals will experience take by Level B harassment in each survey area each year. Annually, that would mean 200 harbor seal takes by Level B harassment in the Cook Inlet/Shelikof Strait stock (1000 over 5 years), and 100

harbor seal takes by Level B harassment from the Prince William Sound stock (500 over 5 years). For Steller sea lion takes by Level B harassment, NPS estimates that 100 individuals will experience take by Level B harassment each year in KATM and KEFJ. However, no takes by Level B harassment will occur in KBAY because Steller sea lions are not common in KBAY. For simplicity, NMFS assumes and analyzes the impacts of the full Steller sea lion take on both the eastern and western stocks. Because these estimates are based on observations of pinnipeds and not harassments, NMFS considers the estimated numbers of take by Level B harassment presented in Table 6 conservative.

¹ See Table 3 for NMFS' three-point scale that categorizes pinniped disturbance reactions by

severity. NMFS only considers responses falling

into Levels 2 and 3 as harassment (Level B Take) under the MMPA.

TABLE 6—PROPOSED TAKES BY LEVEL B HARASSMENT DUE TO SWAN’S RESEARCH AND MONITORING ACTIVITIES

Species	Stock	Proposed Level B take (annual)	Total Level B takes in 5 years	Percentage of population over 1 year ¹ (%)
Harbor seal	Cook Inlet/Shelikof Strait	200	1,000	0.7
	Prince William Sound	100	500	0.3
Steller sea lion	Western	≈ 200	≈ 1,000	≈ 0.4
	Eastern	≈ 200	≈ 1,000	≈ 0.5

¹ Based on the population size of each relevant stock as presented in Table 1.

² NMFS is only proposing to authorize 200 annual (1000 over 5 years) takes by Level B harassment for Steller sea lions, but is analyzing this take as fully coming from each of the U.S. Steller sea lion stocks.

Effects of Specified Activities on Subsistence Uses of Marine Mammals

The availability of the affected marine mammal stocks or species for subsistence uses may be impacted by this activity, though this is not an anticipated outcome. The subsistence uses that may be affected and the potential impacts of the activity on those uses are described below. Measures included in these proposed regulations to reduce the impacts of the activity on subsistence uses are identical to those which minimize disturbance of pinnipeds as described in the *Proposed Mitigation* section. Last, the information from this section and the *Proposed Mitigation* section is analyzed to determine whether the necessary findings may be made in the *Unmitigable Adverse Impact Analysis and Determination* section.

Subsistence harvest of pinnipeds is prohibited in GLBA NP, KATM, and KEFJ but it does occur in nearby areas outside park boundaries. Native communities near KBAY, including Homer, Seldovia, Nanwalek, and Port Graham harvested an estimated 32 harbor seals and 3 Steller sea lions in 2007 (Wolfe *et al.* 2009). It is not known exactly where these pinnipeds were harvested but some of them could potentially have been harvested in KBAY. 2007 harvest of both Steller sea lions and harbor seals was at a low point in June and July when SWAN’s surveys would occur in KBAY. Additionally, the disturbance to pinnipeds caused by NPS’s activities is limited to non-lethal take by Level B harassment and is temporary and short in duration. Because the subsistence harvest is separated in time and space from NPS’s proposed activities, and the disturbance should not result in anything other than short term (minutes to hours) avoidance of haulouts, there should be no impacts on subsistence harvest.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under section

101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, “and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking” for certain subsistence uses. NMFS regulations require applicants for ITAs to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as on subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability of implementing as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Glacier Bay

NPS has based the mitigation measures which they propose to

implement during the proposed research, on the following: (1) Protocols used during previous gull research activities as required by our previous authorizations for these activities; and (2) recommended best practices in Womble *et al.* (2013a); Richardson *et al.* (1995); and Weir and Dolman (2007).

To reduce the potential for disturbance from acoustic and visual stimuli associated with gull and climate monitoring activities within GBLA NP, NPS has proposed to implement the following mitigation measures for marine mammals:

Pre-Survey Monitoring

Before all surveys, the lead NPS biologist will instruct additional survey crew on appropriate conduct when in the vicinity of hauled-out marine mammals. This training shall brief survey personnel on marine mammals (inclusive of identification as needed, *e.g.*, neonates). Prior to deciding to land onshore to conduct gull and climate monitoring, the researchers would use high-powered image stabilizing binoculars from the watercraft to document the number, species, and location of hauled-out marine mammals at each island. The vessels would maintain a distance of 328 to 1,640 ft (100 to 500 m) from the shoreline to allow the researchers to conduct pre-survey monitoring. If offshore predators, harbor seal pups of less than one week of age (*i.e.*, neonates), or Steller sea lions are observed, researchers will follow the protocols for site avoidance discussed below. If neither of these instances occur, researchers will then perform a controlled landing on the survey site.

Site Avoidance

If a harbor seal pup less than one week old (*i.e.*, neonates) or a harbor seal predator (*i.e.*, killer whale) is observed near or within the action area, researchers will not go ashore to conduct gull or climate monitoring activities. Also, if Steller sea lions are observed within or near the study site, researchers will maintain a distance of

at least 100 m from the animals at all times.

Controlled Landings

The researchers would determine whether to approach an island study site based on type of animals present. Researchers would approach the island by motorboat at a speed of approximately 2 to 3 kn (2.3 to 3.4 mph). This would provide enough time for any marine mammals present to slowly enter the water without panic (flushing). The researchers would also select a pathway of approach farthest from the hauled-out harbor seals to minimize disturbance.

Minimize Predator Interactions

During pre-survey monitoring on approach to a site, NPS will observe the surrounding area for predators. If the researchers visually observe marine predators (*i.e.*, killer whales) present within a one mile radius of hauled-out marine mammals, the researchers would not approach the study site.

Disturbance Reduction Protocols

While onshore at study sites, the researchers would remain vigilant for hauled-out marine mammals. If marine mammals are present, the researchers would move slowly and use quiet voices to minimize disturbance to the animals present.

Whale Avoidance

Although humpback whales and killer whales are not expected to be impacted by the proposed activities at GLBA NP, avoidance measures will be taken if humpback whales or killer whales are observed. Based on regulations (81 FR 62018; September 8, 2016), NPS will avoid operation of a motor vessel within $\frac{1}{4}$ nautical mile of a whale. If accidentally positioned within $\frac{1}{4}$ nautical mile of a whale, researchers will slow the vessel speed to 10 knots or less and maintain course away from the whale until at least $\frac{1}{4}$ nautical mile of separation exists.

SWAN

NPS has based the mitigation measures which they propose to implement at SWAN on the following: (1) Protocols used during previous authorizations for similar GLBA NP research; (2) recommended best practices in Womble *et al.* (2013a); Richardson *et al.* (1995); and Weir and Dolman (2007); and (3) experience of SWAN researchers in previous surveys.

To reduce the potential for disturbance from acoustic and visual stimuli associated with SWAN's surveys, NPS has proposed to

implement the following mitigation measures for marine mammals:

Disturbance Reduction Protocols

While surveying study sites, the researchers will maintain a vessel distance of 100 to 150 m from shorelines at all times. If hauled out Steller sea lions and harbor seals are observed, the survey would maintain speed and minimum distance from the haulout to avoid startling. Additionally the survey will be attempted from a distance greater than 150 m, if conditions allow proper execution of the survey at that distance.

Rookery Avoidance

SWAN will avoid transects that pass known Steller sea lion rookery beaches in order to minimize disturbance of these rookeries and the surrounding critical habitat.

Whale Avoidance

Although humpback and beluga whales are not expected to be impacted by SWAN's proposed work, avoidance measures will be taken if these species are observed. Based on regulations (81 FR 62018; September 8, 2016), SWAN will avoid operation of a motor vessel within $\frac{1}{4}$ mile of a whale. If accidentally positioned within $\frac{1}{4}$ nautical mile of a whale, researchers will slow the vessel speed to 10 knots or less and maintain course away from the whale until at least $\frac{1}{4}$ nautical mile of separation exists.

Mitigation Conclusions

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, areas of similar significance, and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on

populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

SWAN

NPS proposes to conduct marine mammal monitoring during the SWAN activities, in order to implement the mitigation measures that require real-time monitoring and to gain a better understanding of marine mammals and their impacts to the project's activities. Because the activity is a survey of marine birds and mammals in the area, researchers will naturally be monitoring the area for pinnipeds or other marine mammals during all activities. Monitoring activities will consist of conducting and recording observations of pinnipeds within the vicinity of the proposed research areas. The monitoring notes would provide dates, transect location, species, numbers of animals present within the transect, and numbers of pinnipeds that flushed into the water.

The method for recording disturbances follows those in Mortenson (1996). For NPS' activities in the SWAN region, pinniped disturbances would be based on a three-point scale that represents an increasing response to the disturbance (Table 3). Because SWAN surveys are conducted at speed, researchers will be able to record the total number of each pinniped species observed and the number of Level 3 (Flushing) responses that occur, but not other, less noticeable disturbance responses.

SWAN does not have previous monitoring aimed specifically at recording and quantifying marine mammal disturbance. Similarity between the GLBA NP and SWAN proposed activities for this proposed rule suggest mitigation measures based on relevant portions of previous GLBA NP authorizations will provide the means of effecting the least practicable impact on the species or stock in the SWAN activity.

GLBA NP

NPS proposes to conduct marine mammal monitoring during the present GLBA NP project, in order to implement the mitigation measures that require real-time monitoring and to gain a better understanding of marine mammals and their impacts to the project's activities. In addition, NPS's monitoring plan is guiding additional monitoring effort designed to answer questions of interest regarding pinniped usage of GLBA NP haulouts and the effects of NPS's activity on these local populations. The researchers will monitor the area for pinnipeds during all research activities. Monitoring activities will consist of conducting and recording observations of pinnipeds within the vicinity of the proposed research areas. The monitoring notes would provide dates, location, species, the researcher's activity, behavioral state, numbers of animals that were alert or moved greater than one meter, and numbers of pinnipeds that flushed into the water.

The method for recording disturbances follows those in Mortenson (1996). NPS activities in GLBA NP would record pinniped disturbances on a three-point scale that represents an increasing response to the disturbance (Table 3). Both a level 2 and level 3 response would be recorded as a take by Level B harassment. NPS will record the time, source, and duration of the disturbance, as well as an estimated distance between the source and haulout.

Previous Monitoring Results

NPS has complied with the monitoring requirements under the previous GLBA NP authorizations. NMFS posted the 2017 report on our website at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities> and the results from the previous NPS monitoring reports support our findings that the mitigation measures required under the 2014—2017 Authorizations provide the means of effecting the least practicable impact on the species or stock in the GLBA NP activity. During the last 3 years of GLBA NP activity, approximately a third of all observed harbor seals have flushed in response to these activities (37 percent in 2015, 37 percent in 2016, and 38 percent in 2017). The following narratives provide a detailed account of each of the past 3 years of monitoring for the GLBA NP activity (Summarized in Table 7):

In 2017, of the 86 harbor seals that were observed: 33 flushed in to the water, 0 became alert but did not move >1 m, and 0 moved >1 m but did not flush into the water. In all, no harbor seal pups were observed. On two occasions, harbor seals were flushed into the water when islands were accessed for gull surveys. In these instances, the vessel approached the island at a very slow speed and most of the harbor seals flushed into the water at approximately 150—185 m. On two

events, harbor seals were observed hauled out on Boulder Island and not disturbed due to their distance from the survey area. In addition, during two pre-monitoring surveys conducted for Lone Island, harbor seals were observed hauled out and the survey was not conducted to prevent disturbance of harbor seals.

In 2016, of the 216 harbor seals that were observed: 77 Flushed in to the water; 3 became alert but did not move >1 m, and 17 moved >1 m but did not flush into the water. On five occasions, harbor seals were flushed into the water when islands were accessed for gull surveys. In these instances, the vessel approached the island at a very slow speed and most of the harbor seals flushed into the water at approximately 50–100 m. In four instances, fewer than 25 harbor seals were present, but in one instance, 41 harbor seals were observed flushing into the water when NPS first saw them as they rounded a point of land in kayaks accessing Flapjack Island. In five instances, harbor seals were observed hauled out and not disturbed due to their distance from the survey areas.

In 2015, of the 156 harbor seals that were observed: 57 Flushed in to the water; 25 became alert but did not move >1 m, and 0 moved >1 m but did not flush into the water. No pups were observed. On 2 occasions, harbor seals were observed at the study sites in numbers <25 and the islands were accessed for gull surveys. In these instances, the vessel approached the island at very slow speed and most of the harbor seals flushed into water at approximately 200 m (Geikie 8/5/15) and 280 m (Lone, 8/5/15). In one instance, (Lone, 6/11/15) NPS counted 20 harbor seals hauled out during the initial vessel-based monitoring, but once on the island, NPS observed 33 hauled out seals. When NPS realized the number of seals present, they ceased the survey and left the area, flushing 13 seals into the water.

TABLE 7—SUMMARY TABLE OF 2015–2017 MONITORING REPORTS FOR NPS GULL STUDIES

Monitoring year	Number of adults observed	Number of pups observed	Flushed into water	Moved >1 m but did not flush	Alert but did not move >1 m	Level B take authorized for activity	Level B take recorded during activities
2017	86	0	33	0	0	218	33
2016	216	1	77	3	17	500	80
2015	156	0	57	0	25	500	57

Coordination

NPS can add to the knowledge of pinnipeds in the proposed action area by noting observations of: (1) Unusual

behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-

bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and

(3) rare or unusual species of marine mammals for agency follow-up.

Glacier Bay

NPS actively monitors harbor seals at breeding and molting haulout locations to assess trends over time (*e.g.*, Mathews & Pendleton, 2006; Womble *et al.* 2010, Womble and Gende, 2013b). NPS's monitoring plan is guiding additional monitoring effort designed to answer questions of interest regarding pinniped usage of GLBA NP haulouts and the effects of NPS's activity on these local populations. This monitoring program involves collaborations with biologists from the Alaska Department of Fish and Game, and the NMFS Alaska Fisheries Science Center. NPS will continue these collaborations and encourage continued or renewed monitoring of marine mammal species. NPS will coordinate with state and Federal marine mammal biologists to determine what additional data or observations may be useful for monitoring marine mammals and haulouts in GLBA NP. Additionally, NPS would report vessel-based counts of marine mammals, branded, or injured animals, and all observed disturbances to the appropriate state and Federal agencies.

SWAN

NPS is establishing a monitoring program for pinnipeds in the SWAN region through its marine bird and marine mammal surveys. NPS will also coordinate with state and Federal marine mammal biologists to determine what additional data or observations may be useful for monitoring marine mammals and haul outs in the SWAN survey areas.

SWAN has been conducting nearshore coastal surveys along the KATM and KEFJ since 2006 and 2007, respectively (Coletti *et al.*, 2018). SWAN collaborates closely with U.S. Geological Survey, U.S. Fish and Wildlife Service, the University of Alaska Fairbanks and others under the Gulf Watch Alaska (<https://www.gulfwatchalaska.org/>) program, primarily funded by the Exxon Valdez Oil Spill Trustee Council. SWAN will continue these collaborations and encourage continued or renewed monitoring of marine mammal species. Additionally, NPS will report vessel-based counts of marine mammals, branded or injured animals, and all observed disturbances to state and Federal agencies.

Reporting

SWAN and GLBA NP are each required to submit separate draft annual reports on all activities and marine mammal monitoring results to NMFS

within ninety days following the end of its monitoring period. These reports will include a summary of the information gathered pursuant to the monitoring requirements set forth in the Authorization. SWAN and GLBA NP will submit final reports to NMFS within 30 days after receiving comments on the draft report. If SWAN or GLBA NP receive no comments from NMFS on the report, NMFS will consider the draft report to be the final report. NPS will also submit a comprehensive 5-year report covering all activities conducted under the incidental take regulations 90 days following expiration of these regulations or, if new regulations are sought, no later than 90 days prior to expiration of the regulations.

Each report will describe the operations conducted and sightings of marine mammals near the proposed project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The report will provide:

1. A summary and table of the dates, times, and weather during all research activities;
2. Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities;
3. An estimate of the number (by species) of marine mammals exposed to acoustic or visual stimuli associated with the research activities; and
4. A description of the implementation and effectiveness of the monitoring and mitigation measures of the Authorization and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization, such as an injury (Level A harassment), serious injury, or mortality (*e.g.*, vessel-strike, stampede, etc.), NPS shall immediately cease the specified activities and immediately report the incident to the Office of Protected Resources, NMFS and the Alaska Regional Stranding Coordinator. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description and location of the incident (including tide level if applicable);
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;

- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

NPS shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. NMFS will work with NPS to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. NPS may not resume their activities until notified by us via letter, email, or telephone.

In the event that NPS discovers an injured or dead marine mammal, and the lead researcher determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as we describe in the next paragraph), NPS will immediately report the incident to the Office of Protected Resources, NMFS and the Alaska Regional Stranding Coordinator. The report must include the same information identified in the paragraph above. Activities may continue while we review the circumstances of the incident. We will work with NPS to determine whether modifications in the activities are appropriate.

In the event that NPS discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), NPS will report the incident to the incident to the Office of Protected Resources, NMFS and the Alaska Regional Stranding Coordinator within 24 hours of the discovery. NPS researchers will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us. NPS can continue their research activities.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of

marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’s implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

During these activities, harbor seals and Steller sea lions may exhibit behavioral modifications, including temporarily vacating the area during the proposed research and monitoring activities to avoid human and vessel disturbance. However, due to the project’s minimal levels of visual and acoustic disturbance (Level B harassment only), NMFS does not expect NPS’s specified activities to cause long-term behavioral disturbance, abandonment of the haulout area, injury, serious injury, or mortality. In addition, while a portion of these proposed activities would take place in areas of significance for marine mammal feeding, resting, breeding, or pupping, there would be no adverse impacts on marine mammal habitat as discussed above. Due to the nature, degree, and context of the behavioral harassment anticipated, we do not expect the activities to impact annual rates of recruitment or survival.

NMFS does not expect pinnipeds to permanently abandon any area surveyed by NPS researchers, as is evidenced by continued presence of pinnipeds at the GLBA NP sites during annual gull and climate monitoring. NMFS anticipates that impacts to hauled-out harbor seals and Steller sea lions during NPS’ research and monitoring activities would be behavioral harassment of limited duration (*i.e.*, up to two hours per site visit) and limited intensity (*i.e.*, temporary flushing at most).

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- The takes from Level B harassment would be due to potential behavioral disturbance;
- The effects of the research activities would be limited to short-term startle responses and localized behavioral changes due to the short and sporadic duration of the research activities;
- The proposed activities would partially take place in areas of significance for marine mammal feeding, resting, breeding, or pupping but due to their nature and duration would not adversely impact marine mammal habitat or deny pinnipeds access to this habitat because of the large availability of alternate haulouts and short-duration of disturbance;
- Anecdotal observations and results from previous monitoring reports show that the pinnipeds returned to the various sites and did not permanently abandon haulout sites after NPS conducted their research activities; and
- Harbor seals and Steller sea lions may flush into the water despite researchers best efforts to keep calm and quiet around these pinnipeds; however, injury or mortality has never been documented and is not anticipated from flushing events. GLBA NP researchers would approach study sites slowly to provide enough time for any marine mammals present to slowly enter the water without panic. SWAN researchers would attempt to conduct their surveys at a distance which would not result in pinniped disturbance.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers Analysis

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals proposed to be taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such

as the temporal or spatial scale of the activities.

As mentioned previously, NMFS estimates that NPS’ research activities, including gull monitoring, climate monitoring, and marine animal surveys, could potentially affect, by Level B harassment only, two species of marine mammal under our jurisdiction. For harbor seals, this annual take estimate is small relative to the three impacted stocks, ranging from 0.3 to 3.7 percent (See Table 1, Table 5, and Table 6). For Steller sea lions, this annual take estimate is small (200 sea lions) relative to the western stock (0.4 percent) or eastern stock (0.5 percent). In addition to this, there is a high probability in the GLBA NP activities that repetitive takes of the same animal may occur which reduces the percentage of population impacted even further.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by the specified activities in GLBA NP, KATM, or KEFJ. Subsistence harvest is prohibited in these national parks and the nature of the activities means they should not affect any harvest occurring in nearby waters. There is possible pinniped harvest in KBAY, but the timing of the survey is removed from the peak seasons of harvest. Additionally, the disturbance to pinnipeds caused by NPS’s activities is limited to non-lethal take by Level B harassment and is temporary and short in duration. Therefore, we have preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of

incidental take regulations and subsequent LOAs, NMFS consults internally, in this case with the Alaska Regional Office, whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of western DPS Steller sea lions, which are listed under the ESA.

NMFS's Office of Protected Resources has requested initiation of Section 7 consultation with NMFS's Alaska Regional Office for the issuance of this LOA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Adaptive Management

The regulations governing the take of marine mammals incidental to NPS research and monitoring activities in GLBA NP and SWAN region would contain an adaptive management component.

The reporting requirements associated with this proposed rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from NPS regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

NPS's monitoring program (see "Proposed Monitoring and Reporting") would be managed adaptively. Changes to the proposed monitoring program may be adopted if they are reasonably likely to better accomplish the MMPA monitoring goals described previously or may better answer the specific questions associated with NPS's monitoring plan.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning NPS's request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare the final rule and make final determinations on whether to issue the requested authorizations. This notice and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NPS is the sole entity that would be subject to the requirements in these proposed regulations, and the NPS is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

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 collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. However, this proposed rule does not contain a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA) because the applicant is a Federal agency, and the information is not "uses for general statistical purposes". 44 U.S.C. 3502(3)(A).

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: December 4, 2018.

Samuel D. Rauch III,

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

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart C to part 217 to read as follows:

Subpart C—Taking Marine Mammals Incidental to Research and Monitoring in Southern Alaska National Parks

Sec.

- 217.20 Specified activity and specified geographical region.
- 217.21 Effective dates.
- 217.22 Permissible methods of taking.
- 217.23 Prohibitions.
- 217.24 Mitigation requirements.
- 217.25 Requirements for monitoring and reporting.
- 217.26 Letters of Authorization.
- 217.27 Renewals and modifications of Letters of Authorization.
- 217.28 [Reserved]
- 217.29 [Reserved]

§ 217.20 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the National Park Service (NPS) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to the NPS's research and monitoring activities listed in the Letter of Authorization (LOA).

(b) The taking of marine mammals by NPS may be authorized in an LOA only if it occurs at Glacier Bay National Park (GLBA NP) or in the NPS's Southwest Alaska Inventory and Monitoring Network (SWAN) sites.

§ 217.21 Effective dates.

Regulations in this subpart are effective from March 1, 2019 through February 29, 2024.

§ 217.22 Permissible methods of taking.

Under LOAs issued pursuant to §§ 216.106 of this chapter and 217.26, the Holder of the LOA (hereinafter "NPS") may incidentally, but not intentionally, take marine mammals within the area described in § 217.20(b) by Level B harassment associated with research and monitoring activities,

provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

§ 217.23 Prohibitions.

Notwithstanding takings contemplated in § 217.20 and authorized by an LOA issued under §§ 216.106 of this chapter and 217.26, no person in connection with the activities described in § 217.20 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §§ 216.106 of this chapter and 217.26;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 217.24 Mitigation requirements.

When conducting the activities identified in § 217.20(a), the mitigation measures contained in any LOA issued under § 216.106 of this chapter and § 217.24 must be implemented. These mitigation measures shall include but are not limited to:

(a) *General conditions*: (1) A copy of any issued LOA must be in the possession of NPS, its designees, and additional survey crew personnel operating under the authority of the issued LOA.

(2) Before all surveys, the lead NPS biologist must instruct additional survey crew on appropriate conduct when in the vicinity of hauled-out marine mammals. This training must brief survey personnel on marine mammals (inclusive of identification as needed, e.g., neonates).

(3) If humpback whales, killer whales, or beluga whales are observed, NPS must avoid operation of a motor vessel within $\frac{1}{4}$ nautical mile of a whale. If accidentally positioned within $\frac{1}{4}$ nautical mile of a whale, NPS must slow the vessel speed to 10 knots or less and maintain course away from the whale until at least $\frac{1}{4}$ nautical mile of separation exists.

(b) *Glacier Bay Gull and Climate Monitoring*. (1) On an annual basis, NPS may conduct a maximum of five days of gull monitoring for each survey location listed in the LOA.

(2) On an annual basis, the NPS may conduct a maximum of three days of activities related to climate monitoring on Lone Island.

(3) NPS is required to conduct pre-survey monitoring before deciding to access a study site.

(4) Prior to deciding to land onshore, NPS must use high-powered image stabilizing binoculars before approaching at distances of greater than 500 m (1,640 ft) to determine and document the number, species, and location of hauled-out marine mammals.

(5) During pre-survey monitoring, vessels must maintain a distance of 328 to 1,640 ft (100 to 500 m) from the shoreline.

(6) If a harbor seal pup less than one week of age (neonate) is present within or near a study site or a path to a study site, NPS must not access the site nor conduct the study at that time. In addition, if during the activity, a pup less than one week of age is observed, all research activities must conclude for the day.

(7) NPS must maintain a distance of at least 100 m from any Steller sea lion;

(8) NPS must perform controlled and slow ingress to islands where harbor seals are present.

(9) NPS must monitor for offshore predators at the study sites during pre-survey monitoring and must avoid research activities when killer whales (*Orcinus orca*) or other predators are observed within a 1 mile radius.

(10) NPS must maintain a quiet working atmosphere, avoid loud noises, and must use hushed voices in the presence of hauled-out pinnipeds.

(c) *SWAN Marine bird and mammal surveys*. (1) On an annual basis, NPS may conduct one summer survey at each location listed in the LOA.

(2) On an annual basis, the NPS may conduct one winter survey at each location listed in the LOA.

(3) NPS must maintain a minimum vessel distance of 100 meters from the shoreline at all times while surveying.

(4) If hauled out Steller sea lions or harbor seals are observed, NPS must maintain the vessel speed and minimum distance. If survey conditions allow, the survey will be attempted from a distance greater than 150 meters.

§ 217.25 Requirements for monitoring and reporting.

NPS is required to conduct marine mammal monitoring during research and monitoring activities. NPS and/or its designees must record the following for the designated monitoring activity:

(a) *Glacier Bay Gull and Climate Monitoring*. (1) Species counts (with numbers of adults/juveniles); and

numbers of disturbances, by species and age, according to a three-point scale of intensity;

(2) Information on the weather, including the tidal state and horizontal visibility;

(3) The observer will note the presence of any offshore predators (date, time, number, and species); and

(4) The observer will note unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; marked or tag-bearing pinnipeds or carcasses, allowing transmittal of the information to appropriate agencies; and any rare or unusual species of marine mammal for agency follow-up. The observer will report that information to NMFS's Alaska Fisheries Science Center and/or the Alaska Department of Fish and Game Marine Mammal Program.

(b) *SWAN Marine Bird and Mammal Surveying*. (1) Species counts and numbers of type 3, flushing, disturbances;

(2) Information on the weather, including the tidal state and horizontal visibility; and

(3) The observer will note unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; marked or tag-bearing pinnipeds or carcasses, allowing transmittal of the information to appropriate agencies; and any rare or unusual species of marine mammal for agency follow-up. The observer will report that information to NMFS's Alaska Fisheries Science Center and/or the Alaska Department of Fish and Game Marine Mammal Program.

(c) NPS must submit separate annual draft reports for GLBA NP and SWAN on all monitoring conducted within ninety calendar days of the completion of annual research and monitoring activities. Final reports for both GLBA NP and SWAN must be prepared and submitted within thirty days following resolution of comments on each draft report from NMFS. This report must contain:

(1) A summary and table of the dates, times, and weather during all research activities;

(2) Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities;

(3) An estimate of the number (by species) of marine mammals exposed to acoustic or visual stimuli associated with the research activities; and

(4) A description of the implementation and effectiveness of the monitoring and mitigation measures of

the Authorization and full documentation of methods, results, and interpretation pertaining to all monitoring.

(d) NPS must submit a comprehensive 5-year report covering all activities conducted under the incidental take regulations at least 90 days prior to expiration of these regulations if new regulations are sought or 90 days after expiration of regulations.

(e) *Reporting of injured or dead marine mammals.* (1) In the unanticipated event that the activity defined in § 219.20(a) clearly causes the take of a marine mammal in a prohibited manner such as an injury (Level A harassment), serious injury, or mortality, NPS must immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator, NMFS. The report must include the following information:

- (i) Time and date of the incident;
- (ii) Description of the incident;
- (iii) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- (iv) Description of all marine mammal observations and active sound source use in the 24 hours preceding the incident;
- (v) Species identification or description of the animal(s) involved;
- (vi) Fate of the animal(s); and
- (vii) Photographs or video footage of the animal(s).

(2) Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with NPS to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. NPS must not resume their activities until notified by NMFS.

(3) In the event that NPS discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), NPS must immediately report the incident to the Office of Protected Resources, NMFS, and the Alaska Stranding Coordinator, NMFS. The report must include the same information identified in § 217.25(e)(1). Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with NPS to determine whether additional mitigation measures or modifications to the activities are appropriate.

(4) In the event that NPS discovers an injured or dead marine mammal and determines that the injury or death is

not associated with or related to the activities defined in § 217.20(a) (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), NPS must report the incident to OPR and the Alaska Stranding Coordinator, NMFS, within 24 hours of the discovery. NPS must provide photographs or video footage or other documentation of the stranded animal sighting to NMFS. NPS can continue their research activities.

(5) Pursuant to paragraphs § 217.25(e)(2) through (4), NPS may use discretion in determining what injuries (*i.e.*, nature and severity) are appropriate for reporting. At minimum, NPS must report those injuries considered to be serious (*i.e.*, will likely result in death) or that are likely caused by human interaction (*e.g.*, entanglement, gunshot). Also pursuant to paragraphs § 217.25(e)(3) and (4) of this section, NPS may use discretion in determining the appropriate vantage point for obtaining photographs of injured/dead marine mammals.

§ 217.26 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, NPS must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, NPS may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, NPS must apply for and obtain a modification of the LOA as described in § 217.27.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within 30 days of a determination.

§ 217.27 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 217.26 for the

activity identified in § 217.20(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 217.26 for the activity identified in § 217.20(a) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with NPS regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from NPS's monitoring from the previous year(s).

(B) Results from other marine mammal research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS shall publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a

significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 217.26, an LOA may be modified without prior

notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§ 217.28 [Reserved]

§ 217.29 [Reserved]

[FR Doc. 2018-26741 Filed 12-12-18; 8:45 am]

BILLING CODE 3510-22-P

Notices

Federal Register

Vol. 83, No. 239

Thursday, December 13, 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

Agricultural Marketing Service

[DOC. No. AMS-FGIS-18-0077]

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), this notice announces AMS's intention to request that the Office of Management and Budget (OMB) approve a 3-year extension and revision to a currently approved information collection; a voluntary customer survey concerning the delivery of official inspection, grading, and weighing services authorized under the United States Grain Standards Act (USGSA) and the Agricultural Marketing Act of 1946 (AMA). OMB approved this information collection as OMB 0580-0018 under Grain Inspection, Packers and Stockyards (GIPSA). Due to the realignment of offices authorized by the Secretary's memorandum dated November 14, 2017, which eliminated the GIPSA as a standalone agency, the grain inspection activities formerly part of GIPSA are now under the Agricultural Marketing Service (AMS) and assigned a new OMB control number of 0581-0310.

This voluntary survey gives customers who are primarily in the grain, oilseed, rice, lentil, dry pea, edible bean, and related agricultural commodity markets an opportunity to provide feedback on the quality of services they receive and provides AMS with information on new services that customers wish to receive. Customer feedback assists Federal Grain Inspection Service (FGIS) with enhancing the value of services and service delivery provided by the official

inspection, grading, and weighing system.

DATES: We will consider comments that we receive by February 11, 2019.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

Internet: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

Mail, hand deliver, or courier: Jennifer S. Hill, AMS, USDA, 1400 Independence Avenue SW, Room 2410-S, Washington, DC 20250-3620. *Fax:* (202) 690-3929. *Instructions:* All comments should be identified as "FGIS customer service survey" and should reference the date and page number of this issue of the **Federal Register**. The information collection package and other documents relating to this action will be available for public inspection in the above office during regular business hours. All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)). Please call (202) 690-3929 to arrange to inspect documents.

FOR FURTHER INFORMATION CONTACT: Jennifer S. Hill, Grain Marketing Specialist, International Affairs Division, email address: Jennifer.s.hill@ams.usda.gov, telephone (202) 690-3929.

SUPPLEMENTARY INFORMATION: Congress enacted the USGSA (7 U.S.C. 71 *et seq.*) and the AMA (7 U.S.C. 1621 *et seq.*) to facilitate the marketing of grain, oilseeds, pulses, rice, and related commodities. These statutes provide for the establishment of standards and terms which accurately and consistently measure the quality of grain and related products, provide for uniform official inspection and weighing, provide regulatory and service responsibilities, and furnish the framework for commodity quality improvement incentives to both domestic and foreign buyers. FGIS establishes policies, guidelines, and regulations to carry out the objectives of the USGSA and the AMA. Regulations appear at 7 CFR parts 800, 801, and 802 for the USGSA and 7 CFR part 868 for the AMA. The USGSA, with few exceptions, requires official inspection of export grain sold by grade. Official services are provided, upon request, for grain in domestic

commerce. The AMA authorizes similar inspection and weighing services, upon request, for rice, pulses, flour, corn meal, and certain other agricultural products. There are approximately 9,000 current users of the official inspection, grading, and weighing programs. These customers are located nationwide and represent a diverse mixture of small, medium, and large producers, merchandisers, processors, exporters, and other financially interested parties. These customers request official services from an FGIS Field Office; delegated, designated, or cooperating State office; or designated private agency office. The goal of FGIS and the official inspection, grading, and weighing system is to provide timely, high quality, accurate, consistent, and professional service that facilitates the orderly marketing of grain and related commodities. To accomplish this goal and in accordance with E.O. 12862, FGIS seeks feedback from customers to evaluate the services provided by the official inspection, grading, and weighing programs.

Title: Survey of Customers of the Official Inspection, Grading, and Weighing Programs (Grain and Related Commodities).

OMB Number: 0581-0310.

Expiration Date of Approval: March 31, 2019.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: the Collecting information using a voluntary service survey provides customers of FGIS and the official inspection, grading, and weighing services an opportunity to evaluate, on a scale of one to five, the timeliness, cost-effectiveness, accuracy, consistency, and usefulness of those services and results, and the professionalism of employees. Customers provide additional comments or indicate what new or existing services they would use if such services were offered or available. FGIS uses the voluntary service survey to maintain a formal means of determining customers' expectations and the quality of official services that are delivered. To collect this information, FGIS would continue to conduct, over a 3-year period, an annual voluntary customer service survey of current and potential customers of the official inspection, grading, and weighing system. FGIS

would make the survey available to any interested party who visits our website or is provided the link. The survey instrument would consist of twelve (12) questions only; FGIS tailors subsequent survey instruments to earlier responses. The information collected from the survey permits FGIS to gauge customers' satisfaction with existing services, compare results from year to year, and determine what new services customers desire.

The customer service survey consists of one document containing questions about timeliness, cost effectiveness, accuracy, consistency, usefulness of services and results, and the professionalism of employees. Some examples of survey questions include the following: "I receive results in a timely manner," "Official results are accurate," and "Inspection personnel are knowledgeable." Customers assess survey questions using a one to five rating scale with responses ranging from "strongly disagree" to "strongly agree" or "no opinion." The survey also asks customers about the products for which they primarily request service, and what percentage of their product is officially inspected. Customers can also provide additional comments or request new or existing services on the survey. The survey provides space for customers to provide their email addresses should they wish to be directly contacted about their survey responses. By obtaining information from customers through a voluntary customer service survey, FGIS believes that it will continue to improve services and service delivery of its official inspection, grading, and weighing programs that meets or exceeds customer expectations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes (*i.e.*, 0.167 hours) per response.

Respondents: The primary respondents will be interested current or potential customers of the official inspection, grading, and weighing program who either visit the AMS Website or receive the link via outreach communications.

FY 2019: Estimated Number of Respondents: 605 (*i.e.*, 1100 total customers times 55% response rate = 605).

Frequency of Responses: 1.
Estimated Annual Burden: 109 hours. (605 responses times 0.167 hours/response plus 495 non-respondents times 0.0170 hours/response = 109 hours).

FY 2020: Estimated Number of Respondents: 616. (*i.e.*, 1100 total customers times 56% response rate = 616).

Frequency of Responses: 1.
Estimated Annual Burden: 111 hours (616 responses times 0.167 hours/response plus 484 non-respondents times 0.0170 hours/response = 111 hours).

FY 2021: Estimated Number of Respondents: 627 (*i.e.*, 1100 total customers times 57% response rate = 627).

Frequency of Responses: 1.
Estimated Annual Burden: 105 hours (627 responses times 0.167 hours/response plus to 473 non-respondents times 0.0170 hours/response = 113 hours).

As required by the PRA (44 U.S.C. 3506(c)(2)(A)) and its implementing regulations (5 CFR 1320.8(d)(1)(i)), AMS specifically requests comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of AMS'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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval.

All comments will become a matter of public record.

Dated: December 7, 2018.

Greg Ibach,

Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 2018-26930 Filed 12-12-18; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 10, 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 January 14, 2019 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 Service Pesticide-Use Proposal Form.

OMB Control Number: 0596-0241.

Summary of Collection: The Forest Service (FS) is authorized under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, and 40 CFR part 171; the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101) as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421), and 36 CFR part 219; and the National Environmental Policy Act 42 CFR part 4321), and 36 CFR part 220 to collect information on proposed use of pesticides on lands administered by FS to safe guard natural resources and human health.

Need and Use of the Information: FS will use form FS-2100-2 to collect pesticide project information from entities for application of pesticides upon FS administered lands within rights-of-way easements, permitted lands, and under similar circumstances. Categories of information requested are

descriptive of type, amount, and location of applications, as well as identification of qualifying credentials of those performing the work. Proposals will be evaluated by FS pesticide use coordinators and other administrative personnel to safeguard human health and ecological protection consistent with FS land use management programs. Without the ability to collect the details of proposed projects from outside parties, the FS would not be able to make appropriately informed decisions concerning land stewardship and necessary ecological and human health safeguards.

Description of Respondents:

Individuals or households, Businesses and Organizations, and State, Local and Tribal Governments.

Number of Respondents: 36.

Frequency of Responses: Reporting: Other (One time only).

Total Burden Hours: 600.

Title: Airplane Pilot Qualifications and Approval Record, Helicopter Pilot Qualifications and Approval Record, Airplane Data Record, and Helicopter Data Record.

OMB Control Number: 0596–0015.

Summary of Collection: The Forest Service (FS) is the largest owner and operator of aircraft in the federal government outside of the Department of Defense. The process by which FS operates, maintains, and provides aircraft is through the use of Federal Government contractual agreements with private industry. Two types of aviation contracts are used: Exclusive Use contracts and Call-When-Needed (CWN) contracts. Currently, in excess of 700 private companies contract with the FS for use in resource protection and administrative projects. In addition, the agency owns and operates 27 agency aircraft. The majority of FS flying is in support of wildland fire suppression. Contractor aircraft and pilots are used to place water and chemical retardants on fires, provide aerial delivery of firefighters to fires, perform reconnaissance, resource surveys, search for lost personnel, and fire detection. Contracts for such services established rigorous qualification requirements for pilots and specific condition/equipment/performance requirements for aircraft. The authority is granted under the Federal Aviation Administration Regulations in Title 14 (Aeronautics and Space) of the Code of Federal Regulations.

Need and Use of the Information: FS will collect information using FS forms to document the basis for approval of contract pilot and aircraft for use in specific FS aviation missions. The information collected from contract

pilots in face to face meetings (such as name, age, pilots license number, number of hours flown in type of aircraft, etc.) is based on the length and type of contract but is usually done on an reoccurring annual basis. Without the information supplied on these forms, FS contracting officers and pilot/aircraft inspectors cannot determine if pilots and aircraft meet the detailed qualification, equipment, and condition requirements essential to safe, efficient accomplishment of FS specified flying missions and which are included in contract specifications.

Description of Respondents:

Individuals or households, Businesses and Organizations, and State, Local and Tribal Governments.

Number of Respondents: 2,555.

Frequency of Responses: Reporting: Other (One time only).

Total Burden Hours: 3,577.

Title: Forest Industries Post Data Collection Systems.

OMB Control Number: 0596–0010.

Summary of Collection: The Forest and Range Renewable Resources Planning Act of 1974 (Pub. L. 93–278), National Forest Management Act of 1976 (16 U.S.C. 1600), and the Forest and Rangeland Renewable Resources Research Act of 1978 (Pub. L. 95–307) amended by the Energy Security Act of 1980 (42 U.S.C. 8701) require the Forest Service (FS) to evaluate trends in the use of logs and wood chips, to forecast anticipated levels of logs and wood chips, and to analyze changes in the harvest of the resources. Forest product and other wood-using industries are important to state, regional, and national economies. In most southern states, the value of rounded timber products is ranked either first or second in relation to other major agricultural crops. The importance and value of the timber products industry is significant in other regions of the United States as well. The FS will collect information using questionnaires.

Need and Use of the Information: To monitor the types, species, volumes, sources, and prices of the timber products harvested throughout the Nation. Using the “Primary Mill Questionnaire” FS will collect industrial round wood information from the primary wood-using industries throughout the United States and from mills in Canada that directly receive wood from the United States. FS will also use the “Pulp & Board Forest Industries Questionnaire.” The data will be used to develop specific economic development plans for a new forest related industry in a State and to assist existing industries in identifying raw material problems and opportunity. The

“Loggers Survey” will track information pertaining to the logging company to determine changes in the logging contractor workforce as a whole, not by individual company. This type of data is important in understanding the logging industry and its response to outside influences. If the information were not collected, data would not be available for sub-state, state, regional and national policy makers and program developers to make decisions related to the forestland on a scientific basis.

Description of Respondents:

Businesses or other for-profit; Not-for-profit institutions.

Number of Respondents: 5,737.

Frequency of Responses: Reporting: Other (One time only).

Total Burden Hours: 2,223.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–27011 Filed 12–12–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 10, 2018.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW, Washington, DC, 20503. 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.

Comments regarding these information collections are best assured of having their full effect if received by January 14, 2019. 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.

Agricultural Marketing Service

Title: Application for Plant Variety Protection Certificate and Objective Description of Variety.

OMB Control Number: 0581–0055.

Summary of Collection: The Plant Variety Protection Act (PVPA) (December 24, 1970; 84 Stat. 1542, 7 U.S.C. 2321 *et seq.*) was established to encourage the development of novel varieties of sexually-reproduced plants and make them available to the public, providing intellectual property rights (IPR) protection to those who breed, develop, or discover such novel varieties, and thereby promote progress in agriculture in the public interest. The PVPA is a voluntary user funded program that grants intellectual property ownership rights to breeders of new and novel seed-and tuber-reproduced plant varieties. To obtain these rights the applicant must provide information that shows the variety is eligible for protection and that it is indeed new, distinct, uniform, and stable, as the law requires. Applicants are provided with applications to identify the information that is required to issue a certificate of protection.

Need and Use of the Information: Applicants must complete the ST–470, “Application for Plant Variety Protection Certificate,” and the ST–470 series of forms, “Objective Description of Variety” along with other forms. The Agricultural Marketing Service will use the information from the applicant to be evaluated by examiners to determine if the variety is eligible for protection under the PVPA. If this information were not collected there will be no basis for issuing certificate of protection, and no way for applicants to request protection.

Description of Respondents: Business or other for profit.

Number of Respondents: 93.

Frequency of Responses: Reporting: On occasion; Other (when forms are requested).

Total Burden Hours: 2,062.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–27012 Filed 12–12–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 10, 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 January 14, 2019 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.

Food Safety and Inspection Service

Title: Foodborne Illness Outbreak Surveys for the FSIS Public Health Partners.

OMB Control Number: 0583—New.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U. S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS intends to collect information from state and territorial government partners on ways to strengthen the collaborative response to illness outbreaks associated with FSIS-regulated food products.

Need and Use of the Information: FSIS will administer a series of surveys regarding foodborne illness outbreak investigation to state and territorial government partners. The results of these surveys will help FSIS assess communication trends and prioritize outreach efforts.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 112.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 19.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–26970 Filed 12–12–18; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Site; Federal Lands Recreation Enhancement Act

AGENCY: Helena–Lewis & Clark National Forest, USDA, Forest Service.

ACTION: Notice of proposed new fee site.

SUMMARY: The Helena-Lewis & Clark National Forest is proposing to implement a new fee at the newly acquired AT&T cabin with a proposed fee of \$45 per night.

This fee is only proposed and will be determined upon further analysis and public comment.

DATES: Comments will be accepted through January 14, 2019. Comments can be compiled, analyzed, and shared

with the North-Central Montana Bureau of Land Management (BLM) Recreation Resource Advisory Council. The proposed effective date of implementation of the proposed new fee will be no earlier than six months after publication of this notice.

ADDRESSES: Lisa Stoeffler, Acting Forest Supervisor, Helena-Lewis & Clark National Forest, 2880 Skyway Drive, Helena, MT 59602 or email to lstoefler@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Rory Glueckert, Forest Recreation Program Manager, Helena-Lewis & Clark National Forest at 406-495-3761 or rglueckert@fs.fed.us; Information about proposed fee changes can also be found on the Helena-Lewis & Clark National Forest website at <http://www.fs.usda.gov/main/helena>. 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 Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108-447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register**, whenever new recreation fee areas are established. Once public involvement is complete, these new fees will be reviewed by the BLM North Central Montana Recreation Resource Advisory Council prior to a final decision and implementation. Reasonable fees, paid by users of these sites and services, will help ensure that the Forest can continue maintaining and improving the sites for future generations. A market analysis of surrounding recreation sites with similar amenities indicates that the proposed fees are comparable and reasonable. Advance reservations for the AT&T Cabin will be available through www.recreation.gov or by calling 1-877-444-6777. The reservation service charge is \$8 for reservations.

Dated: December 4, 2018.

Jennifer Eberlien,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2018-26987 Filed 12-12-18; 8:45 am]

BILLING CODE 3411-15-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the West Virginia 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 meeting of the West Virginia Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EST) on Friday, January 11, 2019. The purpose of the meeting is to discuss plans for preparing the Committee report on the collateral consequences of a felony record on West Virginians' access to employment, housing, professional licenses and public benefits.

DATES: Friday, January 11, at 12:00 p.m. EST.

Public Call-In Information:

Conference call-in number: 1-877-604-9665 and conference call ID: 5788080.

FOR FURTHER INFORMATION CONTACT: Ivy Davis at ero@uscrr.gov or by phone at 202-376-7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1-877-604-9665 and conference call ID: 5788080. Please be advised that before placing them into the conference call, the conference call operator will 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 conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1-888-364-3109 and providing the operator with the toll-free conference call-in number: 1-877-604-9665 and conference call ID: 5788080.

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 Corrine Sanders at ero@uscrr.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://database.faca.gov/committee/>

[meetings.aspx?cid=279](https://database.faca.gov/committee/meetings.aspx?cid=279), 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.uscrr.gov, or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda: Friday, January 11, 2019

- I. Rollcall
- II. Welcome
- III. Planning Discussion
- IV. Other Business
- V. Adjourn

Dated: December 10, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018-27007 Filed 12-12-18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Pennsylvania 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 meeting of the Pennsylvania Advisory Committee to the Commission will convene by conference call at 11:30 a.m. (EST) on Tuesday, January 15, 2019. The Committee is considering possible topics for its civil rights project.

DATES: Tuesday, January 15, 2019, at 11:30 a.m. (EDT).

Public Call-In Information:

Conference call-in number: 800-949-2175 and conference call ID 8426059.

FOR FURTHER INFORMATION CONTACT: Ivy Davis at ero@uscrr.gov or by phone at 202-376-7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 800-949-2175 and conference call ID 8426059. Please be advised that before placing them into the conference call, the conference call operator will 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 conference call-in number.

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-in number: 800-949-2175 and conference call ID 8426059.

Members of the public are invited to make statements during the Public Comment section of the meeting or to submit written comments. The statements must be received in the regional office approximately 30 days after the 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 Corrine Sanders at ero@usccr.gov. Persons who desire additional information may phone 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://database.faca.gov/committee/meetings.aspx?cid=279>, 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 meeting. 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: Tuesday, January 15, 2019

- I. Rollcall
- II. Welcome and Introductions
- III. Other Business
- IV. Public Comment
- V. Adjourn

Dated: December 10, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018-27005 Filed 12-12-18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

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 North Dakota Advisory Committee to the Commission will by teleconference at 12:00 p.m. (CST) on Tuesday, December 18, 2018. The purpose of the meeting is for planning on the voting rights project.

DATES: Tuesday, December 18, 2018, at 12:00 p.m. CST.

Public Call-In Information:

Conference call-in number: 1-888-719-5012 and conference call 1106229.

FOR FURTHER INFORMATION CONTACT:

Evelyn Bohor, at ebohor@usccr.gov or by phone at 303-866-1040.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1-888-719-5012 and conference call 1106229. Please be advised that before placing them into the conference call, the conference call operator will 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 conference call-in number.

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-in number: 1-888-719-5012 and conference call 1106229.

Members of the public are invited to make statements during the open comment period of the meeting or 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 Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13-201, Denver, CO 80294, faxed to (303) 866-1040, or emailed to Evelyn Bohor at ebohor@usccr.gov. Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866-1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at <https://gsageo.force.com/FACA/apex/FACAPublicCommittee?id=a10t>

[000001gzl9AAA](#); click the "Meeting Details" and "Documents" links.

Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. 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 Rocky Mountain Regional Office at the above phone numbers, email or street address.

Agenda: Tuesday, December 18, 2018, 12:00 p.m. (CST)

- Roll call
- Project Planning—Voting Rights
- Open Comment
- Adjourn

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 the original scheduled meeting being cancelled for the national day of mourning.

Dated: December 10, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018-26985 Filed 12-12-18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Virginia 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 meeting of the Virginia Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EST) on Wednesday, January 16, 2019. The purpose of the meeting is for Committee members to continue discussing plans for the in-person briefing on hate crimes in VA—incidences and responses to be scheduled in February.

DATES: Wednesday, January 16, 2019, at 12:00 p.m. EST.

Public Call-In Information: Conference call-in number: 1-800-474-8920 and conference call ID 8310490.

FOR FURTHER INFORMATION CONTACT: Ivy Davis at ero@usccr.gov or by phone at 202-376-7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1-800-

474–8920 and conference call ID 8310490. Please be advised that before placing them into the conference call, the conference call operator will 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 conference call-in number.

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-in number: 1–800–474–8920 and conference call ID 8310490.

Members of the public are invited to make statements during the Public Comment section of the meeting or 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 Corrine Sanders 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://database.faca.gov/committee/meetings.aspx?cid=279>, 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: Wednesday, January 16, 2019

- I. Rollcall
- II. Welcome
- III. Planning Discussion
- IV. Other Business
- V. Public Comment
- VI. Adjourn

Dated: December 10, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–27006 Filed 12–12–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of State Government Research and Development

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written or on-line comments must be submitted on or before February 11, 2019.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at PRAComments@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael Flaherty, U.S. Census Bureau, HQ–6H051, 4600 Silver Hill Rd., Suitland, MD 20746, (301) 763–7699 (or via the internet at michael.j.flaherty@census.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Census Bureau plans to continue to conduct the Survey of State Government Research and Development (SGRD) to measure research and development performed and funded by state government agencies in the United States. The Census Bureau conducts the survey on behalf of the National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation.

The National Science Foundation Act of 1950, as amended, includes a statutory charge to “provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formulation by other agencies in the Federal Government.” This mandate was further codified in the America COMPETES Reauthorization Act of 2010 § 505, which requires NCSES to “collect, acquire, analyze, report, and

disseminate . . . statistical data on (A) research and development trends . . .” Under the aegis of these legislative mandates, NCSES has sponsored surveys of research and development (R&D) since 1951, including the SGRD since 2006. The Census Bureau’s authorization to undertake this work is found at 13 U.S.C. Section 8(b) which provides that the Census Bureau “may make special statistical compilations and surveys for departments, agencies, and establishments of the Federal government, the government of the District of Columbia, the government of any possession or area (including political subdivisions thereof) . . . State or local agencies, or other public and private persons and agencies.”

The SGRD is the only comprehensive source of state government research and development expenditure data collected on a nationwide scale using uniform definitions, concepts, and procedures. The collection covers the expenditures of all agencies in the fifty state governments, the District of Columbia, and Puerto Rico that perform or fund R&D. The NCSES coordinates with the Census Bureau for the data collection. The NCSES uses this collection to satisfy, in part, its need to collect research and development expenditures data.

Fiscal data provided by respondents aid data users in measuring the effectiveness of resource allocation. The products of this data collection make it possible for data users to obtain information on such things as expenditures according to source of funding (e.g., federal funds or state funds), by performer of the work (e.g., intramural and extramural to state agencies), by function (e.g., agriculture, energy, health, transportation, etc.), by type of work (e.g., basic research, applied research, or experimental development) for intramural performance of R&D, and by R&D plant (e.g., construction projects). Final results produced by NCSES contain state and national estimates useful to a variety of data users interested in research and development performance including: The National Science Board; the Office of Management and Budget; the Office of Science and Technology Policy and other science policy makers; institutional researchers; and private organizations.

There are no substantive changes to content for the SGRD so total respondent burden will not change.

The survey announcements and forms used in the research and development survey are:

Survey Announcement. An introductory letter from the Directors of

the NCSES and the Census Bureau is mailed to the Governor's Office to announce the survey collection and to solicit assignment of a State Coordinator. The State Coordinator's Announcement is sent electronically at the beginning of each survey period to solicit assistance in identifying state agencies which may perform or fund R&D activities.

Form SRD-1. This form contains item descriptions and definitions of the research and development items collected by the Census Bureau on behalf of the NCSES. It is used primarily as a worksheet and instruction guide by the state agencies providing research and development expenditure data in their respective states. All states supply their data by electronic means.

II. Method of Collection

The Census Bureau mails the 50 State governors, the mayor of DC, and the governor of Puerto Rico a letter requesting that they appoint a state coordinator for the survey. They are asked to respond within 30 days. The Census Bureau then emails the state coordinators a spreadsheet asking them to identify state agencies that may be active R&D performers. State coordinators are asked to respond within 30 days. The Census Bureau subsequently emails each state agency identified by the respective state coordinators a pdf version of the survey form, which contains embedded data checks and auto-summing functionality. Agencies are asked to complete and email back this pdf version of the form. Alternatively, agencies can download the pdf form from the Census Bureau's Help Site or contact the Census Bureau to request a spreadsheet version of the form with similar data checks and auto-summing. Agencies are also able to report over the telephone by calling the

Census Bureau. Agencies are asked to respond within 60 days.

III. Data

OMB Control Number: 0607-0933.
Form Number: SRD-1.
Type of Review: Regular submission.
Affected Public: State government agencies.
Estimated Number of Respondents: 51 governors, 1 mayor, 52 state coordinators, and approximately 500 state government agencies.
Estimated Time per Response: 5 minutes for each governor, 1 hour for each state coordinator, and 2 hours for each state agency surveyed.
Estimated Total Annual Burden Hours: 1,056.

Estimated Total Annual Cost to the Public: \$0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.
Legal Authority: National Science Foundation Act of 1950 as amended and the America COMPETES Reauthorization Act of 2010, Title 42 U.S.C. 1861-76; Title 13, U.S.C. Section 8(b).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2018-26964 Filed 12-12-18; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[11/20/2018 through 12/5/2018]

Firm name	Firm address	Date accepted for investigation	Product(s)
Plattco Corporation	7 White Street, Plattsburgh, NY 12901.	11/21/2018	The firm manufactures valves, especially double-flap airlock valves and slide-gate valves, as well as custom metal castings.
Premier Manufacturing and Supply Chain Services, Inc.	7755 Miller Drive, Frederick, CO 80504.	11/27/2018	The firm manufactures circuit boards for electrical apparatuses.
Silvex Incorporated	45 Thomas Drive, Westbrook, ME 04092.	12/3/2018	The firm provides services for electroplating, anodizing, and surface finishing metals.

Any party having a substantial interest in these proceedings may request a public hearing on the matter.

A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030,

Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten

(10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Irette Patterson,
Program Analyst.

[FR Doc. 2018-26946 Filed 12-12-18; 8:45 am]

BILLING CODE 3510-WH-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-475-819]

Certain Pasta From Italy: Rescission of 2017 Countervailing Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on certain pasta from Italy for the period of review (POR) January 1, 2017, through December 31, 2017.

DATES: Applicable December 13, 2018.

FOR FURTHER INFORMATION CONTACT: Ethan Talbott or Mary Kolberg, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1030, or (202) 482-1785, respectively.

Background

On July 3, 2018, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the CVD order on certain pasta from Italy for the POR.¹ On July 30, 2018, Commerce received a timely request from Tesa SrL (Tesa), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213(b), to conduct an administrative review of this CVD order.² On July 31, 2018, Commerce received timely requests from Industria

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 31121 (July 3, 2018).

² See Tesa's Letter, "Pasta from Italy; Request for Administrative Review," dated July 30, 2018.

Alimentare Colavita, S.p.A (Indalco) and GR.A.M.M. S.r.l., (GRAMM), in accordance with section 751(a) of the Act and 19 CFR 351.213(b), to conduct an administrative review of this CVD order.³

On September 10, 2018, Commerce published in the **Federal Register** a notice of initiation of the administrative review with respect to Tesa, Indalco, and GRAMM.⁴ On October 4, 2018, Tesa timely withdrew its request for an administrative review.⁵ On October 15, 2018, GRAMM timely withdrew its request for an administrative review.⁶ On November 19, 2018, Indalco timely withdrew its request for an administrative review.⁷

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party who requested the review withdraws its request within 90 days of the publication date of the notice of initiation of the requested review. As noted above, Tesa, Indalco, and GRAMM withdrew their requests for review by the 90-day deadline, and no other party requested an administrative review of this order. Therefore, we are rescinding, in its entirety, the administrative review of the CVD order on certain pasta from Italy covering the period January 1, 2017, through December 31, 2017, in accordance with 19 CFR 351.213(d)(1).

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of certain pasta from Italy during January 1, 2017, through December 31, 2017. Countervailing duties shall be assessed at rates equal to the cash deposit rate for estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends

³ See Indalco's Letter, "Certain Pasta from Italy: Request for Administrative Review on Behalf of Industria Alimentare Colavita, S.p.A.," dated July 31, 2018; see also GR.A.M.M.'s Letter, "Certain Dry Pasta from Italy, C-475-819; Request for Review," dated July 31, 2018.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 45596 (September 10, 2018).

⁵ See Tesa's Letter, "Pasta from Italy; Withdrawal of Request for Administrative Review," dated October 4, 2018.

⁶ See GRAMM's Letter, "Certain Dry Pasta from Italy, C-475-819; Withdrawal Request for Review," dated October 15, 2018.

⁷ See Indalco's Letter, "Certain Pasta from Italy: Withdrawal of Request for CVD Administrative Review of Indalco S.p.A.," dated November 19, 2018.

to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification Regarding Administrative Protective Orders

This notice serves as the only 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). 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 sanctionable violation.

This notice is issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: December 7, 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. 2018-27001 Filed 12-12-18; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-864]

Certain Corrosion-Resistant Steel Products From India: Rescission of 2017 Countervailing Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing order on certain corrosion-resistant steel from India for the period of review (POR), January 1, 2017, through December 31, 2017, based on the timely withdrawal of the request for review.

DATES: Applicable December 13, 2018.

FOR FURTHER INFORMATION CONTACT: Omar Qureshi, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482-5307

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2018, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the countervailing duty order on corrosion-resistant steel products from India for the period January 1, 2017, to December 31, 2017 (POR).¹ On July 31, 2018, Uttam Galva Steels Limited (Uttam Galva) filed a timely request for review in accordance with 751(a) of the Tariff Act of 1930, as amended (the Act).² On September 10, 2018, based on this request and in accordance with section 751(a) of the Act, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the countervailing duty order on certain corrosion-resistant steel products from India, covering the POR.³ On October 26, 2018, Uttam Galva timely withdrew its request for administrative review.⁴

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. Uttam Galva was the only interested party that requested a review of itself. Additionally, Uttam Galva is the only respondent party to this review. As noted above, Uttam Galva withdrew its request for review by the 90-day deadline. As a result, Commerce is rescinding the administrative review of the countervailing duty order on certain corrosion-resistant steel products from India covering the period January 1, 2017, to December 31, 2017.

Assessment

We will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. Because Commerce is rescinding this administrative review in its entirety, the entries to which this administrative review pertained shall be assessed countervailing duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse,

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 83 FR 31,121 (July 3, 2018).

² See Letter from Uttam Galva Steels Limited: Request for Administrative Review, dated July 31, 2018.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 45596 (September 10, 2018).

⁴ See Letter from Uttam Galva: Withdrawal of Request for Review, dated October 26, 2018.

for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of the countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final 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/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: December 7, 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. 2018-26972 Filed 12-12-18; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-992]

Monosodium Glutamate 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) has completed the administrative review of the antidumping duty order on

monosodium glutamate (MSG) from the People's Republic of China (China) covering the period of review (POR) November 1, 2016, through October 31, 2017. We continue to find that none of the exporters of subject merchandise demonstrated eligibility for a separate rate; therefore, each is part of the China-wide entity.

DATES: Applicable December 13, 2018.

FOR FURTHER INFORMATION CONTACT: Kathryn Wallace, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-6251.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2018, Commerce published the *Preliminary Results* and gave interested parties an opportunity to comment.¹ Commerce received no comments. These final results cover 27 companies for which an administrative review was requested and not rescinded.² This review was conducted in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The product covered by this order is MSG, whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in this scope when the resulting mix contains 15 percent or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and various seasonings. Further, MSG is included in this order regardless of physical form (including, but not limited to, in monohydrate or anhydrous form, or as substrates, solutions, dry powders of any particle size, or unfinished forms such as MSG slurry), end-use application, or packaging. MSG in monohydrate form has a molecular formula of C₅H₈NO₄Na·H₂O, a Chemical Abstract Service (CAS) registry number of 6106-04-3, and a Unique Ingredient Identifier (UNII) number of W81N5U6R6U. MSG in anhydrous form has a molecular formula of C₅H₇NO₄Na, a CAS registry number of 142-47-2, and a UNII number of C3C196L9FG. Merchandise

¹ See *Monosodium Glutamate from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2016-17*, 83 FR 39420 (August 8, 2018) (*Preliminary Results*).

² *Id.*

covered by the scope of this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2922.42.10.00. Merchandise subject to the order may also enter under HTS subheadings 2922.42.50.00, 2103.90.72.00, 2103.90.74.00, 2103.90.78.00, 2103.90.80.00, and 2103.90.90.91. The tariff classifications, CAS registry numbers, and UNII numbers are provided for convenience and customs purposes; however, the written description of the scope is dispositive.³

Final Results of Review

Commerce preliminarily determined that none of the companies subject to this review demonstrated eligibility for separate rate status and were thus found to be part of the China-wide entity.⁴ As noted above, Commerce received no comments concerning the *Preliminary Results* of this segment of the proceeding. As there are no changes from, or comments upon, the *Preliminary Results*, Commerce finds that there is no reason to modify its analysis. Accordingly, no decision memorandum accompanies this **Federal Register** notice. For further details of the issues addressed in this proceeding, see the *Preliminary Results*.⁵ In these final results of review, we continued to treat all 27 exporters subject to this review as part of the China-wide entity.⁶ The China-wide entity rate is 40.41 percent.⁷

China-Wide Entity

Commerce's policy regarding the conditional review of the China-wide entity applies to this administrative review.⁸ Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review

³ See *Monosodium Glutamate from the People's Republic of China: Second Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Order*, 80 FR 487 (January 6, 2015) (*Amended Antidumping Duty Order*).

⁴ See *Preliminary Results*.

⁵ *Id.*

⁶ In the *Preliminary Results*, we found all 27 exporters subject to this review to be part of the China-wide entity as each exporter failed to submit an SRA and/or an SRC to establish its eligibility for separate rate status. For further details of the issues addressed in this proceeding, see the *Preliminary Results*.

⁷ See *Amended Antidumping Duty Order*.

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).

and the entity's rate is not subject to change (*i.e.*, 40.41 percent).⁹

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in this review, in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1). Commerce intends to issue assessment instructions directly to CBP 15 days after publication in the **Federal Register** of these final results of this administrative review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters not under review in this segment of the proceeding, but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) 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 China-wide entity rate (*i.e.*, 40.41 percent); and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

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 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.

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

⁹ See *Amended Antidumping Duty Order*.

destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h).

Dated: December 6, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018-26974 Filed 12-12-18; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-489-816]

Certain Oil Country Tubular Goods From Turkey: 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) finds that oil country tubular goods (OCTG) from Turkey have been sold at less than normal value during the period of review (POR) September 1, 2016, through August 31, 2017.

DATES: Applicable December 13, 2018.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0665.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 2018, Commerce published the *Preliminary Results* of the administrative review.¹ We invited

¹ See *Certain Oil Country Tubular Goods from Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 26957 (June 11, 2018) (*Preliminary Results*) and Memorandum, "Certain Oil Country Tubular Goods
Continued

interested parties to comment on the *Preliminary Results* and received case and rebuttal briefs from interested parties.² On August 23, 2018, Commerce held a public hearing. After reviewing comments submitted by interested parties, Commerce determined to conduct a formal inquiry into the *bona fides* nature of the U.S. sale reported by the mandatory respondent, Çayırova Boru Sanayi ve Ticaret A.Ş. and Yücel Boru İthalat-İhracat ve Pazarlama A.Ş. (collectively, Yücel) in this review.³ On September 24, 2018, Commerce extended the deadline for the final results by 59 days to December 7, 2018.⁴ On October 30, 2018, Commerce reached a determination that Yücel's U.S. sale subject to this review is a *bona fide* transaction and invited interested parties to comment on this determination.⁵ On November 5, 2018, U.S. Steel submitted a case brief, and on November 7, 2018, Yücel submitted its rebuttal brief.⁶

Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the order is certain OCTG. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30,

from Turkey: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2016–2017,” dated June 5, 2018 (Preliminary Decision Memorandum).

² See case brief from the petitioner, United States Steel Corporation, “Re: Oil Country Tubular Goods from Turkey: U.S. Steel’s Case Brief,” dated July 11, 2018, and a rebuttal brief from a mandatory respondent, Çayırova Boru Sanayi ve Ticaret A.Ş. and Yücel Boru İthalat-İhracat ve Pazarlama A.Ş. “Re: OCTG from Turkey; Yücel rebuttal brief,” dated July 16, 2018.

³ We previously determined these companies to constitute a single entity (hereinafter, Yücel). See *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances in Part*, 79 FR 41971, 41973 (July 18, 2014).

⁴ See Memorandum, “Certain Oil Country Tubular Goods from Turkey: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” dated September 24, 2018.

⁵ See Commerce’s memorandum, “2016–2017 Antidumping Duty Administrative Review of Oil Country Tubular Goods from Turkey: *Bona Fides* Analysis of the U.S. Sale Made by Çayırova Boru Sanayi ve Ticaret A.Ş. and Yücel Boru İthalat-İhracat ve Pazarlama A.Ş.,” dated October 30, 2018.

⁶ See Letter from the petitioner, “Re: Oil Country Tubular Goods from Turkey: U.S. Steel’s Case Brief Concerning Commerce’s *Bona Fides* Analysis,” dated November 5, 2018 and Letter from Yücel, “Re: OCTG from Turkey; Yücel rebuttal brief regarding *bona fides* of U.S. sale,” dated November 7, 2018.

7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Issues and Decision Memorandum.⁷

Finding of No Shipments

The record evidence in this review indicates that Tosçelik Profil ve Sac Endüstrisi A.Ş. and Tosyalı Dis Ticaret A.S. (collectively, Tosçelik)⁸ had no

⁷ See Memorandum, “Certain Oil Country Tubular Goods from Turkey: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review,” dated concurrently with, and hereby adopted by this notice (Issues and Decision Memorandum).

⁸ We previously determined these companies to constitute a single entity. See *Certain Oil Country Tubular Goods from Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016*, 82 FR 42285 (September 7, 2017) (unchanged in *Certain Oil Country Tubular Goods from Turkey: Final Results of Antidumping Duty Administrative Review; 2015–2016*, 83 FR 1240 (January 10, 2018)).

exports, sales, or entries of subject merchandise to the United States during the POR. Accordingly, we determine that Tosçelik had no shipments during the POR. For additional information on our preliminary finding of no shipments, see the Preliminary Decision Memorandum. Accordingly, consistent with Commerce’s practice, we will issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on our final results.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this review are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached as an 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 <http://access.trade.gov> and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Enforcement and Compliance website at <http://enforcement.trade.gov/frn/>. A list of the topics discussed in the Issues and Decision Memorandum is attached as an Appendix to this notice.

Changes Since the Preliminary Results

We did not make any changes for these final results.

Final Results of Review

We determine that the following weighted-average dumping margins exist for the period September 1, 2016, through August 31, 2017.

Producer/exporter	Weighted-average dumping margin (percent)
Çayırova Boru Sanayi ve Ticaret A.Ş. and Yücel Boru İthalat-İhracat ve Pazarlama A.Ş.	1.59
Çayırova Boru San A.Ş.	1.59
HG Tubulars Canada Ltd.	1.59
Yücelboru İhracat, İthalat.	1.59

Assessment

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the

final results of this review. For Yücel, we calculated importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).⁹

For entries of subject merchandise during the POR produced by Yücel for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate un-reviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For Tosçelik, which we determined had no shipments of subject merchandise in this review period, we will instruct CBP to liquidate any applicable entries of subject merchandise at the all-others rate.¹⁰

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of the administrative review for all shipments of OCTG from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for companies subject to this review will be the rates established in the final results of the review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior completed segment of the proceeding, including those for which Commerce has determined had no shipments during the POR, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this administrative review, a prior review, or the original investigation, but the producer has been covered in a prior complete segment of this proceeding, the cash deposit rate will be the rate established for the most

recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 35.86 percent,¹¹ the all-others rate established in the less-than-fair-value investigation, adjusted for the export-subsidy rate established in the companion countervailing duty investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a 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 review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 7, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Issues

⁹In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

¹⁰See, e.g., *Certain Circular Welded Carbon Quality Steel Pipes and Tubes from Taiwan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017*, 83 FR 52204 (October 16, 2018); *Certain Crystalline Silicon Photovoltaic Products From Taiwan: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 30401, 30402 (June 28, 2018).

¹¹See *Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value*, 79 FR 53691, 53693 (September 10, 2014).

Whether the U.S. Sale is *Bona Fide*
Whether the Dumping Margin was
Manipulated

V. Recommendation

[FR Doc. 2018–26973 Filed 12–12–18; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG666

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 60 Assessment Scoping webinar for South Atlantic Red Porgy.

SUMMARY: The SEDAR 60 assessment of the South Atlantic stock of Red Porgy will consist of a series of webinars and an in-person workshop. See **SUPPLEMENTARY INFORMATION.**

DATES: A SEDAR 60 Assessment Scoping webinar will be held on Wednesday, January 9, 2019, from 9 a.m. until 1 p.m.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; www.sedarweb.org.

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: julia.byrd@safmc.net.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. The product of the SEDAR webinar series will be a

report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Assessment Scoping webinar are as follows:

Participants will review data and discuss data issues, as necessary, and initial modeling issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: December 10, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018-26979 Filed 12-12-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG648

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Groundfish Management Team (GMT) will hold a week-long work session that is open to the public.

DATES: The GMT meeting will be held Monday, January 14, 2019 through Friday, January 18, 2019. The GMT meeting will begin on Monday, January 14, from 1 p.m. until business for the day is completed. The meeting will reconvene Tuesday, January 15 through Friday, January 18, from 8:30 a.m. until business for each day has been completed.

ADDRESSES: The meeting will be held at the Pacific Council Office, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Phillips, Pacific Council; phone: (503) 820-2426.

SUPPLEMENTARY INFORMATION: The primary purpose of this week-long work session is for the GMT to prepare for 2019 Pacific Council meetings. Specific agenda items will include: A detailed review of 2019/20 harvest specifications and management measure process, planning for the 2021/22 harvest specifications and management measure process, meeting with representatives from the Pacific Council's Ecosystem Workgroup; consideration of the groundfish workload prioritization process and Council Operating Procedure 9, Endangered Species Act salmon mitigation measures, and GMT chair/vice chair elections. The GMT may also address work assigned by the Pacific Council that relates to groundfish management, such as: A methodology overview of Sablefish Management and Trawl Allocation Attainment Committee analysis needs and impact analysis of proposed changes to the directed Pacific halibut fishery on groundfish. A detailed agenda will be available on the Pacific Council's website prior to the meeting.

Although nonemergency issues not contained in the meeting agenda may be

discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820-2411, at least 10 business days prior to the meeting date.

Dated: December 10, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018-26982 Filed 12-12-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG573

Endangered and Threatened Species; Recovery Plans

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

ACTION: Notice of availability; request for comments.

SUMMARY: We, NMFS, announce that the Proposed Endangered Species Act (ESA) Recovery Plan for Puget Sound Steelhead (Proposed Plan) is available for public review and comment. The Proposed Plan addresses the Puget Sound Steelhead (*Onchorhynchus mykiss*) Distinct Population Segment (DPS), which was listed as threatened under the ESA on May 11, 2007. As required under the ESA, the Proposed Plan contains objective, measurable delisting criteria, site-specific management actions necessary to achieve the Proposed Plan's goals, and estimates of the time and cost required to implement recovery actions. We are soliciting review and comment from the public and all interested parties on the Proposed Plan.

DATES: Comments on the Proposed Plan must be received by February 11, 2019.

ADDRESSES: You may submit comments on the Proposed Plan, identified by

NOAA–NMFS–2018–0125, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments on the Proposed Plan via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0125. Click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments on the Proposed Plan to David Price, National Marine Fisheries Service, 510 Desmond Dr. SE, Lacey, WA 98503.

Instructions: Comments or information 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 and information 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).

The Proposed Plan is available online at www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0125 or upon request from the NMFS West Coast Region, Protected Resources Division (see **ADDRESSES** or **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: David Price, (360) 753–9598, david.price@noaa.gov; or Elizabeth Babcock, (206) 526–4505, elizabeth.babcock@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

We are responsible for developing and implementing recovery plans for Pacific salmon and steelhead listed under the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*). Section 4(f)(1) of the ESA requires that recovery plans include, to the extent practicable: (1) Objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the plan’s goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for each listed species unless such a plan would not promote its recovery.

We believe it is essential to have local support of recovery plans by those

whose activities directly affect the listed species and whose continued commitment and leadership will be needed to implement the necessary recovery actions. We therefore support and participate in collaborative efforts to develop recovery plans that involve state, tribal, and Federal entities, local communities, and other stakeholders. For this Proposed Plan for threatened Puget Sound Steelhead, we worked collaboratively with local, state, tribal, and Federal partners to produce a recovery plan that satisfies the ESA requirements. We have determined that this Proposed ESA Recovery Plan for Puget Sound Steelhead meets the statutory requirements for a recovery plan and are proposing to adopt it as the ESA recovery plan for this threatened species. Section 4(f) of the ESA, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided prior to final approval of a recovery plan. This notice solicits comments on this Proposed Plan.

Development of the Proposed Plan

The geographic area covered by the Proposed Plan is the Puget Sound basin, from the Elwha River (inclusive) eastward, including rivers in Hood Canal, South Sound, and North Sound, including steelhead from six artificial propagation programs: The Green River Natural Program; White River Winter Steelhead Supplementation Program; Hood Canal Steelhead Supplementation Off-station Projects in the Dewatto, Skokomish, and Duckabush Rivers; and the Lower Elwha Fish Hatchery Wild Steelhead Recovery Program.

For the purpose of recovery planning for the ESA-listed species of Pacific salmon and steelhead in Idaho, Oregon, and Washington, NMFS designated five geographically based “recovery domains.” The Puget Sound Steelhead DPS spawning range is in the Puget Sound domain. For each domain, NMFS appointed a team of scientists, nominated for their geographic and species expertise, to provide a solid scientific foundation for recovery plans. The Puget Sound Steelhead Technical Recovery Team included biologists from NMFS, other Federal agencies, state agencies, tribes, and academic institutions.

A primary task for the Puget Sound Steelhead Technical Recovery Team was to recommend criteria for determining when each component population within a DPS or Evolutionarily Significant Unit (ESU) should be considered viable (*i.e.*, when they have a low risk of extinction over a 100-year period) and when ESUs

or DPSs have a risk of extinction consistent with no longer needing the protections of the ESA. All NMFS’ Technical Recovery Teams used the same biological principles for developing their recommendations; these principles are described in the NOAA technical memorandum Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units (McElhany *et al.* 2000). Viable salmonid populations (VSP) are defined in terms of four parameters: Abundance, productivity or growth rate, spatial structure, and diversity.

We also collaborated with the state of Washington, tribes, other Federal agencies, local governments, representatives of industry and environmental groups, other stakeholders, and the public to develop the Proposed Plan. The Plan for the Puget Sound steelhead DPS was developed by NMFS in cooperation with a Recovery Team made up of experts from the Washington Department of Fish and Wildlife, Northwest Indian Fisheries Commission, Nooksack Tribe, Seattle Light, Long Live the Kings, Puget Sound Partnership, and NMFS Northwest Fisheries Science Center. These groups provided vital input during the planning process, and their continued involvement during recovery plan implementation is critical to the success of our joint efforts to recover Puget Sound steelhead.

Contents of Proposed Plan

The Proposed Plan contains biological background and contextual information that includes description of the DPS, the planning area, and the context of the plan’s development. It presents relevant information on DPS structure and guidelines for assessing salmonid population and DPS status. It provides background on the natural history of steelhead, population status, and threats to their sustainability.

The Puget Sound steelhead DPS consists of three Major Population Groups (MPGs) and 32 Demographically Independent Populations (DIPs). NMFS based its decision to list the species in 2007 on findings by the Puget Sound Steelhead Biological Review Team (Hard *et al.* 2007). This team considered the major risk factors facing Puget Sound steelhead to be widespread declines in abundance and productivity for most natural steelhead populations in the DPS, including those in Skagit and Snohomish Rivers, previously considered strongholds for steelhead in the DPS; the low abundance of several summer-run populations; and the sharply diminishing abundance of some

steelhead populations, especially in south Puget Sound, Hood Canal, and the Strait of Juan de Fuca. Continued releases of out-of-DPS hatchery fish from Skamania-derived summer run were a major concern for diversity in the DPS. In 2011, eight years after the ESA-listing decision, a status assessment of the DPS by NMFS' Biological Review Team found that the status of Puget Sound steelhead regarding risk of extinction had not changed (NMFS 2016; 81 FR 33468; May 26, 2016). Scientists on the Biological Review Team identified degradation and fragmentation of freshwater habitat, with consequential effects on connectivity, as the primary limiting factors and threats facing the Puget Sound steelhead DPS. They determined that most of the steelhead populations within the DPS continued to show downward trends in estimated abundance, with a few sharp declines (Ford 2011). Most recently, a NMFS species status review (NMFS 2016) concluded that "The biological risks faced by the Puget Sound steelhead DPS have not substantively changed since the listing in 2007, or since the 2011 status review." The NMFS review team concluded that the DPS was at very low viability, as were all three of its constituent MPGs, and many of its 32 DIPs (Hard *et al.* 2015).

The Proposed Plan presents NMFS' proposed recovery goals and the viability criteria and listing factor criteria for making a delisting decision. The proposed viability criteria for the Puget Sound steelhead DPS are designed to improve the DPS so it "has a negligible risk of extinction due to threats from demographic variation, local environmental variation, and genetic diversity changes over a 100-year time frame" based on the status of the MPGs and DIPs, and supporting ecosystems (McElhany *et al.* 2000). A self-sustaining viable population has a negligible risk of extinction due to reasonably foreseeable changes in circumstances affecting its abundance, productivity, spatial structure, and diversity characteristics and achieves these characteristics without dependence upon artificial propagation. The proposed viability criteria for Puget Sound steelhead require that all three MPGs be viable because the three MPGs differ substantially in key biological and habitat characteristics that contribute in distinct ways to the overall viability, diversity and spatial structure of the DPS.

The proposed listing factor criteria are based on the five listing factors found in the ESA section 4(a)(1). Before NMFS can remove the DPS from protection

under the ESA, the factors that led to ESA listing need to have been reduced or eliminated to the point where Federal protection under the ESA is no longer needed, and there is reasonable certainty that the relevant regulatory mechanisms are adequate to protect Puget Sound steelhead viability. NMFS listing factor criteria for Puget Sound steelhead address pressures from freshwater habitat degradation, hatcheries, and other factors that led to the species listing and continue to affect its viability.

The Proposed Plan also describes specific information on the following: Current status of Puget Sound steelhead; pressures (limiting factors) and threats throughout the life cycle that have contributed to the species decline; recovery strategies to address the threats based on the best available science; site-specific actions with timelines; and a proposed adaptive management framework for focusing needed research and evaluations and revising our recovery strategies and actions. The Proposed Plan also summarizes time and costs required to implement recovery actions.

How NMFS and Others Expect To Use the Plan

With approval of the final Puget Sound Steelhead recovery plan, we will implement the actions in the plan for which we have authority and funding; encourage other Federal, state and local agencies and tribal governments to implement recovery actions for which they have responsibility, authority, and funding; and work cooperatively with tribes, the public and local stakeholders on implementation of other actions. We expect the recovery plan to guide us and other Federal agencies in evaluating Federal actions under ESA section 7, as well as in implementing other provisions of the ESA and other statutes. For example, the plan will provide greater biological context for evaluating the effects that a proposed action may have on the species by providing delisting criteria, information on priority areas for addressing specific limiting factors, and information on how the DPS can tolerate varying levels of risk.

When we are considering a species for delisting, the agency will examine whether the section 4(a)(1) listing factors have been addressed. To assist in this examination, we will use the delisting criteria described in Chapter 4 of the Proposed Plan, which include both viability criteria and listing factor criteria addressing each of the ESA section 4(a)(1) listing factors, as well as

any other relevant data and policy considerations.

Public Comments Solicited

We are soliciting written comments on the Proposed Plan. All substantive comments received by the date specified above will be considered and incorporated, as appropriate, prior to our decision whether to approve the plan. While we invite comments on all aspects of the Proposed Plan, we are particularly interested in comments on the proposed strategies and actions, comments on the cost of recovery actions, and comments on establishing an appropriate implementation forum for the plan. We will issue a news release announcing the adoption and availability of the final plan. We will post on the NMFS West Coast Region website (www.wcr.noaa.gov) a summary of, and responses to, the comments received, along with electronic copies of the final plan and its appendices.

Literature Cited

The complete citations for the references used in this document can be obtained by contacting NMFS (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 6, 2018.

Donna S. Wieting,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2018-27003 Filed 12-12-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG668

Fisheries of the Gulf of Mexico and South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 64 Data webinar for Gulf of Mexico and South Atlantic yellowtail snapper.

SUMMARY: The SEDAR 64 assessment process of Gulf of Mexico and South Atlantic yellowtail snapper will consist of a Data Workshop, and a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 64 Data webinar will be held January 11, 2019, from 10 a.m. to 11 a.m. Eastern Time.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (See Contact Information Below) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571-4366; Email: Julie.neer@safmc.net.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) a Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Data webinar are as follows:

Panelists will review the data sets being considered for the assessment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: December 10, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018-26981 Filed 12-12-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management will hold a public meeting to solicit comments on the performance evaluation of the Rhode Island Coastal Management Program.

DATES:

Rhode Island Coastal Management Program Evaluation: The public meeting will be held on February 5, 2019, and written comments must be received on or before February 15, 2019.

For specific dates, times, and locations of the public meetings, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit comments on the coastal program NOAA intends to evaluate by any of the following methods:

Public Meeting and Oral Comments: A public meeting will be held in Wakefield, Rhode Island. For the specific location, see **SUPPLEMENTARY INFORMATION.**

Written Comments: Please direct written comments to Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or email comments Carrie.Hall@noaa.gov.

FOR FURTHER INFORMATION CONTACT:

Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, by phone at (240) 533-0730 or email comments Carrie.Hall@noaa.gov. Copies of the previous evaluation findings and 2016-2020 Assessment and Strategy may be viewed and downloaded on the internet at <http://coast.noaa.gov/czm/evaluations>. A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved state and territorial coastal programs. The process includes one or more public meetings, consideration of written public comments, and consultations with interested Federal, state, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the state has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

You may participate or submit oral comments at the public meeting scheduled as follows:

Date: February 5, 2019.

Time: 6:00 p.m., local time.

Location: Stedman Government Center, Conference Room A, 4808 Tower Hill Road, Wakefield, Rhode Island 02879.

Written public comments must be received on or before February 15, 2018. Federal Domestic Assistance Catalog 11.419

Coastal Zone Management Program
Administration

Dated November 26, 2018.

Keelin Kuipers,*Deputy Director, Office for Coastal
Management, National Ocean Service,
National Oceanic and Atmospheric
Administration.*

[FR Doc. 2018-27046 Filed 12-12-18; 8:45 am]

BILLING CODE 3510-08-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric
Administration****Marine Mammals and Endangered
Species****AGENCY:** National Marine Fisheries
Service (NMFS), National Oceanic andAtmospheric Administration (NOAA),
Commerce.**ACTION:** Notice; issuance of permits and
permit amendments.**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. 17429-01), Carrie Hubard (Permit No. 21678),
and Sara Young (Permit No. 21425); 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
17429-01	0648-XC766	Sea Life Park Hawaii, 41-202 Kalaniana'ole Highway No. 7, Waimanalo, HI 96795 (Responsible Party: Valerie King)	79 FR 1834; January 10, 2014.	October 3, 2018.
21425	0648-XG297	Point Blue Conservation Science, 3820 Cypress Drive #11, Petaluma, CA 94954, (Responsible Party: Grant Ballard, Ph.D.).	83 FR 47606; September 20, 2018.	November 7, 2018.
21678	0648-XG320	John Calambokidis, Cascadia Research Collective, Waterstreet Building Suite 201, 218 1/2 West Fourth Ave., Olympia, WA 98501.	83 FR 35621; July 27, 2018	November 15, 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: December 10, 2018.

Julia Marie Harrison,*Chief, Permits and Conservation Division,
Office of Protected Resources, National
Marine Fisheries Service.*

[FR Doc. 2018-26996 Filed 12-12-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric
Administration**

RIN 0648-XG664

**Pacific Fishery Management Council;
Public Meeting****AGENCY:** National Marine Fisheries
Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA),
Commerce.**ACTION:** Notice of public meeting
(webinar).**SUMMARY:** The Pacific Fishery
Management Council (Pacific Council)
will host a webinar meeting of the Area
2A Pacific halibut governmental
management entities. This meeting is
open to the public.**DATES:** The webinar meeting will be
held on Thursday, January 3, 2019, from
10 a.m. until 2 p.m.

ADDRESSES: The meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar (1) join the meeting by visiting this link <https://www.gotomeeting.com/webinar>, (2) enter the Webinar ID: 991-995-667, and (3) enter your name and email address (required). After logging in to the webinar, please (1) dial this TOLL number 1 (562) 247-8321 (not a toll-free number), (2) enter the attendee phone audio access code 906-460-333, and (3) then enter your audio phone pin (shown after joining the webinar). NOTE: We have disabled Mic/Speakers as an option and require all participants to use a telephone or cell phone to participate. Technical Information and system requirements: PC-based attendees are required to use Windows® 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See the <https://www.gotomeeting.com/webinar/ipad-iphone-android-webinar-apps>). You may send an email to Mr. Kris Kleinschmidt at Kris.Kleinschmidt@noaa.gov or contact him at (503) 820-2280, extension 411 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Ehlke, Pacific Council; telephone: (503) 820-2410.

SUPPLEMENTARY INFORMATION: The primary purpose of the Area 2A Pacific halibut manager's meeting is to prepare and develop recommendations for the 2019 International Pacific Halibut Commission's (IPHC) annual meeting in Victoria, BC from January 28 through February 1. Recommendations generated from the meeting will be communicated to the IPHC by the Pacific Council's representative, Mr. Phil Anderson. Attendees may also address other topics relating to Pacific halibut management. No management actions will be decided by the attendees. The meeting will be open to the public, and the agenda, which will be posted on the Pacific Council website prior to the meeting, will provide for a public comment period.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (503) 820-2411 at least 10 business days prior to the meeting date.

Dated: December 10, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018-26978 Filed 12-12-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Final Evaluation Findings of State Coastal Programs and National Estuarine Research Reserves

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

Notice is hereby given of the availability of final evaluation findings of state coastal programs and national estuarine research reserves. The NOAA Office for Coastal Management has completed review of the Coastal Zone Management Program evaluations for the state and territories of New Jersey, Guam, and U.S. Virgin Islands. The state and territories were found to be implementing and enforcing their federally approved Coastal Zone Management Programs, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)-(K), and adhering to the programmatic terms of their financial assistance awards.

The NOAA Office for Coastal Management has completed review of the National Estuarine Research Reserve evaluations for Grand Bay, Jobos Bay, and Padilla Bay. The reserves were found to be adhering to programmatic requirements of the National Estuarine Research Reserve System. Copies of these final evaluation findings may be downloaded at http://coast.noaa.gov/czm/evaluations/evaluation_findings/index.html or by submitting a written request to the person identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or *Carrie.Hall@noaa.gov*.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Dated: November 26, 2018.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2018-27065 Filed 12-12-18; 8:45 am]

BILLING CODE 3510-08-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG667

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 61 Assessment Webinar II for Gulf of Mexico red grouper.

SUMMARY: The SEDAR 61 stock assessment process for Gulf of Mexico red grouper will consist of an In-person Workshop, and a series of data and assessment webinars. See **SUPPLEMENTARY INFORMATION**.

SUPPLEMENTARY INFORMATION.

DATES: The SEDAR 61 Assessment Webinar II will be held January 10, 2019, from 1 p.m. to 3 p.m. Eastern Time.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571-4366; Email: *Julie.neer@safmc.net*.

SUPPLEMENTARY INFORMATION:

The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and

monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Assessment Webinar are as follows:

1. Using datasets and initial assessment analysis recommended from the in-person workshop, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: December 10, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018-26980 Filed 12-12-18; 8:45 am]

BILLING CODE 3510-22-P

COMMODITY FUTURES TRADING COMMISSION

Fees for Reviews of the Rule Enforcement Programs of Designated Contract Markets and Registered Futures Associations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of 2018 schedule of fees.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") charges fees to designated contract markets and registered futures associations to recover the costs incurred by the Commission in the operation of its program of oversight of self-regulatory organization rule enforcement programs, specifically National Futures Association ("NFA"), a registered futures association, and the designated contract markets. Fees collected from each self-regulatory organization are deposited in the Treasury of the United States as miscellaneous receipts. The calculation of the fee amounts charged for 2018 by this notice is based upon an average of actual program costs incurred during fiscal year (FY) 2015, FY 2016, and FY 2017.

DATES: Each self-regulatory organization is required to remit electronically the applicable fee on or before February 11, 2019.

FOR FURTHER INFORMATION CONTACT: Anthony C. Thompson, Executive Director, Commodity Futures Trading Commission; (202) 418-5697; Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. For information on electronic payment, contact Jennifer Fleming; (202) 418-5034; Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. General

This notice relates to fees for the Commission's review of the rule enforcement programs at the registered futures associations¹ and designated contract markets ("DCM"), each of which is a self-regulatory organization ("SRO") regulated by the Commission. The Commission recalculates the fees charged each year to cover the costs of operating this Commission program.² The fees are set each year based on

¹ National Futures Association is the only registered futures association.

² See Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a, and 31 U.S.C. 9701. For a broader discussion of the history of Commission fees, see 52 FR 46070, Dec. 4, 1987.

direct program costs, plus an overhead factor. The Commission calculates actual costs, then calculates an alternate fee taking volume into account, and then charges the lower of the two.³

B. Overhead Rate

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide overhead direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs generally consist of the following Commission-wide costs: Indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 211 percent for FY 2015, and 190 percent for FY 2016, and 175 percent for FY 2017.

C. Conduct of SRO Rule Enforcement Reviews

Under the formula adopted by the Commission in 1993, the Commission calculates the fee to recover the costs of its rule enforcement reviews and examinations, based on the three-year average of the actual cost of performing such reviews and examinations at each SRO. The cost of operation of the Commission's SRO oversight program varies from SRO to SRO, according to the size and complexity of each SRO's program. The three-year averaging computation method is intended to smooth out year-to-year variations in cost. Timing of the Commission's reviews and examinations may affect costs—a review or examination may span two fiscal years and reviews and examinations are not conducted at each SRO each year.

As noted above, adjustments to actual costs may be made to relieve the burden on an SRO with a disproportionately large share of program costs. The Commission's formula provides for a reduction in the assessed fee if an SRO has a smaller percentage of United States industry contract volume than its percentage of overall Commission oversight program costs. This adjustment reduces the costs so that, as a percentage of total Commission SRO oversight program costs, they are in line

³ 58 FR 42643, Aug. 11, 1993, and 17 CFR part 1, appendix B

with the pro rata percentage for that SRO of United States industry-wide contract volume.

The calculation is made as follows: The fee required to be paid to the Commission by each DCM is equal to the lesser of actual costs based on the three-year historical average of costs for that DCM or one-half of average costs incurred by the Commission for each

DCM for the most recent three years, plus a pro rata share (based on average trading volume for the most recent three years) of the aggregate of average annual costs of all DCMs for the most recent three years.

The formula for calculating the second factor is: $0.5a + 0.5vt = \text{current fee}$. In this formula, "a" equals the average annual costs, "v" equals the

percentage of total volume across DCMs over the last three years, and "t" equals the average annual costs for all DCMs. NFA has no contracts traded; hence, its fee is based simply on costs for the most recent three fiscal years. This table summarizes the data used in the calculations of the resulting fee for each entity:

TABLE 1—SUMMARY OF DATA USED IN FEE CALCULATIONS

Actual total costs	FY 2015	FY 2016	FY 2017	3-Year average actual costs	3-Year average volume (%)	Adjusted volume costs	2017 Actual fee	2018 Assessed fee
CBOE Futures	\$158,209	\$227,059	\$31,765	\$139,011	1.44	\$79,398	\$71,004	\$79,398
Chicago Board of Trade ...	17,938	28,720	98,737	48,465	30.14	231,283	34,058	48,465
Chicago Mercantile Exchange	540,151	372,278	483,391	465,273	44.34	537,235	379,377	465,273
ICE Futures U.S.	105,864	386,719	203,826	232,136	8.68	175,696	143,431	175,696
Minneapolis Grain Exchange	147,983	14,314	43,230	68,509	0.06	34,667	35,250	34,667
NADEX North American .....	.....	81,758	86,680	56,146	0.18	29,309	14,516	29,309
New York Mercantile Exchange	118,701	242,792	217,861	193,118	14.25	194,451	172,990	193,118
OneChicago, LLC	289	282	37,311	12,627	0.31	8,443	6,798	8,443
NASDAQ .....	.....	.....	257,177	85,726	0.58	46,847	.....	46,847
ERIS Exchange .....	.....	.....	54,272	18,091	0.01	9,136	.....	9,136
CANTOR .....	.....	.....	61,474	20,491	.....	10,246	.....	10,246
NODAL .....	.....	.....	102,993	34,331	.....	17,166	.....	17,166
Subtotal	1,089,134	1,353,921	1,678,716	1,373,924	100	1,373,877	857,423	1,117,763
National Futures Association	401,337	282,405	676,430	453,390	.....	.....	325,281	453,390
Total	1,490,471	1,636,326	2,355,145	1,827,314	.....	.....	\$1,182,704	1,571,154

Note to Table 1: The 2018 Fee is the Lesser of the 3-year Average Actual cost or the Adjusted Volume Cost

An example of how the fee is calculated for one exchange, the Chicago Board of Trade, is set forth here:

a. Actual three-year average costs = \$48,465.

b. The alternative computation is: $(.5) (\$48,465) + (.5) (.3014) (\$1,373,924) = \$231,283$.

c. The fee is the lesser of a or b; in this case \$48,465.

As noted above, the alternative calculation based on contracts traded is not applicable to NFA because it is not a DCM and has no contracts traded. The Commission's average annual cost for conducting oversight review of the NFA rule enforcement program during fiscal years 2015 through 2017 was \$453,390.

The fee to be paid by the NFA for the current fiscal year is \$453,390.

II. Schedule of Fees

Fees for the Commission's review of the rule enforcement programs at the registered futures associations and DCMs regulated by the Commission are as follows:

TABLE 2—SCHEDULE OF FEES

	3-Year average actual costs	3-Year average volume %	Adjusted volume costs	2018 Assessed fee
CBOE Futures	\$139,011	1.44	\$79,398	\$79,398
Chicago Board of Trade	48,465	30.14	231,283	48,465
Chicago Mercantile Exchange	465,273	44.34	537,235	465,273
ICE Futures U.S.	232,136	8.68	175,696	175,696
Minneapolis Grain Exchange	68,509	0.06	34,667	34,667
NADEX North American	56,146	0.18	29,309	29,309
New York Mercantile Exchange	193,118	14.25	194,451	193,118
OneChicago, LLC	12,627	0.31	8,443	8,443
NASDAQ	85,726	0.58	46,847	46,847
ERIS Exchange	18,091	0.01	9,136	9,136
CANTOR	20,491	.....	10,246	10,246
NODAL	34,331	.....	17,166	17,166
Subtotal	1,373,924	100	1,373,877	1,117,763
National Futures Association	453,390	.....	.....	453,390
Total	1,827,314	.....	.....	1,571,154

III. Payment Method

The Debt Collection Improvement Act (DCIA) requires deposits of fees owed to the government by electronic transfer of funds. See 31 U.S.C. 3720. For information about electronic payments, please contact Jennifer Fleming at (202) 418-5034 or jffleming@cftc.gov, or see the CFTC website at <http://www.cftc.gov>, specifically, www.cftc.gov/cftc/cftcelectronicpayments.htm.

Fees collected from each self-regulatory organization shall be deposited in the Treasury of the United States as miscellaneous receipts. See 7 U.S.C 16a.

Issued in Washington, DC, on December 10, 2018, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2018-27042 Filed 12-12-18; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD-2018-HA-0098]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 11, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24 Suite 08D09, Alexandria, VA 22350-1700.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Consortium for Health and Military Performance (CHAMP), Department of Military and Emergency Medicine (MEM), Uniformed Services University of the Health Sciences, ATTN: Mr. Ian Gutierrez, 6720B Rockledge Drive, Suite 605, Bethesda, MD 20817, at (301) 295-1362.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Preservation of the Force and Family (POTFF) Spiritual Fitness Metrics; OMB Control Number 0720-XXXX.

Needs and Uses: The information collection requirement is necessary to develop and validate measures of Spiritual Fitness and Performance in line with the Chairman of the Joint Chiefs of Staff Instruction on Total Force Fitness. This measure will be used by US Special Operations Command's (USSOCOM) Preservation of the Force and Family's (POTFF) Spiritual Performance Team to evaluate programs that enhance spiritual performance.

Affected Public: Individuals and Households.

Annual Burden Hours: 2,670.67.

Number of Respondents: 8,012.

Responses per Respondent: 1.

Annual Responses: 8,012.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

Respondents will be members of the general public recruited through standard internet recruiting techniques. Respondents will complete the online survey once. The responses will help in developing and validating a measure of spiritual fitness. If the information is not collected, the measure cannot be created. This will potential result in

faulty evaluations of USSOCOM Chaplaincy services.

Dated: December 10, 2018.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018-26986 Filed 12-12-18; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18-1632-003.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Compliance Filing—Major Maintenance Cost Component to Mitigated Offers to be effective 4/18/2019.

Filed Date: 12/7/18.

Accession Number: 20181207-5108.

Comments Due: 5 p.m. ET 12/28/18.

Docket Numbers: ER18-2398-001.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2018-12-07 Response to Deficiency Letter—Compliance with Order No. 844 to be effective 1/1/2019.

Filed Date: 12/7/18.

Accession Number: 20181207-5066.

Comments Due: 5 p.m. ET 12/28/18.

Docket Numbers: ER19-256-001.

Applicants: Wisconsin Power and Light Company.

Description: Tariff Amendment: Amendment to WPL Wholesale Formula Rate Changes to be effective 12/31/2018.

Filed Date: 12/7/18.

Accession Number: 20181207-5119.

Comments Due: 5 p.m. ET 12/28/18.

Docket Numbers: ER19-257-001.

Applicants: Interstate Power and Light Company.

Description: Tariff Amendment: Amendment to IPL Wholesale Formula Rate Changes to be effective 12/31/2018.

Filed Date: 12/7/18.

Accession Number: 20181207-5121.

Comments Due: 5 p.m. ET 12/28/18.

Docket Numbers: ER19-459-000.

Applicants: AEP Texas Inc.

Description: AEP Texas Inc. submits tariff filing per 35.13(a)(2)(iii): AEPTX-LCRA TSC Chaparrosa Facilities Development Agreement submitted on 12/3/2018 10:14:08 a.m.

Filed Date: 12/3/18.

Accession Number: 20181207-5145.

Comments Due: 5 p.m. ET 12/24/18.

Docket Numbers: ER19-508-000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2018-12-06 GHG Inputs and Fallback Logic Tariff Clarification to be effective 2/5/2019.

Filed Date: 12/6/18.

Accession Number: 20181206-5304.

Comments Due: 5 p.m. ET 12/27/18.

Docket Numbers: ER19-509-000.

Applicants: South Carolina Electric & Gas Company.

Description: Notice of Cancellation of Wholesale Service Agreement (No. 8) of South Carolina Electric & Gas Company.

Filed Date: 12/6/18.

Accession Number: 20181206-5327.

Comments Due: 5 p.m. ET 12/27/18.

Docket Numbers: ER19-510-000.

Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.

Description: § 205(d) Rate Filing: 2018-12-07 SA 3220 Flying Cow Wind-OTP E&P (J493 J510) to be effective 12/1/2018.

Filed Date: 12/7/18.

Accession Number: 20181207-5002.

Comments Due: 5 p.m. ET 12/28/18.

Docket Numbers: ER19-511-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to the OATT, OA and RAA re: Peak Shaving Adjustment

Enhancements to be effective 2/5/2019.

Filed Date: 12/7/18.

Accession Number: 20181207-5024.

Comments Due: 5 p.m. ET 12/28/18.

Docket Numbers: ER19-512-000.

Applicants: San Diego Gas & Electric Company.

Description: § 205(d) Rate Filing: 2019 SDGE TACBAA update to Transmission Owner Tariff Filing to be effective 1/1/2019.

Filed Date: 12/7/18.

Accession Number: 20181207-5027.

Comments Due: 5 p.m. ET 12/28/18.

Docket Numbers: ER19-513-000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: GIA Portal Ridge Solar A Project SA No. 1048 to be effective 12/8/2018.

Filed Date: 12/7/18.

Accession Number: 20181207-5090.

Comments Due: 5 p.m. ET 12/28/18.

Docket Numbers: ER19-514-000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: GIA Windhub Solar B Project SA No. 1050 to be effective 12/8/2018.

Filed Date: 12/7/18.

Accession Number: 20181207-5096.

Comments Due: 5 p.m. ET 12/28/18.

Docket Numbers: ER19-515-000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: LGIA Desert Quartzite, LLC—Quartzite Solar 8 to be effective 2/6/2019.

Filed Date: 12/7/18.

Accession Number: 20181207-5101.

Comments Due: 5 p.m. ET 12/28/18.

Docket Numbers: ER19-516-000.

Applicants: Southern California Edison Company.

Description: Tariff Cancellation: Notices of Cancellation IFA & Distrib Serv Agmt AES Placerita Inc. to be effective 2/6/2019.

Filed Date: 12/7/18.

Accession Number: 20181207-5140.

Comments Due: 5 p.m. ET 12/28/18.

Docket Numbers: ER19-517-000.

Applicants: Interstate Power and Light Company.

Description: § 205(d) Rate Filing: Interstate Power & Light MBR Tariff to be effective 2/5/2019.

Filed Date: 12/7/18.

Accession Number: 20181207-5149.

Comments Due: 5 p.m. ET 12/28/18.

Docket Numbers: ER19-518-000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC-City of Kings Mountain, NC NITSA (SA-363) Amendment to be effective 1/1/2019.

Filed Date: 12/7/18.

Accession Number: 20181207-5150.

Comments Due: 5 p.m. ET 12/28/18.

Docket Numbers: ER19-519-000.

Applicants: Wisconsin Power and Light Company.

Description: § 205(d) Rate Filing: Wisconsin Power & Light Market-Based Rate Tariff to be effective 2/5/2019.

Filed Date: 12/7/18.

Accession Number: 20181207-5162.

Comments Due: 5 p.m. ET 12/28/18.

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: December 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018-26962 Filed 12-12-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. **EL19-25-000, QF18-1748-001, QF18-1749-001**]

Notice of Petition for Enforcement: Great Divide Wind Farm 2, LLC; Great Divide Wind Farm 3, LLC

Take notice that on December 6, 2018, pursuant to section 210(h)(2)(B) of the Public Utility Regulatory Policies Act of 1978 (PURPA), Great Divide Wind Farm 2 LLC and Great Divide Wind Farm 3 LLC (Project Companies or Petitioner) filed a Petition for Enforcement, requesting that the Federal Energy Regulatory Commission (Commission) initiate an enforcement action against New Mexico Public Regulation Commission to remedy their alleged improper implementation of PURPA, all as more fully explained in their 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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Petitioners.

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 December 27, 2018.

Dated: December 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018-26961 Filed 12-12-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6299-014]

Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, Protests: Dakota and Goodhue Counties

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Exemption.

b. *Project No.:* P-6299-014.

c. *Date Filed:* October 31, 2018.

d. *Applicant:* Dakota County, Minnesota.

e. *Name of Project:* Lake Byllesby Hydroelectric Project.

f. *Location of Project:* The project is located on the Cannon River, in the City of Cannon Falls, Dakota County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Mr. Joshua Petersen, Senior Water Resources Engineer, Dakota County Environmental Resources Department, 14955 Galaxie Avenue, Apple Valley MN 55124, (952) 891-7140, Joshua.Petersen@co.dakota.mn.us.

i. *FERC Contact:* Ms. Alicia Burtner, (202) 502-8038, Alicia.Burtner@ferc.gov.

j. *Deadline for filing comments, motions to interview, and protests:* January 7, 2019. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, and recommendations, 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-6299-014.

k. *Description of Request:* The exemptee proposes to modify, repair, or replace several project features associated with a proposed upgrade to its turbine generator units. The work would primarily involve construction to the gate structures, intake pier, and buttressing; replacement of the project draft tubes, turbines, and other generation equipment; repair or restoration of several historic features of the project powerhouse; and restoration work in the downstream river channel. The replacement of the turbines and related generation equipment would increase the project's maximum intake design flow from 650 cubic feet per second (cfs) to 1,050 cfs, resulting in an increase in installed generating capacity from 1.9 megawatts (MW) to an estimated 4.0 MW.

l. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE, Washington, DC 20426. The filing may also be viewed on the Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the Docket number (P-6299-014) excluding the last three digits in the docket number field to access the notice. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1-866-208-3676 or email FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, 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.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the request to upgrade the turbine generator units. 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. If an intervener 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. 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.

Dated: December 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018-26963 Filed 12-12-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19-390-000.

Applicants: Kinder Morgan Louisiana Pipeline LLC.

Description: eTariff filing per 1430: FERC Form No. 501-G to be effective N/A.

Filed Date: 12/6/18.

- Accession Number:* 20181206–5122.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–392–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: eTariff filing per 1430: FERC Form No. 501–G Report to be effective N/A.
Filed Date: 12/6/18.
Accession Number: 20181206–5135.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–393–000.
Applicants: Kinder Morgan Illinois Pipeline LLC.
Description: eTariff filing per 1430: FERC Form No. 501–G to be effective N/A.
Filed Date: 12/6/18.
Accession Number: 20181206–5137.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–394–000.
Applicants: Sea Robin Pipeline Company, LLC.
Description: eTariff filing per 1430: FERC Form No. 501–G Report to be effective N/A.
Filed Date: 12/6/18.
Accession Number: 20181206–5156.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–395–000.
Applicants: Natural Gas Pipeline Company of America.
Description: eTariff filing per 1430: FERC Form No. 501–G to be effective N/A.
Filed Date: 12/6/18.
Accession Number: 20181206–5157.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–396–000.
Applicants: MarkWest Pioneer, L.L.C.
Description: eTariff filing per 1430: FERC Form No. 501–G Filing to be effective N/A.
Filed Date: 12/6/18.
Accession Number: 20181206–5162.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–397–000.
Applicants: DBM Pipeline, LLC.
Description: eTariff filing per 1430: Form 501–G Filing to be effective N/A.
Filed Date: 12/6/18.
Accession Number: 20181206–5167.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–398–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (TRMC Redesignation) to be effective 12/7/2018.
Filed Date: 12/6/18.
Accession Number: 20181206–5168.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–399–000.
Applicants: Great Lakes Gas Transmission Limited Par.
Description: eTariff filing per 1430: GLGT Form 501–G Report to be effective N/A.
- Filed Date:* 12/6/18.
Accession Number: 20181206–5174.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–400–000.
Applicants: Nautilus Pipeline Company, L.L.C.
Description: eTariff filing per 1430: Nautilus FERC Form 501–G to be effective N/A.
Filed Date: 12/6/18.
Accession Number: 20181206–5176.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–401–000.
Applicants: Nautilus Pipeline Company, L.L.C.
Description: eTariff filing per 1440: Nautilus Limited Section 4 Filing to be effective 2/1/2019.
Filed Date: 12/6/18.
Accession Number: 20181206–5177.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–402–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: eTariff filing per 1430: FERC Form No. 501–G Report to be effective N/A.
Filed Date: 12/6/18.
Accession Number: 20181206–5180.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–403–000.
Applicants: ANR Pipeline Company.
Description: eTariff filing per 1430: ANR Form No. 501–G Report to be effective N/A.
Filed Date: 12/6/18.
Accession Number: 20181206–5181.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–403–000.
Applicants: ANR Pipeline Company.
Description: (doc-less) Motion to Intervene of Koch Energy Services, LLC. under RP19–403, *et al.*
Filed Date: 12/6/18.
Accession Number: 20181206–5182.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–404–000.
Applicants: Mojave Pipeline Company, L.L.C.
Description: eTariff filing per 1430: Mojave Form 501–G Filing to be effective N/A.
Filed Date: 12/6/18.
Accession Number: 20181206–5182.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–405–000.
Applicants: ANR Storage Company.
Description: eTariff filing per 1430: ANR Storage Form No. 501–G Report to be effective N/A.
Filed Date: 12/6/18.
Accession Number: 20181206–5187.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–405–000.
Applicants: ANR Storage Company
Description: (doc-less) Motion to Intervene of Koch Energy Services, LLC. under RP19–403, *et al.*
- Filed Date:* 12/6/18.
Accession Number: 20181206–5292.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–406–000.
Applicants: Columbia Gas Transmission, LLC.
Description: eTariff filing per 1430: Columbia Form No. 501–G Report to be effective N/A.
Filed Date: 12/6/18.
Accession Number: 20181206–5189.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–407–000.
Applicants: Transwestern Pipeline Company, LLC.
Description: eTariff filing per 1430: FERC Form No. 501–G Report to be effective N/A.
Filed Date: 12/6/18.
Accession Number: 20181206–5190.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–408–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: eTariff filing per 1430: Columbia Gulf Form No. 501–G Report to be effective N/A.
Filed Date: 12/6/18.
Accession Number: 20181206–5191.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–409–000.
Applicants: Great Lakes Gas Transmission Limited Par.
Description: eTariff filing per 1440: GLGT 501–G Limited Section 4 to be effective 2/1/2019.
Filed Date: 12/6/18.
Accession Number: 20181206–5192.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–410–000.
Applicants: Crossroads Pipeline Company.
Description: eTariff filing per 1430: Crossroads Form No. 501–G Report to be effective N/A.
Filed Date: 12/6/18.
Accession Number: 20181206–5193.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–411–000.
Applicants: Northern Border Pipeline Company.
Description: eTariff filing per 1430: Northern Border 501–G Filing to be effective N/A.
Filed Date: 12/6/18.
Accession Number: 20181206–5194.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–412–000.
Applicants: Rockies Express Pipeline LLC.
Description: eTariff filing per 1430: REX Form No. 501–G Report to be effective N/A.
Filed Date: 12/6/18.
Accession Number: 20181206–5195.
Comments Due: 5 p.m. ET 12/18./18.
Docket Numbers: RP19–413–000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: eTariff filing per 1430: Colorado Interstate Gas Form 501-G Filing to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5196.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-414-000.

Applicants: Northern Border Pipeline Company.

Description: eTariff filing per 1440: NBPL 501-G Limited Section 4 to be effective 2/1/2019.

Filed Date: 12/6/18.

Accession Number: 20181206-5197.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-415-000.

Applicants: Cimarron River Pipeline, LLC.

Description: eTariff filing per 1430: Form 501-G to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5198.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-416-000.

Applicants: Tuscarora Gas Transmission Company.

Description: eTariff filing per 1430: Tuscarora 501-G Filing to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5201.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-417-000.

Applicants: Cheniere Creole Trail Pipeline, L.P.

Description: eTariff filing per 1430: Cheniere Creole Trail Pipeline, LP FERC Form 501-G to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5209.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-418-000.

Applicants: NGO Transmission, Inc.

Description: eTariff filing per 1430: FERC Form No. 501-G Filing to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5231.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-419-000.

Applicants: Tuscarora Gas Transmission Company.

Description: eTariff filing per 1440: Tuscarora 501-G Lim Section 4 to be effective 2/1/2019.

Filed Date: 12/6/18.

Accession Number: 20181206-5221.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-420-000.

Applicants: Wyoming Interstate Company, L.L.C.

Description: eTariff filing per 1430: Wyoming Interstate Form 501-G Filing to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5224.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-421-000.

Applicants: National Grid LNG, LLC.
Description: eTariff filing per 1430: Form No. 501-G Informational Filing to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5225.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-422-000.

Applicants: Rover Pipeline LLC.

Description: eTariff filing per 1430: FERC Form No. 501-G Report to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5226.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-423-000.

Applicants: Tallgrass Interstate Gas Transmission, L.

Description: eTariff filing per 1430: TIGT Form No. 501-G Report to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5227.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-424-000.

Applicants: Pine Needle LNG Company, LLC.

Description: eTariff filing per 1430: Pine Needle Form No. 501-G Report to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5228.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-425-000.

Applicants: Sierrita Gas Pipeline LLC.

Description: eTariff filing per 1430: Sierrita Form 501-G Filing to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5235.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-426-000.

Applicants: TransColorado Gas

Transmission Company L.
Description: eTariff filing per 1430: TransColorado Form 501-G Filing to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5236.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-427-000.

Applicants: Honeoye Storage Corporation.

Description: Compliance filing Honeoye Storage Corp Resubmission of Approval of Stipulation and Agreement to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5239.
Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-428-000.

Applicants: Ruby Pipeline, L.L.C.

Description: eTariff filing per 1430: Ruby Form 501-G Filing to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5248.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-429-000.

Applicants: National Fuel Gas Supply Corporation.

Description: eTariff filing per 1430: NFGSC Form 501-G Filing to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5252.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-430-000.

Applicants: Cheyenne Plains Gas Pipeline Company, L.

Description: eTariff filing per 1430: Cheyenne Plains Form 501-G Filing to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5256.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-431-000.

Applicants: Gulf South Pipeline Company, LP.

Description: eTariff filing per 1430: FERC Form No. 501-G Filing to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5257.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-432-000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: eTariff filing per 1430: FERC Form No. 501-G Filing to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5258.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-433-000.

Applicants: KO Transmission Company.

Description: eTariff filing per 1430: Order No. 849 Compliance Filing—Form No. 501-G to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5261.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-434-000.

Applicants: Destin Pipeline Company, L.L.C.

Description: eTariff filing per 1430: Destin Form 501-G filing to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5262.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-435-000.

Applicants: Dauphin Island Gathering Partners.

Description: eTariff filing per 1430: Form 501-G to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206-5263.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19-436-000.

Applicants: Venice Gathering System, L.L.C.

Description: eTariff filing per 1430: Form 501–G Filing to be effective N/A.
Filed Date: 12/6/18.

Accession Number: 20181206–5273.
Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19–437–000.

Applicants: American Midstream (Midla), LLC.

Description: eTariff filing per 1430: Midla Submission of Form 501–G to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206–5281.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19–438–000.

Applicants: Trans-Union Interstate Pipeline, L.P.

Description: eTariff filing per 1430: Trans-Union Form 501–G to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206–5288.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19–439–000.

Applicants: Stagecoach Pipeline & Storage Company LL.

Description: eTariff filing per 1430: Stagecoach Pipeline & Storage Company LLC.—Form No. 501–G to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206–5289.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19–440–000.

Applicants: Florida Southeast Connection, LLC.

Description: eTariff filing per 1430: Form 501–G to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206–5303.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19–441–000.

Applicants: WTG Hugoton, LP.

Description: eTariff filing per 1430: WTG Hugoton FERC Form 501–G Filing to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206–5305.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19–442–000.

Applicants: West Texas Gas, Inc.

Description: eTariff filing per 1430: West Texas Gas FERC Form 501–G Filing to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206–5306.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19–443–000.

Applicants: Western Gas Interstate Company.

Description: eTariff filing per 1430: Western Gas Interstate FERC Form 501–G Filing to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206–5310.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19–444–000.

Applicants: Sabal Trail Transmission, LLC.

Description: eTariff filing per 1430: Sabal Trail Form 501–G to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206–5321.

Comments Due: 5 p.m. ET 12/18/18.

Docket Numbers: RP19–445–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: eTariff filing per 1430: 120618 Form 501–G Filing to be effective N/A.

Filed Date: 12/6/18.

Accession Number: 20181206–5326.

Comments Due: 5 p.m. ET 12/18/18.

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: December 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–26956 Filed 12–12–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–1–000]

Notice of Schedule for Environmental Review of the Palmyra to Ogden A-Line Project; Northern Natural Gas Company

On October 3, 2018, Northern Natural Gas Company (Northern) filed an application in Docket No. CP19–1–000 requesting a Certificate of Public Convenience and Necessity pursuant to section 7(b) of the Natural Gas Act to abandon certain natural gas pipeline facilities. The proposed project is known as the Palmyra to Ogden A-Line Project (Project), and would allow Northern to abandon approximately

146.6 miles of 24-inch-diameter pipeline to provide for safer long-term operation of the mainline.

On October 17, 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 May 13, 2019

90-day Federal Authorization

Decision Deadline August 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

Northern proposes to isolate and abandon by sale to DKM Enterprises, LLC (DKM) approximately 146.6 miles of 24-inch-diameter pipeline on Northern's M580A and M530A system (collectively referred to as the A-line) in Otoe and Cass counties in Nebraska, and Mills, Pottawattamie, Cass, Audubon, Guthrie, Greene, and Boone counties in Iowa. Northern indicates that DKM intends to salvage the abandoned pipeline.

To abandon the pipeline, Northern would disconnect and cap the A-line at five interconnections where it is linked to other system facilities. Ground disturbances would be limited to one location in Otoe County, Nebraska, and four locations in Mills, Guthrie, and Boone (two locations) counties, Iowa, where the A-line would be disconnected from Northern's existing pipeline system.

Background

On November 14, 2018 the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Palmyra to Ogden A-Line Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. Comments on the NOI should be received by the Commission in Washington, DC on or

before 5:00 p.m. Eastern Time on December 14, 2018. All substantive comments filed in the Commission's public record 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.*, CP19-1), 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: December 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018-26948 Filed 12-12-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19-464-000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Vermillion Power, L.L.C.

This is a supplemental notice in the above-referenced Innovative Vermillion Power, L.L.C.'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 December 27, 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: December 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018-26955 Filed 12-12-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD19-9-000]

Electric Quarterly Report Users Group Meeting; Notice of Electric Quarterly Report Users Group Meeting

Take notice that on February 14, 2019, staff of the Federal Energy Regulatory

Commission (Commission) will hold the next Electric Quarterly Report (EQR) Users Group meeting. The meeting will take place from 1:00 p.m. to 5:00 p.m. (EST) in the Commission Meeting Room at 888 First Street NE, Washington, DC 20426. All interested persons are invited to attend. For those unable to attend in person, access to the meeting will be available via webcast.

This meeting provides a forum for dialogue between Commission staff and EQR users to discuss potential improvements to the EQR program and the EQR filing process. Prior to the meeting, staff would like input on discussion topics. Individuals may suggest agenda topics for consideration by emailing EQRUsersGroup@ferc.gov.

Please note that matters pending before the Commission and subject to ex parte limitations cannot be discussed at this meeting. An agenda of the meeting will be provided in a subsequent notice.

Due to the nature of the discussion, those interested in participating are encouraged to attend in person. All interested persons (whether attending in person or via webcast) are asked to register online at <https://www.ferc.gov/whats-new/registration/02-14-19-form.asp>. There is no registration fee. Anyone with internet access can listen to the meeting by navigating to www.ferc.gov's Calendar of Events, locating the EQR Users Group Meeting on the Calendar, and clicking on the link to the webcast. The webcast will allow persons to listen to the technical conference and they can email questions during the meeting to EQRUsersGroup@ferc.gov.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to accessibility@ferc.gov or call toll free 1-866-208-3372 (voice) or 202-502-8659 (TTY), or send a FAX to 202-208-2106 with the required accommodations.

For more information about the EQR Users Group meeting, please contact Jeff Sanders of the Commission's Office of Enforcement at (202) 502-6455, or send an email to EQRUsersGroup@ferc.gov.

Dated: December 4, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018-26999 Filed 12-12-18; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2006-0407; FRL-9987-93-OAR]

Proposed Information Collection Request; Comment Request; EPA's ENERGY STAR Program in the Commercial and Industrial Sectors (Renewal)**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), "EPA's ENERGY STAR Program in the Commercial and Industrial Sectors" (EPA ICR No. 1772.08, OMB Control No. 2060-0347), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through September 30, 2019. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before February 11, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-OAR-2006-0407, online using www.regulations.gov (our preferred method), by email to a-and-r-Docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Cynthia Veit, Climate Protection Partnerships Division, (6202A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202-564-9494; fax number: 202-343-2204; email address: veit.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will

be collecting are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: EPA created ENERGY STAR as a voluntary program to help businesses and individuals protect the environment through superior energy efficiency. The program focuses on reducing utility-generated emissions by reducing the demand for energy. In 1991, EPA launched the Green Lights Program to encourage corporations, State and local governments, colleges and universities, and other organizations to adopt energy-efficient lighting as a profitable means of preventing pollution and improving lighting quality. Since then, EPA has rolled Green Lights into ENERGY STAR and expanded ENERGY STAR to encompass organization-wide energy performance improvement, such as building technology upgrades, product purchasing initiatives, and employee training. At the same time, EPA has streamlined the reporting requirements of ENERGY STAR and focused on providing incentives for improvements (e.g., ENERGY STAR awards program). EPA also makes tools and other

resources available over the Web to help the public overcome the barriers to evaluating their energy performance and investing in profitable improvements.

To join ENERGY STAR, organizations are asked to complete a Partnership Application that establishes their commitment to energy efficiency. Partners agree to undertake efforts such as measuring, tracking, and benchmarking their organization's energy performance by using tools such as those offered by ENERGY STAR; developing and implementing a plan to improve energy performance in their facilities and operations by adopting a strategy provided by ENERGY STAR; and educating staff and the public about their Partnership with ENERGY STAR, and highlighting achievements with the ENERGY STAR, where available.

Partners also may be asked to periodically submit information to EPA as needed to assist in program implementation.

Partnership in ENERGY STAR is voluntary and can be terminated by Partners or EPA at any time. EPA does not expect organizations to join the program unless they expect participation to be cost effective and otherwise beneficial for them.

In addition, Partners and other interested parties can seek recognition and help EPA promote energy-efficient technologies by evaluating the efficiency of their buildings using EPA's on-line tools (e.g., Portfolio Manager) and applying for recognition. EPA does not expect any information collected under ENERGY STAR to be Confidential Business Information (CBI).

Form Numbers: 5900-19, 5900-21, 5900-22, 5900-33, 5900-89, 5900-195, 5900-197, 5900-198, 5900-262, 5900-263, 5900-264, 5900-265, 5900-375, 5900-376, 5900-377, 5900-378, 5900-379, 5900-380, 5900-381, 5900-382, 5900-383, 5900-384, 5900-385, 5900-386, and 5900-387.

Respondents/affected entities: Participants in EPA's ENERGY STAR Program in the commercial and industrial sectors.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 51,515 (total).

Frequency of response: One-time, annually, or on occasion.

Total estimated burden: 254,084 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$21,784,161 (per year), includes \$10,827,727 in annualized capital or operation & maintenance costs.

Changes in Estimates: The burden estimates presented in this notice are

from the last approval. EPA is currently evaluating and updating these estimates as part of the ICR renewal process. EPA will discuss its updated estimates, as well as changes from the last approval, in the next **Federal Register** notice to be issued for this renewal.

Dated: November 19, 2018.

Carolyn Snyder,

Director, Climate Protection Partnerships Division.

[FR Doc. 2018–27048 Filed 12–12–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9987–88–Region 5]

Re-Establishment of the Great Lakes Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of re-establishment of Great Lakes Advisory Board.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the re-establishment of the Great Lakes Advisory Board (GLAB).

FOR FURTHER INFORMATION CONTACT: Edlynzia Barnes, Designated Federal Officer (DFO), Great Lakes National Program Office, Environmental Protection Agency, 77 W Jackson Boulevard, Chicago, IL; telephone number: 312–886–6249; email address: Barnes.Edlynzia@epa.gov.

SUPPLEMENTARY INFORMATION: The GLAB is being re-established in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix 2, as amended) and 41 CFR 102–3.50(d). The Advisory Board will provide advice and recommendations on matters related to the Great Lakes Restoration Initiative. The Advisory Board will also advise on domestic matters related to implementation of the Great Lakes Water Quality Agreement between the U.S. and Canada.

The major objectives will be to provide advice and recommendations on:

- a. Great Lakes protection and restoration activities.
- b. Long term goals, objectives, and priorities for Great Lakes protection and restoration.
- c. Other issues identified by the Great Lakes Interagency Task Force/Regional Working Group.

EPA has determined that this federal advisory committee is in the public interest and will assist the EPA in performing its duties and responsibilities. Copies of the GLAB's

charter will be filed with the appropriate congressional committees and the Library of Congress.

The GLAB expects to meet in person or by electronic means (e.g., telephone, videoconference, webcast, etc.) approximately two (2) times per year, or as needed and approved by the Designated Federal Officer (DFO). Meetings will be held in the Great Lakes region.

Membership: The GLAB will be composed of approximately fifteen (15) members who will generally serve as representative members of non-federal interests. Nominations for membership will be solicited through the **Federal Register** and other sources. In selecting members, EPA will consider candidates representing a broad range of interests relating to the Great Lakes, including, but not limited to, environmental groups, industry, business groups, agricultural groups, citizen groups, environmental justice groups, foundations, academia and state, local and tribal governments. In selecting members, EPA will consider the differing perspectives and breadth of collective experience needed to address the EPA's charge.

Dated: December 3, 2018.

Cathy Stepp,

Regional Administrator, Great Lakes National Program Manager.

[FR Doc. 2018–27050 Filed 12–12–18; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Regular Meeting; Farm Credit System Insurance Corporation Board

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation (Board).

DATES: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 13, 2018, from 11:00 a.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102. Submit attendance requests via email to VisitorRequest@FCA.gov. See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Farm Credit System Insurance Corporation Board,

(703) 883–4009, TTY (703) 883–4056, aultmand@fca.gov.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to VisitorRequest@FCA.gov at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit System Insurance Corporation Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- September 19, 2018

B. Business Reports

- September 30, 2018 Financial Reports
- Reports on Insured and Other Obligations
- Quarterly Report on Annual Performance Plan

Closed Session

- Confidential Report on Insurance Risk

Closed Session—Audit Committee

- Audit Plan for the Year Ended December 31, 2018
- Executive Session of the Audit Committee with Auditor

Dated: December 3, 2018.

Dale Aultman,

Secretary, Farm Credit System Insurance Corporation.

[FR Doc. 2018–26993 Filed 12–12–18; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at

the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 28, 2018.

A. *Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Janet Ranniger, Manning, Iowa, individually and as trustee of the Janet Ranniger Trust, Manning, Iowa, and as a group acting in concert with Gaylin R. Ranniger, Alex J. Ranniger, Abbey Stangl, and Jacob Ranniger, all of Manning, Iowa;* to retain and acquire shares of Manning Financial Services, Inc. and thereby indirectly retain and acquire The First National Bank of Manning, both of Manning, Iowa.

Board of Governors of the Federal Reserve System, December 10, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–26977 Filed 12–12–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0048; Docket No. 2018–0003; Sequence No. 9]

Submission for OMB Review; Authorized Negotiators and Integrity of Unit Prices

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding authorized negotiators and integrity of unit prices.

DATES: Submit comments on or before January 14, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention:

Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to <http://www.regulations.gov> and follow the instructions on the site.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0048, Authorized Negotiators and Integrity of Unit Prices.

Instructions: Please submit comments only and cite Information Collection 9000–0048, Authorized Negotiators and Integrity of Unit Prices, in all correspondence related to this collection. 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: Mr. Michael O. Jackson, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202–208–4949, or via email to michaelo.jackson@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection requirement, OMB Control No. 9000–0048, currently titled “Authorized Negotiators,” is proposed to be retitled “Authorized Negotiators and Integrity of Unit Prices,” due to consolidation with currently approved information collection requirement OMB Control No. 9000–0080, Integrity of Unit Prices.

This information collection requirement pertains to information that offerors and contractors must submit in response to the requirements in the Federal Acquisition Regulation (FAR) as follows:

1. Authorized Negotiators—FAR 52.215–1(c)(2)(iv). Firms offering supplies or services to the Government under negotiated solicitations must provide the names, titles, and telephone and facsimile numbers (and electronic addresses if available) of authorized negotiators to assure that discussions are held with authorized individuals.

2. Integrity of Unit Prices—FAR 52.215–14. This clause requires offerors

and contractors under negotiated solicitations and contracts to identify those supplies which they will not manufacture or to which they will not contribute significant value, if requested by the contracting officer or when contracting without adequate price competition. This requirement does not apply to: Contracts below the simplified acquisition threshold, construction and architect-engineering services, utility services, service contracts where supplies are not required, commercial items, and contracts for petroleum products.

B. Public Comment

A 60-day notice published in the **Federal Register** at 83 FR 45129, on September 5, 2018. No comments were received.

C. Annual Reporting Burden

1. Authorized Negotiators—FAR 52.215–1(c)(2)(iv)

Respondents: 708,016.

Responses per Respondent: 1.

Total Annual Responses: 708,016.

Hours per Response: 0.017.

Total Burden Hours: 12,036.

2. Integrity of Unit Prices—FAR 52.215–14

Respondents: 2,808.

Responses per Respondent: 2.375.

Total Annual Responses: 6,669.

Hours per Response: 1.

Total Burden Hours: 6,669.

3. Summary

Respondents: 710,824.

Total Annual Responses: 714,685.

Total Burden Hours: 18,705.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: Annually.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0048, Authorized Negotiators and Integrity of Unit Prices, in all correspondence.

Dated: December 10, 2018.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2018–27020 Filed 12–12–18; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

[OMB Control No. 9000–0027; Docket No. 2018–0003; Sequence No. 25]

**Information Collection; Value
Engineering Requirements**

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act and the Office of Management and Budget (OMB) regulations, the Federal Acquisition Regulation (FAR) Council invites the public to comment on a renewal of an approved information collection requirement concerning value engineering requirements.

DATES: Submit comments on or before February 11, 2019.

ADDRESSES: The FAR Council invites interested persons to submit comments on this information collection by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to <http://www.regulations.gov> and follow the instructions on the site.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0027, Value Engineering Requirements.

Instructions: All items submitted must cite “Information Collection 9000–0027, Value Engineering Requirements.” 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: Ms. Marilyn E. Chambers, Procurement Analyst, 202–285–7380, or marilyn.chambers@gsa.gov.

SUPPLEMENTARY INFORMATION:**A. Purpose**

Per Federal Acquisition Regulation Part 48, value engineering is the technique by which contractors (1) voluntarily suggest methods for performing more economically and share in any resulting savings, or (2) are required to establish a program to identify and submit to the Government methods for performing more economically. These recommendations are submitted to the Government as value engineering change proposals (VECP’s) and they must include specific information. This information is needed to enable the Government to evaluate the VECP and, if accepted, to arrange for an equitable sharing plan.

B. Annual Reporting Burden

Respondents: 794.

Responses per Respondent: 2.

Annual Responses: 1,588.

Hours per Response: 15.

Total Burden Hours: 23,820.

Affected Public: Business or other for-profit entities.

Reporting Frequency: On occasion.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0027, Value Engineering Requirements, in all correspondence.

Dated: December 10, 2018.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2018–27019 Filed 12–12–18; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES****Administration for Children and
Families****Submission for OMB Review;
Comment Request**

Title: Regional Partnership Grant National Cross-Site Evaluation and Evaluation Technical Assistance.
OMB No.: 0970–NEW.

Description: The Children’s Bureau (CB) within the Administration for Children and Families of the U.S. Department of Health and Human Services seeks approval to collect information for the Regional Partnership Grants to Increase the Well-being of and to Improve Permanency Outcomes for Children Affected by Substance Abuse (known as the Regional Partnership Grants Program or “RPG”) Cross-Site Evaluation and Evaluation-Related Technical Assistance project. The Child and Family Services Improvement and Innovation Act (Pub. L. 112–34) includes a targeted grants program (section 437(f) of the Social Security Act) that directs the Secretary of Health and Human Services to reserve a specified portion of the appropriation for these Regional Partnership Grants, to be used to improve the well-being of children affected by substance abuse. Under three prior rounds of RPG, the Children’s Bureau has issued 74 grants to organizations such as child welfare or substance abuse treatment providers or family court systems to develop interagency collaborations and integration of programs, activities, and services designed to increase well-being, improve permanency, and enhance the safety of children who are in an out-of-home placement or are at risk of being placed in out-of-home care as a result of a parent’s or caretaker’s substance abuse. In 2017, CB awarded grants to a fourth cohort of 17 grantees and in 2018 they plan to award 10 grants to a fifth cohort.

The RPG cross-site evaluation will extend our understanding of what types of programs and services grantees provided to participants, how grantees leveraged their partnerships to coordinate services for children and families, and what the outcomes were for children and families enrolled in RPG programs. First, the cross-site evaluation will describe the characteristics of participants served by RPG programs, the types of services provided to families, the dosage of each type of service received by families, and the level of participant engagement with the services provided. Second, the

cross-site will assess the coordination of partners' service systems (e.g., shared participant data, joint staff training) to better understand how partners' collaborative effort affects the array of services offered to families. The cross-site evaluation will also focus more deeply on the partnership between the child welfare and substance use disorder (SUD) treatment agencies, to add to the research base about how these agencies can collaborate to address the needs of children and families affected by SUD. Finally, the evaluation will assess the outcomes of children and adults served through the RPG program.

The evaluation is being undertaken by the Children's Bureau and its contractor Mathematica Policy Research. The evaluation is being implemented by Mathematica Policy Research and its subcontractor, WRMA Inc.

The RPG Cross-Site Evaluation will include the following data collection activities:

1. Site visits and key informant interviews. The cross-site evaluation team will visit up to 21 sites to better understand the partnership and coordination between the child welfare and SUD treatment agencies. The remaining six grantees will participate in telephone interviews to gather similar information about their design and implementation. The site visits and phone interviews will focus on the RPG planning process; how and why particular services were selected; the ability of the child welfare, substance use disorder treatment, and other service systems to collaborate and support quality implementation of the RPG services; challenges experienced; and the potential for sustaining the collaborations and services after RPG funding ends.

2. Partner survey. To describe the interagency collaboration within RPG sites, grantees and their partners will participate in an online survey once during the grant period. One person from each organization knowledgeable about the RPG program will be invited to participate in the survey. The survey

will collect information about communication and service coordination among partners. The survey will also collect information on characteristics of strong partnerships (e.g., data sharing agreements, colocation of staff, referral procedures, and cross-staff training).

3. Semi-annual progress reports. The semi-annual progress reports will be used to obtain updated information from grantee project directors about their program operations and partnerships, including any changes from prior periods. The CB has tailored the semi-annual progress reports to collect information on grantees' programs and other services grantees implement, the target population for the RPG program, and grantees' perceived successes and challenges to implementation.

4. Enrollment, client, and service data. To document participant characteristics and their enrollment in RPG services, all grantees will provide data on family characteristics, and enrollment of and services provided to RPG families. These data include demographic information on family members, dates of entry into and exit from RPG services, and information on RPG service dosage. These data will be submitted on an ongoing basis by staff at the grantee organizations into an information system developed by the cross-site evaluation team.

5. Outcome and impact data. To measure participant outcomes, all grantees will collect self-administered standardized instruments from RPG adults. The standardized instruments used in RPG collect information on child well-being, adult and family functioning, and adult substance use. Grantees will share the responses on these self-report instruments with the cross-site evaluation team. Grantees will also obtain administrative data on a common set of child welfare and substance use disorder treatment data elements.

In addition to conducting local evaluations and participating in the RPG Cross-Site Evaluation, the RPG grantees

are legislatively required to report performance indicators aligned with their proposed program strategies and activities. A key strategy of the RPG Cross-Site Evaluation is to minimize burden on the grantees by ensuring that the cross-site evaluation, which includes all grantees in a study that collects data to report on implementation, the partnerships, and participant characteristics and outcomes, fully meets the need for performance reporting. Thus, rather than collecting separate evaluation and performance indicator data, the grantees need only participate in the cross-site evaluation. In addition, using the standardized instruments that the Children's Bureau has specified will ensure that grantees have valid and reliable data on child and family outcomes for their local evaluations. The inclusion of an impact study conducted on a subset of grantees with rigorous designs will also provide the Children's Bureau, Congress, grantees, providers, and researchers with information about the effectiveness of RPG programs.

A 60-Day **Federal Register** Notice was published for this study on October 10, 2018. This 30-Day **Federal Register** Notice covers the following data collection activities: (1) The site visits with grantees; (2) the web-based survey of grantee partners (3) the semi-annual progress reports; (4) enrollment and service data provided by grantees; and (6) outcome and impact data provided by grantees.

Respondents. Respondents include grantee staff or contractors (such as local evaluators) and partner staff. Specific types of respondents and the expected number per data collection effort are noted in the burden table below.

Annual burden estimates. The following instruments are proposed for public comment under this 30-Day **Federal Register** Notice. Burden for all components is annualized over three years.

RPG CROSS-SITE EVALUATION ANNUALIZED BURDEN ESTIMATES

Data collection activity	Total number of respondents	Number of responses per respondent (each year)	Average burden hours per response (in hours)	Estimated total burden hours	Total annual burden hours
Site Visit and Key Informant Data Collection					
Program director in-person interview	21	.33	2	42	14
Program manager/supervisor in-person interview	21	.33	1	21	7
Partner representative interviews	63	.33	1	63	21
Frontline staff interview	42	.33	1	42	14
Program director/manager phone interview	12	.33	1	4.0	12

RPG CROSS-SITE EVALUATION ANNUALIZED BURDEN ESTIMATES—Continued

Data collection activity	Total number of respondents	Number of responses per respondent (each year)	Average burden hours per response (in hours)	Estimated total burden hours	Total annual burden hours
Partner survey	135	.33	0.42	56.3	18.8
Enrollment, client and service data					
Semi-annual progress reports	27	2	16.5	2,673	891
Case enrollment data	81	43	0.25	2,612.3	870.8
Case closure	81	43	0.017	174.2	58.1
Case closure—prenatal	81	33	0.017	133.7	44.6
Service log entries	162	2,288	0.03	37,065	12,355
Outcome and impact data					
<i>Administrative Data:</i>					
Obtain access to administrative data	27	1	42.6	3,450.6	1150.2
Report administrative data	27	2	144	23,328	7,776
<i>Standardized instruments:</i>					
Review and adopt reporting templates	27	.33	8	216	72
Data entry for standardized instruments	27	130	1.25	13,162.5	4,387.5
Review records and submit	27	2	25	4,050	1,350
Data entry for comparison study sites (22 grantees) ...	22	130	1.25	10,725	3,575
Estimated Total Burden Hours				97,827	32,609

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: OIRA_SUBMISSION@OMB.EOP.GOV, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018-27041 Filed 12-12-18; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2018-P-1734]

Determination That IC-GREEN (Indocyanine Green for Injection), 10 Milligrams/Vial, 40 Milligrams/Vial, and 50 Milligrams/Vial Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that IC-GREEN (indocyanine green for injection), 10 milligrams (mg)/vial, 40 mg/vial, and 50 mg/vial, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for indocyanine green for injection, 10 mg/vial, 40 mg/vial, and 50 mg/vial if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT:

Heather A. Dorsey, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6219, Silver Spring, MD 20993-0002, 301-796-3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term

Restoration Act of 1984 (Pub. L. 98-417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the “listed drug,” which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the “Approved Drug Products with Therapeutic Equivalence Evaluations,” which is known generally as the “Orange Book.” Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug’s NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn

from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

IC-GREEN (indocyanine green for injection), 10 mg/vial, 25 mg/vial, 40 mg/vial, and 50 mg/vial, is the subject of NDA 011525, held by Akorn, Inc. IC-GREEN (indocyanine green for injection), 25 mg/vial and 50 mg/vial, became conditionally effective on February 2, 1959. IC-GREEN (indocyanine green for injection), 10 mg/vial and 40 mg/vial, became conditionally effective on March 20, 1967. NDA 011525 was included in the Drug Efficacy Study Implementation review, (35 FR 12231 (July 30, 1970); 42 FR 31495 (June 21, 1977)) and the application was approved on August 2, 1989. IC-GREEN (indocyanine green for injection) is indicated for determining cardiac output, hepatic function, and liver blood flow, and for ophthalmic angiography.

IC-GREEN (indocyanine green for injection), 10 mg/vial, 40 mg/vial, and 50 mg/vial, is currently listed in the “Discontinued Drug Product List” section of the Orange Book.

Foley & Lardner LLP submitted a citizen petition dated May 3, 2018 (Docket No. FDA-2018-P-1734), under 21 CFR 10.30, requesting that the Agency determine whether IC-GREEN (indocyanine green for injection), 10 mg/vial, 40 mg/vial, and 50 mg/vial, was withdrawn from sale for reasons of safety or effectiveness. In 1987, IC-GREEN (indocyanine green for injection), 10 mg/vial and 40 mg/vial were discontinued from marketing. In 1996, Akorn, Inc. discontinued marketing IC-GREEN (indocyanine green for injection), 50mg/vial.

After considering the citizen petition and reviewing Agency records, and based on the information we have at this time, FDA has determined under

§ 314.161 that IC-GREEN (indocyanine green for injection), 10 mg/vial, 40 mg/vial, and 50 mg/vial, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that IC-GREEN (indocyanine green for injection), 10 mg/vial, 40 mg/vial, and 50 mg/vial, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of IC-GREEN (indocyanine green for injection), 10 mg/vial, 40 mg/vial, and 50 mg/vial from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that these drug products were not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list IC-GREEN (indocyanine green for injection), 10 mg/vial, 40 mg/vial, and 50 mg/vial, in the “Discontinued Drug Product List” section of the Orange Book. The “Discontinued Drug Product List” delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to IC-GREEN (indocyanine green for injection), 10 mg/vial, 40 mg/vial, and 50 mg/vial, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: December 10, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018-26975 Filed 12-12-18; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2018-N-4416]

Allied Pharma, Inc., et al.; Withdrawal of Approval of Nine Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of nine abbreviated new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of January 14, 2019.

FOR FURTHER INFORMATION CONTACT: Trang Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1671, Silver Spring, MD 20993-0002, 240-402-7945, Trang.Tran@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
ANDA 073079	Loperamide Hydrochloride (HCl) Oral Solution, 1 milligram (mg)/5 milliliters.	Allied Pharma, Inc., 20 Corrielle St., Fords, NJ 08863.
ANDA 076741	Ibuprofen Tablets USP, 100 mg	LNK International, Inc., 145 Ricefield Ln., Hauppauge, NY 11788.
ANDA 080210	Lidocaine Ointment, 5%	Belmora, LLC, 2231 Crystal Dr., #1000, Arlington, VA 22202.
ANDA 085497	Phendimetrazine Tartrate Tablets, 35 mg	Virtus Pharmaceuticals, LLC, 2050 Cabot Blvd. West, 2nd Floor, Langhorne, PA 19047.
ANDA 085695	Phendimetrazine Tartrate Capsules, 35 mg	Do.
ANDA 086365	Phendimetrazine Tartrate Tablets, 35 mg	Do.
ANDA 086399	Theolair (theophylline) Tablets, 125 mg and 250 mg	Medicis Pharmaceutical Corp., c/o Valeant Pharmaceuticals North America, LLC, 400 Somerset Corporate Blvd., Bridgewater, NJ 08807.
ANDA 087378	Phendimetrazine Tartrate Extended-Release Capsules, 105 mg.	Virtus Pharmaceuticals, LLC.
ANDA 202030	Bromfenac Sodium Ophthalmic Solution, Equivalent to 0.09% Acid.	Amring Pharmaceuticals, Inc., 1235 Westlakes Dr., Suite 205, Berwyn, PA 19312.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of January 14, 2019. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on January 14, 2019, may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: December 7, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–26947 Filed 12–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–3984]

Data Integrity and Compliance With Drug CGMP: Questions and Answers; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled “Data Integrity and Compliance With Drug CGMP: Questions and Answers.” The purpose of the guidance is to clarify the role of data integrity in current good manufacturing practice (CGMP) for drugs. (Unless otherwise noted, the term CGMP refers to CGMPs for drugs, including biologics.) The guidance has been developed in response to an increase in findings of data integrity lapses in recent inspections. FDA expects that all data be reliable and accurate. CGMP regulations and guidance allow for flexible and risk-based strategies to prevent and detect data integrity issues. Firms should implement meaningful and effective strategies to manage their data integrity risks based on their process understanding and knowledge management of technologies and business models.

DATES: The announcement of the guidance is published in the **Federal Register** on December 13, 2018.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2018–D–3984 for “Data Integrity and Compliance With Drug CGMP: Questions and Answers.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper

submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002; or the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Karen Takahashi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 75, Rm. 6686, Silver Spring, MD 20993-0002, 301-796-3191; Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911; or Jonathan Bray, Center for Veterinary Medicine (HFV-232), Food and Drug Administration, 7519 Standish Pl., Rm. 130, Rockville, MD 20855, 240-402-5623.

SUPPLEMENTARY INFORMATION:**I. Background**

FDA is announcing the availability of a guidance for industry entitled "Data Integrity and Compliance With Drug CGMP: Questions and Answers." In recent years, FDA has increasingly observed CGMP violations involving data integrity during CGMP inspections. This is troubling because ensuring data integrity is an important component of industry's responsibility to ensure the safety, efficacy, and quality of drugs, and of FDA's ability to protect the public health. These data integrity-related CGMP violations have led to numerous regulatory actions, including warning letters, import alerts, and consent decrees. The underlying premise in 21 CFR 210.1 and 212.2 is that CGMP sets forth minimum requirements to assure that drugs meet the standards of the Federal Food, Drug, and Cosmetic Act regarding safety, identity, strength, quality, and purity.

The guidance addresses specific questions about how data integrity relates to compliance with CGMP for drugs, as well as more general data integrity concepts, in question and answer format. This guidance was published as a draft guidance in April 2016—"Data Integrity and Compliance With CGMP"—and has been revised in response to comments from the docket for clarity. Other comments to the docket requested additional details on FDA's thinking on current best practices and additional examples. The Agency has used clarifying language and additional examples that also address best practices for ensuring data integrity. A paragraph regarding independent security role assignments for small operations or facilities was removed because the guidance for industry "PET Drugs—Current Good Manufacturing Practice (CGMP)" covering this topic is sufficiently clear.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115).

The guidance represents the current thinking of FDA on data integrity and compliance with drug CGMP. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that 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 parts 210 and 211 (CGMPs), 212 (positron emission tomography CGMPs), and 11 (electronic records and signatures) have been approved under OMB control numbers 0910-0139, 0910-0667, and 0910-0303, respectively.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either <https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm>, <https://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm>, or <https://www.regulations.gov>.

Dated: December 7, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018-26957 Filed 12-12-18; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA-2018-N-4609]

Issuance of Priority Review Voucher; Rare Pediatric Disease Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to award priority review vouchers to sponsors of

approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the award of the priority review voucher. FDA has determined that GAMIFANT (emapalumab-lzsg) Injection, manufactured by Novimmune S.A., meets the criteria for a priority review voucher.

FOR FURTHER INFORMATION CONTACT:

Althea Cuff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-4061, Fax: 301-796-9856, email: althea.cuff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), which was added by FDASIA, FDA will award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA has determined that GAMIFANT (emapalumab-lzsg) Injection, manufactured by Novimmune S.A., meets the criteria for a priority review voucher. GAMIFANT (emapalumab-lzsg) Injection is indicated for the treatment of adult and pediatric (newborn and older) patients with primary hemophagocytic lymphohistiocytosis (HLH) with refractory, recurrent or progressive disease or intolerance with conventional HLH therapy.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to <https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm>. For further information about GAMIFANT (emapalumab-lzsg) Injection, go to the "Drugs@FDA" website at <https://www.accessdata.fda.gov/scripts/cder/daf/>.

Dated: December 10, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018-27043 Filed 12-12-18; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering; Special Emphasis Panel BRAIN Initiative: Theories, Models and Methods for Analysis of Complex Data from the Brain (2019/5).

Date: January 16, 2019.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Circle, 1500 New Hampshire Avenue NW, Washington, DC 20036.

Contact Person: Dennis Hlasta, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 496-4794, dennis.hlasta@mail.nih.gov.

Dated: December 7, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018-26959 Filed 12-12-18; 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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant and/or contract proposals applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI UG1 and U24 Chemoprevention Clinical Trials Network.

Date: January 15, 2019.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W102, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Shakeel Ahmad, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W102, Bethesda, MD 20892-9750, 240-276-6349, ahmads@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP-2: SBIR Contract Review.

Date: February 6, 2019.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W102, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Shakeel Ahmad, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W102, Bethesda, MD 20892-9750, 240-276-6349, ahmads@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP-5: SBIR Contract Review.

Date: February 21, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 6E034, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W260, Bethesda, MD 20892-9750, 240-276-5856, nadeem.khan@nih.gov.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee I—Transition to Independence.

Date: February 21-22, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Delia Tang, M.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W602, Bethesda, MD 20892-9750, 240-276-6456, tangd@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; R25 Review.

Date: March 6, 2019.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W110, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Robert E. Bird, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W110, Bethesda, MD 20892-9750, 240-276-6344, birdr@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; UH2/UH3 Review.

Date: March 7, 2019.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W110, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Robert E. Bird, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W110, Bethesda, MD 20892-9750, 240-276-6344, birdr@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP-8: NCI Clinical and Translational R21 and Omnibus R03.

Date: March 7-8, 2019.

Time: 6:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Reed Graves, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W106, Bethesda, MD 20892-9750, 240-276-6384, gravesr@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; Informatics Tools for Cancer Research and Surveillance.

Date: March 21-22, 2019.

Time: 5:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National

Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W260, Bethesda, MD 20892–9750, 240–276–5856, nadeem.khan@nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP–6: SBIR Contract Review.

Date: April 18, 2019.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W106, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Reed Graves, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W106, Bethesda, MD 20892–9750, 240–276–6384, gravesr@mail.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: December 7, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–26960 Filed 12–12–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as mentioned, notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and

personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: January 25, 2019.

Closed: 8:30 a.m. to 9:40 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, Room C and D, 6001 Executive Boulevard, Rockville, MD 20852.

Open: 9:40 a.m. to 1:50 p.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: National Institutes of Health, Neuroscience Center, Room C and D, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Craig A. Jordan, Ph.D., Director, Division of Extramural Activities, NIDCD, NIH, Room 8345, MSC 9670, 6001 Executive Blvd., Bethesda, MD 20892–9670, 301–496–8693, jordanc@nidcd.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <https://www.nidcd.nih.gov/about/advisory-council>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: December 7, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–26958 Filed 12–12–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1871]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository

address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Map Information eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood

hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more

stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Colorado:						
Adams	City of Westminster (18-08-0635P).	The Honorable Herb Atchison, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	City Hall, 4800 West 92nd Avenue, Westminster, CO 80031.	https://msc.fema.gov/portal/advanceSearch .	Feb. 14, 2019 ..	080008
Adams	Unincorporated areas of Adams County (18-08-0635P).	The Honorable Mary Hodge, Chair, Adams County Board of Commissioners, 4430 South Adams County Parkway, 5th Floor, Suite C5000A, Brighton, CO 80601.	Adams County, Development Engineering Services Department, 4430 South Adams County Parkway, Brighton, CO 80601.	https://msc.fema.gov/portal/advanceSearch .	Feb. 14, 2019 ..	080001
Boulder	City of Boulder (18-08-1141P).	The Honorable Suzanne Jones, Mayor, City of Boulder, 1777 Broadway Street, Boulder, CO 80306.	Central Records Department, 1777 Broadway Street, Boulder, CO 80306.	https://msc.fema.gov/portal/advanceSearch .	Mar. 5, 2019	080024
Garfield	City of Rifle (18-08-0695P).	Mr. Scott Hahn, Manager, City of Rifle, 202 Railroad Avenue, Rifle, CO 81650.	City Hall, 202 Railroad Avenue, Rifle, CO 81650.	https://msc.fema.gov/portal/advanceSearch .	Feb. 8, 2019	085078
Garfield	Unincorporated areas of Garfield County (18-08-0695P).	The Honorable John Martin, Chairman, Garfield County Board of Commissioners, 108 8th Street, Suite 101, Glenwood Springs, CO 81601.	Garfield County Courthouse, 108 8th Street, Glenwood Springs, CO 81601.	https://msc.fema.gov/portal/advanceSearch .	Feb. 8, 2019	080205
Larimer	City of Fort Collins (17-08-1354P).	The Honorable Wade Troxell, Mayor, City of Fort Collins, 300 LaPorte Avenue, Fort Collins, CO 80521.	Stormwater Utilities Department, 700 Wood Street, Fort Collins, CO 80521.	https://msc.fema.gov/portal/advanceSearch .	Feb. 21, 2019 ..	080102
Larimer	Town of Timnath (17-08-1354P).	The Honorable Jill Grossman-Belisle, Mayor, Town of Timnath, 4800 Goodman Street, Timnath, CO 80547.	Town Hall, 4800 Goodman Street, Timnath, CO 80547.	https://msc.fema.gov/portal/advanceSearch .	Feb. 21, 2019 ..	080005
Larimer	Unincorporated areas of Larimer County (17-08-1354P).	The Honorable Steve Johnson, Chairman, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, CO 80522.	Larimer County Engineering Department, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521.	https://msc.fema.gov/portal/advanceSearch .	Feb. 21, 2019 ..	080101
Connecticut:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Fairfield	City of Norwalk (18-01-1147P).	The Honorable Harry W. Rilling, Mayor, City of Norwalk, 125 East Avenue, Norwalk, CT 06851.	Planning and Zoning Department, 125 East Avenue, Norwalk, CT 06851.	https://msc.fema.gov/portal/advanceSearch .	Feb. 21, 2019 ..	090012
Florida:						
Broward	City of Parkland (18-04-4986P).	The Honorable Christine Hunschofsky, Mayor, City of Parkland, 6600 University Drive, Parkland, FL 33067.	City Hall, 6600 University Drive, Parkland, FL 33067.	https://msc.fema.gov/portal/advanceSearch .	Mar. 5, 2019	120051
Lee	City of Sanibel (18-04-3740P).	The Honorable Kevin Ruane, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957.	Planning and Code Enforcement Department, 800 Dunlop Road, Sanibel, FL 33957.	https://msc.fema.gov/portal/advanceSearch .	Feb. 19, 2019 ..	120402
Monroe	Unincorporated areas of Monroe County (18-04-6042P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	Monroe County Building Department, 9400 Overseas Highway, Suite 300, Marathon, FL 33050.	https://msc.fema.gov/portal/advanceSearch .	Feb. 22, 2019 ..	125129
Monroe	Unincorporated areas of Monroe County (18-04-6309P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	Monroe County Building Department, 9400 Overseas Highway, Suite 300, Marathon, FL 33050.	https://msc.fema.gov/portal/advanceSearch .	Mar. 6, 2019	125129
Pasco	Unincorporated areas of Pasco County (17-04-7747P).	The Honorable Mike L. Wells, Chairman, Pasco County Board of Commissioners, 8731 Citizens Drive, Suite 100, New Port Richey, FL 34654.	Pasco County Building and Construction Services Department, 8731 Citizens Drive, New Port Richey, FL 34654.	https://msc.fema.gov/portal/advanceSearch .	Feb. 28, 2019 ..	120230
Polk	Unincorporated areas of Polk County (18-04-5171P).	The Honorable R. Todd Dantzer, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Bartow, FL 33831.	Polk County Administration Building, 330 West Church Street, Bartow, FL 33831.	https://msc.fema.gov/portal/advanceSearch .	Feb. 28, 2019 ..	120261
Sarasota	Unincorporated areas of Sarasota County (18-04-6698P).	The Honorable Nancy Detert, Chair, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34236.	https://msc.fema.gov/portal/advanceSearch .	Mar. 8, 2019	125144
Maryland: Somerset.	Unincorporated areas of Somerset County (18-03-1921P).	The Honorable Randy Laird, President, Somerset County Commission, 11916 Somerset Avenue, Room 111, Princess Anne, MD 21853.	Somerset County Department of Technical and Community Services, 11916 Somerset Avenue, Room 211, Princess Anne, MD 21853.	https://msc.fema.gov/portal/advanceSearch .	Feb. 28, 2019 ..	240061
New Hampshire: Hillsborough.	City of Manchester (18-01-0929P).	The Honorable Joyce Craig, Mayor, City of Manchester, One City Hall Plaza, Manchester, NH 03101.	Planning Department, One City Hall Plaza, Manchester, NH 03101.	https://msc.fema.gov/portal/advanceSearch .	Feb. 14, 2019 ..	330169
North Carolina: Montgomery.	Unincorporated areas of Montgomery County (18-04-1965P).	The Honorable Jackie Morris, Chairman, Montgomery County Board of Commissioners, 102 East Spring Street, Troy, NC 27371.	Montgomery County Inspections and Zoning Department, 219 South Main Street, Troy, NC 27371.	https://msc.fema.gov/portal/advanceSearch .	Nov. 23, 2019	370336
South Dakota: Lawrence.	City of Spearfish (18-08-0274P).	The Honorable Dana Boke, Mayor, City of Spearfish, 625 5th Street, Spearfish, SD 57783.	City Hall, 625 5th Street, Spearfish, SD 57783.	https://msc.fema.gov/portal/advanceSearch .	Feb. 25, 2019 ..	460046
Texas:						
Bexar	City of San Antonio (18-06-0893P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Stormwater Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	https://msc.fema.gov/portal/advanceSearch .	Feb. 4, 2019	480045

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Bexar	City of San Antonio (18-06-1813P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Stormwater Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	https://msc.fema.gov/portal/advanceSearch .	Mar. 4, 2019 ...	480045
Denton	City of Denton (18-06-2351P).	The Honorable Chris A. Watts, Mayor, City of Denton, 215 East McKinney Street, Suite 100, Denton, TX 76201.	Engineering Services Department, 901-A Texas Street, Denton, TX 76509.	https://msc.fema.gov/portal/advanceSearch .	Feb. 25, 2019 ..	480194
Denton	City of The Colony (18-06-1146P).	The Honorable Joe McCourry, Mayor, City of The Colony, 6800 Main Street, The Colony, TX 75056.	Engineering Department, 6800 Main Street, The Colony, TX 75056.	https://msc.fema.gov/portal/advanceSearch .	Feb. 19, 2019 ..	481581
Denton	Town of Flower Mound (18-06-2274P).	The Honorable Steve Dixon, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028.	Town Hall, 2121 Cross Timbers Road, Flower Mound, TX 75028.	https://msc.fema.gov/portal/advanceSearch .	Feb. 19, 2019 ..	480777
Harris	Unincorporated areas of Harris County (18-06-2182P).	The Honorable Edward M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Department, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	https://msc.fema.gov/portal/advanceSearch .	Feb 4, 2019	480287
Tarrant	City of Saginaw (18-06-0438P).	The Honorable Todd Flippo, Mayor, City of Saginaw, 333 West McLeroy Boulevard, Saginaw, TX 76179.	Department of Public Works, 205 Brenda Lane, Saginaw, TX 76179.	https://msc.fema.gov/portal/advanceSearch .	Mar. 22, 2019 ..	480610
Taylor	City of Abilene (18-06-0761P).	The Honorable Anthony Williams, Mayor, City of Abilene, P.O. Box 60, Abilene, TX 79604.	City Hall, 555 Walnut Street, Abilene, TX 79601.	https://msc.fema.gov/portal/advanceSearch .	Feb. 25, 2019 ..	485450
Travis	City of Austin (18-06-1298P).	Mr. Spencer Cronk, Manager, City of Austin, P.O. Box 1088, Austin, TX 78767.	Watershed Protection Department, 505 Barton Springs Road, 12th Floor, Austin, TX 78704.	https://msc.fema.gov/portal/advanceSearch .	Feb. 25, 2019 ..	480624
Travis	Unincorporated areas of Travis County (18-06-1298P).	The Honorable Sarah Eckhardt, Travis County Judge, P.O. Box 1748, Austin, TX 78767.	Travis County Transportation and Natural Resources Department, 700 Lavaca Street, 5th Floor, Austin, TX 78767.	https://msc.fema.gov/portal/advanceSearch .	Feb. 25, 2019 ..	481026
Virginia: Chesterfield ...	Unincorporated areas of Chesterfield County (18-03-1312P).	Mr. Joseph P. Casey, Administrator, Chesterfield County, P.O. Box 40, Chesterfield, VA 23832.	Chesterfield County Department of Environmental Engineering, 9800 Government Center Parkway, Chesterfield, VA 23832.	https://msc.fema.gov/portal/advanceSearch .	Feb. 26, 2019 ..	510035
Independent City.	City of Harrisonburg (18-03-1944P).	The Honorable Deanna R. Reed, Mayor, City of Harrisonburg, 409 South Main Street, Harrisonburg, VA 22801.	Department of Planning and Community Development, 409 South Main Street, Harrisonburg, VA 22801.	https://msc.fema.gov/portal/advanceSearch .	Feb. 14, 2019 ..	510076

[FR Doc. 2018-26937 Filed 12-12-18; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4408-DR; Docket ID FEMA-2018-0001]

Pennsylvania; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA-4408-DR), dated November 27, 2018, and related determinations.

DATES: The declaration was issued November 27, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated

November 27, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania resulting from severe storms and flooding during the period of August 10-15, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Steven S. Ward, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Pennsylvania have been designated as adversely affected by this major disaster:

Bradford, Columbia, Lackawanna, Lycoming, Montour, Schuylkill, Sullivan, Susquehanna, Tioga, and Wyoming Counties for Public Assistance.

All areas within the Commonwealth of Pennsylvania are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018-26938 Filed 12-12-18; 8:45 am]

BILLING CODE 9111-11-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2018-0002; Internal Agency Docket No. FEMA-B-1870]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository

address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbabit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbabit@fema.dhs.gov; or visit the FEMA Map Information eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository

address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

David I. Maurstad,
Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
California: Riverside	City of Riverside (18-09-1163P).	The Honorable Rusty Bailey, Mayor, City of Riverside, 3900 Main Street, Riverside, CA 92522.	Planning and Building Department, 3900 Main Street, Riverside, CA 92501.	https://msc.fema.gov/portal/advanceSearch .	Feb. 6, 2019 ...	060260
Santa Clara ...	City of San Jose (18-09-1360P).	The Honorable Sam Liccardo, Mayor, City of San Jose, 200 East Santa Clara Street, 18th Floor, San Jose, CA 95113.	Department of Public Works, 200 East Santa Clara Street, 3rd Floor, San Jose, CA 95113.	https://msc.fema.gov/portal/advanceSearch .	Mar. 7, 2019 ...	060349
Florida: Broward	City of Hollywood (18-04-1751P).	The Honorable Josh Levy, Mayor, City of Hollywood, 2600 Hollywood Boulevard, Room 419, Hollywood, FL 33022.	City Hall, 2600 Hollywood Boulevard, Hollywood, FL 33022.	https://msc.fema.gov/portal/advanceSearch .	Feb. 22, 2019 ..	125113
St. Johns	Unincorporated Areas of St. Johns County (18-04-3472P).	Mr. Henry Dean, Chairman, St. Johns County Board of Commissioners, St. Johns County Administration, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32084.	https://msc.fema.gov/portal/advanceSearch .	Feb. 28, 2019 ..	125147
St. Johns	Unincorporated Areas of St. Johns County (18-04-4670P).	Mr. Henry Dean, Chairman, St. Johns County Board of Commissioners, St. Johns County Administration, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32084.	https://msc.fema.gov/portal/advanceSearch .	Mar. 1, 2019	125147
Indiana: Allen	City of Fort Wayne (18-05-2605P).	The Honorable Tom Henry, Mayor, City of Fort Wayne, Citizens Square, 200 East Berry Street, Suite 420, Fort Wayne, IN 46802.	Department of Planning Services, 200 East Berry Street, Suite 150, Fort Wayne, IN 46802.	https://msc.fema.gov/portal/advanceSearch .	Feb. 22, 2019 ..	180003
Kansas: Johnson ..	City of Lenexa (18-07-1607P).	The Honorable Michael Boehm, Mayor, City of Lenexa, 8522 Caenen Lake Court, Lenexa, KS 66215.	City Hall, 12350 West 87th Street Parkway, Lenexa, KS 66215.	https://msc.fema.gov/portal/advanceSearch .	Mar. 13, 2019 ..	200168
Minnesota: Wash- ington.	City of Lake Elmo (18-05-3738P).	The Honorable Mike Pearson, Mayor, City of Lake Elmo, 2805 Lisbon Avenue North, Lake Elmo, MN 55042.	City Hall 3800 Laverne Avenue Lake Elmo, MN 55042.	https://msc.fema.gov/portal/advanceSearch .	Mar. 7, 2019	270505
Virginia: Fairfax	Unincorporated Areas of Fairfax County (18-03-1811P).	Mr. Bryan J. Hill, County Executive, 12000 Government Center Parkway, Suite 552, Fairfax, VA 22035.	Fairfax County Stormwater Planning, 12000 Government Center Parkway, Suite 449, Fairfax, VA 22035.	https://msc.fema.gov/portal/advanceSearch .	Mar. 6, 2019	515525

[FR Doc. 2018-26935 Filed 12-12-18; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-3409-EM; Docket ID FEMA-2018-0001]

California; Amendment No. 1 to Notice of an Emergency Declaration**AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Notice.**SUMMARY:** This notice amends the notice of an emergency declaration for the State of California (FEMA-3409-EM), dated November 9, 2018, and related determinations.**DATES:** This amendment was issued November 29, 2018.**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this emergency is closed effective November 25, 2018.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2018-26988 Filed 12-12-18; 8:45 am]

BILLING CODE 9111-11-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Docket ID: FEMA-2018-0030; OMB No. 1660-0002]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Disaster Assistance Registration**AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Notice and request for comments.**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.**DATES:** Comments must be submitted on or before January 14, 2019.**ADDRESSES:** Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to dhsdeskofficer@omb.eop.gov.**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW, Washington, DC 20472-3100, or email address FEMA-Information-Collections-Management@fema.dhs.gov or Brian Thompson, Supervisory Program Specialist, FEMA, Recovery Directorate, at (540) 686-3602.**SUPPLEMENTARY INFORMATION:** This proposed information collection previously published in the **Federal Register** on September 27, 2018 at 83 FR 48855 with a 60 day public comment period. FEMA received one unrelated comment. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of

Management and Budget for review and clearance.

Collection of Information*Title:* Disaster Assistance Registration.
Type of information collection: Extension, without change, of a currently approved information collection.*OMB Number:* 1660-0002.
Form Titles and Numbers: FEMA Form 009-0-1T (English) Tele-Registration, Disaster Assistance Registration; FEMA Form 009-0-1Int (English) internet, Disaster Assistance Registration; FEMA Form 009-0-2Int (Spanish) internet, Registro Para Asistencia De Desastre; FEMA Form 009-0-1 (English) Paper Application/ Disaster Assistance Registration; FEMA Form 009-0-2 (Spanish), Solicitud en Papel/Registro Para Asistencia De Desastre; FEMA Form 009-0-1S (English) Smartphone, Disaster Assistance Registration; FEMA Form 009-0-2S (Spanish) Smartphone, Registro Para Asistencia De Desastre; FEMA Form 009-0-3 (English), Declaration and Release; FEMA Form 009-0-4 (Spanish), Declaración Y Autorización; FEMA Form 009-0-5 (English), Manufactured Housing Unit Revocable License and Receipt for Government Property; FEMA Form 009-0-6 (Spanish), Las Casas Manufacturadas Unidad Licencia Revocable y Recibo de la Propiedad del Gobierno.*Abstract:* The various forms in this collection are used to collect pertinent information to provide financial assistance, and if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster, have necessary expenses and serious needs that are unable to be met through other means.*Affected Public:* Individuals or Households.*Estimated Number of Respondents:* 2,221,579.*Estimated Number of Responses:* 2,221,579.*Estimated Total Annual Burden Hours:* 649,816 hours.*Estimated Total Annual Respondent Cost:* \$23,094,460.*Estimated Respondents' Operation and Maintenance Costs:* 0.*Estimated Respondents' Capital and Start-Up Costs:* 0.*Estimated Total Annual Cost to the Federal Government:* \$28,705,098.**Comments**Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper

performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Millicent L. Brown,
*Government Information Specialist,
 Information Management Division, Mission
 Support, Federal Emergency Management
 Agency, Department of Homeland Security.*

[FR Doc. 2018-26936 Filed 12-12-18; 8:45 am]

BILLING CODE 9111-11-P

**DEPARTMENT OF HOMELAND
 SECURITY**

**Federal Emergency Management
 Agency**

[Docket ID FEMA-2018-0002]

**Changes in Flood Hazard
 Determinations**

AGENCY: Federal Emergency
 Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-
 percent annual chance) Flood
 Elevations (BFEs), base flood depths,
 Special Flood Hazard Area (SFHA)
 boundaries or zone designations, and/or
 regulatory floodways (hereinafter
 referred to as flood hazard
 determinations) as shown on the
 indicated Letter of Map Revision
 (LOMR) for each of the communities

listed in the table below are finalized.
 Each LOMR revises the Flood Insurance
 Rate Maps (FIRMs), and in some cases
 the Flood Insurance Study (FIS) reports,
 currently in effect for the listed
 communities. The flood hazard
 determinations modified by each LOMR
 will be used to calculate flood insurance
 premium rates for new buildings and
 their contents.

DATES: Each LOMR was finalized as in
 the table below.

ADDRESSES: Each LOMR is available for
 inspection at both the respective
 Community Map Repository address
 listed in the table below and online
 through the FEMA Map Service Center
 at <https://msc.fema.gov>.

FOR FURTHER INFORMATION CONTACT: Rick
 Sacbibit, Chief, Engineering Services
 Branch, Federal Insurance and
 Mitigation Administration, FEMA, 400
 C Street SW, Washington, DC 20472,
 (202) 646-7659, or (email)
patrick.sacbibit@fema.dhs.gov; or visit
 the FEMA Map Information eXchange
 (FMIX) online at [https://
 www.floodmaps.fema.gov/fhm/fmx_
 main.html](https://www.floodmaps.fema.gov/fhm/fmx_main.html).

SUPPLEMENTARY INFORMATION: The
 Federal Emergency Management Agency
 (FEMA) makes the final flood hazard
 determinations as shown in the LOMRs
 for each community listed in the table
 below. Notice of these modified flood
 hazard determinations has been
 published in newspapers of local
 circulation and 90 days have elapsed
 since that publication. The Deputy
 Associate Administrator for Insurance
 and Mitigation has resolved any appeals
 resulting from this notification.

The modified flood hazard
 determinations are made pursuant to
 section 206 of the Flood Disaster
 Protection Act of 1973, 42 U.S.C. 4105,
 and are in accordance with the National
 Flood Insurance Act of 1968, 42 U.S.C.
 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently
 effective community number is shown
 and must be used for all new policies
 and renewals.

The new or modified flood hazard
 information is the basis for the
 floodplain management measures that
 the community is required either to
 adopt or to show evidence of being
 already in effect in order to remain
 qualified for participation in the
 National Flood Insurance Program
 (NFIP).

This new or modified flood hazard
 information, together with the
 floodplain management criteria required
 by 44 CFR 60.3, are the minimum that
 are required. They should not be
 construed to mean that the community
 must change any existing ordinances
 that are more stringent in their
 floodplain management requirements.
 The community may at any time enact
 stricter requirements of its own or
 pursuant to policies established by other
 Federal, State, or regional entities.

This new or modified flood hazard
 determinations are used to meet the
 floodplain management requirements of
 the NFIP and are used to calculate the
 appropriate flood insurance premium
 rates for new buildings, and for the
 contents in those buildings. The
 changes in flood hazard determinations
 are in accordance with 44 CFR 65.4.

Interested lessees and owners of real
 property are encouraged to review the
 final flood hazard information available
 at the address cited below for each
 community or online through the FEMA
 Map Service Center at [https://
 msc.fema.gov](https://msc.fema.gov).

(Catalog of Federal Domestic Assistance No.
 97.022, "Flood Insurance.")

David I. Maurstad,

*Deputy Associate Administrator for Insurance
 and Mitigation, Department of Homeland
 Security, Federal Emergency Management
 Agency.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Alabama:					
Shelby (FEMA Docket No.: B-1848).	City of Helena (18-04-2020P).	The Honorable Mark R. Hall, Mayor, City of Helena, 816 Highway 52 East, Helena, AL 35080.	City Hall, 816 State Route 82, Helena, AL 35080.	Nov. 10, 2018	010294
Shelby (FEMA Docket No.: B-1845).	City of Montevallo (18-04-1231P).	The Honorable Hollie Cost, Mayor, City of Montevallo, 541 Main Street, Montevallo, AL 35115.	City Hall, 541 Main Street, Montevallo, AL 35115.	Oct. 25, 2018	010349
Shelby (FEMA Docket No.: B-1845).	Unincorporated Areas of Shelby County (18-04-1231P).	The Honorable Jon Parker, Chairman, Shelby County Board of Commissioners, 200 West College Street, Columbiana, AL 35051.	Shelby County Engineering Department, 506 Highway 70, Columbiana, AL 35051.	Oct. 25, 2018	010191
Colorado:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Boulder (FEMA Docket No.: B-1848).	City of Boulder (17-08-1389P).	The Honorable Suzanne Jones, Mayor, City of Boulder, P.O. Box 791, Boulder, CO 80306.	City Hall, 1777 Broadway Street, Boulder, CO 80302.	Nov. 5, 2018	080024
Boulder (FEMA Docket No.: B-1845).	City of Boulder (18-08-0256P).	The Honorable Suzanne Jones, Mayor, City of Boulder, 1777 Broadway Street, Boulder, CO 80302.	City Hall, 1777 Broadway Street, Boulder, CO 80302.	Nov. 2, 2018	080024
Boulder (FEMA Docket No.: B-1848).	Unincorporated areas of Boulder County (17-08-1389P).	The Honorable Cindy Domenico, Chair, Boulder County Board of Commissioners, P.O. Box 471, Boulder, CO 80306.	Boulder County Transportation Department, 2525 13th Street, Suite 203, Boulder, CO 80304.	Nov. 5, 2018	080023
Douglas (FEMA Docket No.: B-1848).	Unincorporated areas of Douglas County (17-08-1321P).	The Honorable Lora Thomas, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Douglas County Public Works Department, Engineering Division, 100 3rd Street, Castle Rock, CO 80104.	Nov. 9, 2018	080049
Montrose (FEMA Docket No.: B-1852).	City of Montrose (17-08-1374P).	Mr. William Bell, City Manager, City of Montrose, P.O. Box 790, Montrose, CO 81402.	Engineering Department, 1221 6450 Road, Montrose, CO 81401.	Nov. 9, 2018	080125
Montrose (FEMA Docket No.: B-1852).	Unincorporated areas of Montrose County (17-08-1374P).	The Honorable Keith Caddy, Chairman, Montrose County Board of Commissioners, 317 South 2nd Street, Montrose, CO 81401.	Montrose County Public Works Department, 949 North 2nd Street, Montrose, CO 81401.	Nov. 9, 2018	080124
Connecticut: Fairfield (FEMA Docket No.: B-1848)	Town of Darien (18-01-1237P).	The Honorable Jayme J. Stevenson, First Selectwoman, Town of Darien Board of Selectmen, 2 Renshaw Road, Darien, CT 06820.	Planning and Zoning Department, 2 Renshaw Road, Darien, CT 06820.	Nov. 13, 2018	090005
Florida:					
Collier (FEMA Docket No.: B-1852).	City of Naples (18-04-4561P).	The Honorable Bill Barnett, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	Building Department, 295 Riverside Circle, Naples, FL 34102.	Nov. 9, 2018	125130
Duval (FEMA Docket No.: B-1845).	City of Atlantic Beach (17-04-4155P).	The Honorable Ellen E. Glasser, Mayor, City of Atlantic Beach, 800 Seminole Road, Atlantic Beach, FL 32233.	City Hall, 800 Seminole Road, Atlantic Beach, FL 32233.	Nov. 5, 2018	120075
Duval (FEMA Docket No.: B-1845).	City of Jacksonville (17-04-4155P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	City Hall, 214 North Hogan Street, Suite 2100, Jacksonville, FL 32202.	Nov. 5, 2018	120077
Lee (FEMA Docket No.: B-1845).	City of Sanibel (18-04-3742P).	The Honorable Kevin Ruane, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957.	Planning Department, 800 Dunlop Road, Sanibel, FL 33957.	Oct. 25, 2018	120402
Lee (FEMA Docket No.: B-1845).	City of Sanibel (18-04-3819P).	The Honorable Kevin Ruane, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957.	Planning Department, 800 Dunlop Road, Sanibel, FL 33957.	Oct. 26, 2018	120402
Monroe (FEMA Docket No.: B-1845).	Unincorporated areas of Monroe County (18-04-3568P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 1100 Simonton Street, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Oct. 22, 2018	125129
Monroe (FEMA Docket No.: B-1848).	Unincorporated areas of Monroe County (18-04-4286P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Oct. 31, 2018	125129
Monroe (FEMA Docket No.: B-1848).	Unincorporated areas of Monroe County (18-04-4294P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Nov. 13, 2018	125129
Monroe (FEMA Docket No.: B-1845).	Village of Islamorada (18-04-3795P).	The Honorable Chris Sante, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Planning and Development Department, 86800 Overseas Highway, Islamorada, FL 33036.	Oct. 26, 2018	120424
Orange (FEMA Docket No.: B-1848).	City of Orlando (17-04-3097P).	The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32802.	Information Technology Division, 400 South Orange Avenue, 8th Floor, Orlando, FL 32801.	Nov. 9, 2018	120186

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Kentucky: Jefferson (FEMA Docket No.: B-1848)	Louisville-Jefferson County Metro Government (18-04-3582P).	The Honorable Greg Fischer, Mayor, Louisville-Jefferson County Metro, Government, 527 West Jefferson Street, Louisville, KY 40202.	Louisville-Jefferson County Metropolitan Sewer District, 700 West Liberty Street, Louisville, KY 40203.	Nov. 13, 2018	210120
Maryland: Prince George's (FEMA Docket No.: B-1845)	Unincorporated areas of Prince George's County (18-03-0330P).	The Honorable Rushern L. Baker, III, Prince George's County Executive, 14741 Governor Oden Bowie Drive, Upper Marlboro, MD 20772.	Prince George's County Department of Environment, 1801 McCormick Drive, Suite 500, Largo, MD 20774.	Nov. 2, 2018	245208
Massachusetts: Norfolk (FEMA Docket No.: B-1848)	City of Quincy (18-01-0033P).	The Honorable Thomas P. Koch, Mayor, City of Quincy, 1305 Hancock Street, Quincy, MA 02169.	City Hall, 1305 Hancock Street, Quincy, MA 02169.	Nov. 9, 2018	255219
New Hampshire: Rockingham (FEMA Docket No.: B-1845)	Town of Exeter (18-01-0144P).	The Honorable Julie Gilman, Chair, Town of Exeter Select Board, 10 Front Street, Exeter, NH 03833.	Building Department, 10 Front Street, Exeter, NH 03833.	Nov. 5, 2018	330130
New Mexico: Santa Fe (FEMA Docket No.: B-1848)	Unincorporated areas of Santa Fe County (18-06-0707P).	Ms. Katherine Miller, Manager, Santa Fe County, 102 Grant Avenue, Santa Fe, NM 87501.	Santa Fe County Building and Development Services Department, 102 Grant Avenue, Santa Fe, NM 87501.	Nov. 13, 2018	350069
North Carolina: Duplin (FEMA Docket, No.: B-1848)	Unincorporated areas of Duplin County (18-04-2016P).	The Honorable Jesse Dowe, Chairman, Duplin County Board of Commissioners, 224 Seminary Street, Kenansville, NC 28349.	Duplin County Planning Department, 117 Beasley Street, Kenansville, NC 28349.	Oct. 26, 2018	370083
Pennsylvania: Lebanon (FEMA Docket No.: B-1848).	Township of Jackson (18-03-1094P).	The Honorable Thomas M. Houtz, Chairman, Township of Jackson Board of Supervisors, 60 North Ramona Road, Myerstown, PA 17067.	Township Hall, 60 North Ramona Road, Myerstown, PA 17067.	Nov. 2, 2018	421805
Lebanon (FEMA Docket No.: B-1848).	Township of Millcreek (18-03-1094P).	The Honorable Donald Leibig, Chairman, Township of Millcreek Board of Supervisors, 81 East Alumni Avenue, Newmanstown, PA 17073.	Township Hall, 81 East Alumni Avenue, Newmanstown, PA 17073.	Nov. 2, 2018	420574
South Dakota: Codington (FEMA Docket No.: B-1845).	City of Watertown (17-08-0664P).	The Honorable Sarah Caron, Mayor, City of Watertown, 23 2nd Street Northeast, Watertown, SD 57201.	Planning and Zoning Department, 23 2nd Street Northeast, Watertown, SD 57201.	Nov. 5, 2018	460016
Pennington (FEMA Docket No.: B-1848).	City of Rapid City (18-08-0082P).	The Honorable Steve Allender, Mayor, City of Rapid City, 300 6th Street, Rapid City, SD 57701.	Public Works Department, Engineering Services Division, 300 6th Street, Rapid City, SD 57701.	Nov. 2, 2018	465420
Pennington (FEMA Docket No.: B-1848).	Unincorporated areas of Pennington County (18-08-0082P).	The Honorable Lloyd LaCroix, Chairman, Pennington County Board of Commissioners, 130 Kansas City Street, Suite 100, Rapid City, SD 57701.	Pennington County Planning Department, 130 Kansas City Street, Suite 200, Rapid City, SD 57701.	Nov. 2, 2018	460064
Texas: Bexar (FEMA Docket No.: B-1848).	Unincorporated areas of Bexar County (18-06-2600X).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecas-La Trinidad Street, Suite 420, San Antonio, TX 78207.	Nov. 5, 2018	480035
Dallas (FEMA Docket No.: B-1848).	City of University Park (18-06-0033P).	The Honorable Olin Burnett Lane, Jr., Mayor, City of University Park, 3800 University Boulevard, University Park, TX 75205.	Peek Service Center, 4420 Worcola Street, Dallas, TX 75206.	Nov. 5, 2018	480189
Dallas (FEMA Docket No.: B-1848).	Town of Highland Park (18-06-0033P).	The Honorable Margo Goodwin, Mayor, Town of Highland Park, 4700 Drexel Drive, Highland Park, TX 75205.	Engineering Department, 4700 Drexel Drive, Highland Park, TX 75205.	Nov. 5, 2018	480178
Denton (FEMA Docket No.: B-1848).	City of Denton (18-06-0017P).	The Honorable Chris A. Watts, Mayor, City of Denton, 215 East McKinney Street, Suite 100, Denton, TX 76201.	Engineering Services Department, 901-A Texas Street, Denton, TX 76509.	Nov. 7, 2018	480194
Denton (FEMA Docket No.: B-1852).	City of Sanger (18-06-0546P).	The Honorable Thomas Muir, Mayor, City of Sanger, P.O. Box 1729, Sanger, TX 76266.	City Hall, 201 Bolivar Street, Sanger, TX 76266.	Nov. 9, 2018	480786
Harris (FEMA Docket No.: B-1848).	Unincorporated areas of Harris County (18-06-0774P).	The Honorable Edward M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Department, 10555 Northwest Freeway, Suite 120, Houston, TX 77002.	Oct. 29, 2018	480287

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Harris (FEMA Docket No.: B-1848).	Unincorporated areas of Harris County (18-06-1830P).	The Honorable Edward M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Department, 10555 Northwest Freeway, Suite 120, Houston, TX 77002.	Oct. 29, 2018	480287
McLennan (FEMA Docket No.: B-1848).	City of Waco (17-06-4092P).	Mr. Wiley Stem III, Manager, City of Waco, 300 Austin Avenue, Waco, TX 76702.	Public Works Department, 300 Austin Avenue, Waco, TX 76702.	Nov. 13, 2018	480461
Midland (FEMA Docket No.: B-1848).	City of Midland (18-06-1903P).	Mr. Courtney Sharp, Manager, City of Midland, 300 North Loraine Street, Midland, TX 79701.	City Hall, 300 North Loraine Street, Midland, TX 79701.	Nov. 5, 2018	480477
Midland (FEMA Docket No.: B-1848).	Unincorporated areas of Midland County (18-06-1903P).	The Honorable Michael R. Bradford, Midland County Judge, 500 North Loraine Street, Suite 1100, Midland, TX 79701.	Midland County Department of Emergency Management, 500 North Loraine Street, Suite 1100, Midland, TX 79701.	Nov. 5, 2018	481239
Montgomery (FEMA Docket No.: B-1848).	Unincorporated areas of Montgomery County (18-06-1830P).	The Honorable Craig B. Doyal, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301.	Montgomery County Commissioners Court Building, 501 North Thompson Street, Suite 103, Conroe, TX 77301.	Oct. 29, 2018	480483
Tarrant (FEMA Docket No.: B-1852).	City of Fort Worth (18-06-1306P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Engineering Department, 200 Texas Street, Fort Worth, TX 76102.	Nov. 13, 2018	480596
Tarrant (FEMA Docket No.: B-1852).	Unincorporated areas of Tarrant County (18-06-1306P).	The Honorable B. Glen Whitley, Tarrant County Judge, 100 East Weatherford Street, Fort Worth, TX 76196.	Tarrant County Engineering Department, 100 East Weatherford Street, Fort Worth, TX 76196.	Nov. 13, 2018	480582
Wyoming: Teton (FEMA Docket No.: B-1848)	Unincorporated areas of Teton County (18-08-0225P).	The Honorable Mark Newcomb, Chairman, Teton County Board of Commissioners, P.O. Box 3594, Jackson, WY 83001.	Teton County Public Works Department, 320 South King Street, Jackson, WY 83001.	Nov. 1, 2018	560094

[FR Doc. 2018-26943 Filed 12-12-18; 8:45 am]
 BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4403-DR; Docket ID FEMA-2018-0001]

Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA-4403-DR), dated October 19, 2018, and related determinations.

DATES: The amendment was issued on November 21, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order

12148, as amended, Constance C. Johnson-Cage, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Paul Taylor as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2018-26942 Filed 12-12-18; 8:45 am]

BILLING CODE 9111-11-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-3409-EM; Docket ID FEMA-2018-0001]

California; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of California (FEMA-3409-EM), dated November 9, 2018, and related determinations.

DATES: The declaration was issued November 9, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 9, 2018, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of California resulting from wildfires beginning on November 8, 2018, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the State of California.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, David G. Samanigo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of California have been designated as adversely affected by this declared emergency:

Butte, Los Angeles, and Ventura Counties for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–26989 Filed 12–12–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Revision From OMB of One Current Public Collection of Information: Aircraft Operator Security, 49 CFR Part 1544

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0003, abstracted below that we will submit to OMB for a revision in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. Aircraft operators must provide certain information to TSA and adopt and implement a TSA-approved security program. These programs require aircraft operators to maintain and update records to ensure compliance with security provisions set forth in 49 CFR part 1544.

DATES: Send your comments by February 11, 2019.

ADDRESSES: Comments may be emailed to TSAPRA@tsa.dhs.gov or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at <http://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information

collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency’s estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

OMB Control Number 1652–0003; Aircraft Operator Security, 49 CFR part 1544. The information collected is used to determine compliance with 49 CFR part 1544 and to ensure passenger safety by monitoring aircraft operator security procedures. TSA implements aircraft operator security standards at part 1544 to require each aircraft operator, to which this part applies, to adopt and carry out a security program. This TSA-approved security program establishes procedures that aircraft operators must carry out to protect persons and property traveling on flights provided by the aircraft operator against acts of criminal violence, aircraft piracy, and the introduction of explosives, incendiaries, or weapons aboard an aircraft. Aircraft operators must also comply with TSA-issued Security Directives (SDs), which are issued when TSA determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation.

This information collection is mandatory for aircraft operators. As part of their security programs, affected aircraft operators are required to maintain and update, as necessary, records of compliance with the security program provisions set forth in part 1544, including maintaining records of compliance for selected crew and security employees. Part 1544 also requires affected aircraft operators to submit security program amendments and SD compliance plans to TSA, when

applicable, and to make their security programs and associated records available for inspection and copying by TSA to ensure transportation security and regulatory compliance.

In addition, part 1544 requires the affected aircraft operators to submit information on aircraft operators' flight crews and other employees, passengers, and cargo. The information collection includes information regarding security program, amendments, fingerprint-based criminal history records check (CHRC) applications; recordkeeping requirements for security program, CHRCs, and training; watchlist matching for employees and reporting matches to TSA; watchlist matching for passengers in case of Secure Flight outages; and incident and suspicious activity reporting. Aircraft operators may provide the information electronically or manually.

Aircraft operators must ensure that certain flight crew members and employees (including certain contract employees and authorized representatives) submit to and receive a CHRC. These requirements apply to flight crew members and employees with unescorted access authority to a Security Identification Display Area (SIDA) or who perform screening, checked baggage, or cargo functions. As part of the CHRC process, the individual must provide identifying information, including fingerprints. Additionally, aircraft operators must maintain these records and make them available to TSA for inspection and copying upon request.

TSA is revising the information collection and will no longer collect information regarding watchlist matching for Secure Flight outages. TSA has assumed from the private sector the responsibility for pre-flight screening of passengers and certain non-traveling individuals against the Federal Government watchlist, as required by sec. 4012(a) of the Intelligence Reform and Terrorism Prevention Act of 2004,¹ and consolidation of the aviation passenger watchlist matching function within one agency of the Federal Government. TSA no longer requires airlines to compare passenger names to watchlists during a Secure Flight outage. TSA estimates that there will be approximately 673 respondents to the information requirements described above, with a total annual burden estimate of approximately 569,686 hours.

Dated: December 6, 2018.

Christina A. Walsh,

*TSA Paperwork Reduction Act Officer,
Information Technology.*

[FR Doc. 2018-26932 Filed 12-12-18; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA-2009-0018]

Intent To Request Revision From OMB of One Current Public Collection of Information: Certified Cargo Screening Standard Security Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), OMB control number 1652-0053, abstracted below that we will submit to the Office of Management and Budget (OMB) for a revision in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collections of information that make up this ICR include: (1) Applications from entities that wish to become Certified Cargo Screening Facilities (CCSFs), Third-Party Canine-Cargo (3PK9-C) Certifiers or Certified Cargo Screening Program-Canine (CCSP-K9) Holders; (2) personally identifiable information to allow TSA to conduct security threat assessments (STA) on certain individuals employed by the CCSFs, 3PK9-C Certifiers, Certified Cargo Screening Facilities-K9 (CCSF-K9) and those authorized to conduct 3PK9-C Program activities; (3) standard security program or submission of a proposed modified security program or amendment to a security program by CCSFs and CCSP-K9s; or standards provided by TSA or submission of a proposed modified standard by 3PK9-C Certifiers; (5) recordkeeping requirements for CCSFs, CCSP-K9s and 3PK9-C Certifiers; (6) designation of a Security Coordinator (SC) by CCSFs and CCSP-K9s; and (7) significant security concerns detailing information of incidents, suspicious activities, and/or threat information by CCSFs, 3PK9-C Certifiers, and CCSP-K9 Holders.

DATES: Send your comments by February 11, 2019.

ADDRESSES: Comments may be emailed to TSAPRA@dhs.gov or delivered to the TSA PRA Officer, Information

Technology (IT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227-2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at www.reginfo.gov upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

OMB Control Number 1652-0053, Certified Cargo Screening Standard Security Program, 49 CFR parts 1515, 1540, 1544, 1546, 1548, and 1549. Section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007¹ (9/11 Act) required the development of a system to screen 100 percent of such cargo no later than August 2010. This requirement was implemented through TSA's regulations, including amendments to parts 1515, 1520, 1540, 1544, 1546, 1548 and adding part 1549. See 76 FR 51848 (Aug. 18, 2011). As part of these regulatory provisions, TSA

¹ Public Law 108-458, 118 Stat. 3638, 3714; Dec. 17, 2004.

¹ Public Law 110-53; 121 Stat. 266 (Aug. 3, 2007).

certifies qualified facilities as Certified Cargo Screening Facilities (CCSF) to screen cargo as part of the Certified Cargo Screening Standard Security Program (CCSSSP).

Section 1941 of the TSA Modernization Act² amended provision in the 9/11 Act to require TSA to develop a program to enhance the screening of air cargo by leveraging the capabilities of third-party explosives detection canine teams. TSA must ensure the program provides for certified canine teams to conduct primary screening of air cargo for “air carriers, foreign air carriers, freight forwarders, and shippers.” *Id.*

Facilities-based CCSFs may screen cargo off-airport and must implement measures to ensure a secure chain of custody from the point of screening to the point at which the cargo is tendered to the aircraft operator. A CCSF-K9 is an inherently mobile capability that can screen cargo at the facility owned and operated by one of TSA’s regulated entities. All CCSFs are required to engage TSA to assess whether a person or entity meets the standards of their security program. The ICR allows TSA to collect several categories of information as explained below.

In this ICR, TSA currently collects the following information:

(1) CCSF Applications. Under TSA regulations, an applicant is required to submit an application to become a CCSF at least 90 days before the intended date of operation, the contents of which are contained in 49 CFR 1549.7. In addition, once certified as a CCSF, the CCSF is required to submit any changes to the application information as they occur. CCSFs must renew their certification every 36 months by submitting a new complete application. CCSF applicants are required to provide TSA access to their records, equipment, and facilities necessary for TSA to conduct an eligibility assessment. (49 CFR 1549.7).

(2) STA Applications. TSA regulations require that CCSF applicants ensure that individuals performing cargo screening and related functions, and their supervisors have completed an STA conducted by TSA. In addition, TSA regulations require CCSF Security Coordinators and their alternates to successfully have completed an STA. TSA regulations further require these individuals to submit personally identifiable information so that TSA can perform STAs. *See* TSA Form 419F, previously approved under OMB

control number 1652–0040 (49 CFR 1549.111, and 1549.103).

(3) Security Programs. TSA requires CCSFs to accept and operate under a standard security program provided by TSA, or submit a proposed modified security program or amendment(s) to the designated TSA official for approval initially and periodically thereafter as required. (49 CFR 1549.7).

(4) Recordkeeping. Require CCSFs to maintain records of compliance and make them available for TSA inspection (49 CFR 1549.105).

TSA is revising the collection in response to changing conditions in the air cargo industry. To meet the demand of the enhanced air cargo screening standards of the International Civil Aviation Organization (ICAO) and requirements of the TSA Modernization Act,³ TSA created the 3PK9-C program to provide an additional air cargo screening method under TSA’s regulations. Under this program, canine team providers can apply to be CCSF-K9s, regulated under 49 CFR part 1549. As holders of a CCSP-K9 security program, they can contract with air carriers and standard CCSFs to screen air cargo with canine explosives detection teams. The 3PK9-C program allows non-governmental certifiers, operating under the 3PK9-C Certifier Order, to evaluate canine teams to determine whether these teams meet the TSA certification standards.

Due to the additional development of the 3PK9-C Program, the current information collection request will be revised to include the following:

(1a) 3PK9-C Certifier Applications. TSA will require initial applications and changes to information in the application for any 3PK9-C Certifier, intending to operate under the 3PK9-C Certifier Order.

(1b) CCSF-K9 Applications. Under TSA regulations, an applicant is required to submit an application to become a CCSF at least 90 days before the intended date of operation unless otherwise authorized by TSA. The contents of the initial application are contained in 49 CFR 1549.7. In addition, once certified as a CCSF, the CCSF-K9 will be required to submit an Operational Implementation Plan (OIP), described within the CCSP-K9 and any changes to the application information as they occur. CCSF-K9s must renew their certification every 36 months by submitting a new complete application. CCSF-K9 applicants will be required to provide TSA access to their records, equipment, and facilities necessary for

TSA to conduct an eligibility assessment. (49 CFR 1549.7).

(2) STA Applications. TSA regulations require that individuals performing screening and related functions, their supervisors, those authorized to conduct 3PK9-C Program activities, and people supporting these functions successfully have completed an STA conducted by TSA. In addition, TSA regulations require CCSF Security Coordinators and their alternates to successfully have completed an STA. TSA regulations further require these individuals to submit personally identifiable information so that TSA can perform STAs. *See* TSA Form 419F, previously approved under OMB control number 1652–0040 (49 CFR 1549.111, and 1549.103).

(3a) Security Programs. TSA will require CCSF-K9s to accept and operate under a standard security program provided by TSA, or submit a proposed modified security program or amendment(s) to the designated TSA official for approval initially and periodically thereafter as required. (49 CFR 1549.7).

(3b) The 3PK9-C Certifier Order. TSA will require 3PK9-C Certifiers to accept standards provided by TSA, or submit a proposed modified standard to the designated TSA official for approval initially and periodically thereafter as required.

(4) Recordkeeping. TSA will require 3PK9-C Certifiers and CCSF-K9s to maintain records of compliance with the Order and the CFR, making them available for TSA inspection (49 CFR 1549.105).

(5) Significant Security Concerns Information. TSA will require 3PK9-C Certifiers, and CCSP-K9 Holders to report to TSA incidents, suspicious activities, and/or threat information.

(6) Security Coordinator. TSA will require 3PK9-C Certifiers and CCSF-K9s to provide the name and contact information of the Security Coordinator (SC) and one or more designated alternates at the corporate or ownership level.

Estimated Burden Hours

As noted above, TSA has identified several separate information collections under this ICR. The 3PK9-C Certifiers information collections represent an estimated average of 79 respondents annually, including security threat assessment applicants for 3PK9-C, for an average annual hour burden of 2,555 hours. The CCSP-K9 Holder and Certified 3PK9-C Team information collections represent an estimated average of 567 respondents annually, including security threat assessment

²Division K of the FAA Reauthorization Act of 2018, Public Law 115–254; Stat. 132–3186 (Oct. 6, 2018).

³ *See* text accompany n. 2 *supra*.

applicants for CCSP–K9 Holder and Certified 3PK9–C Teams, for an average annual hour burden of 496 hours. The CCSP information collections represent an estimated average of 6,320 respondents annually, for an average annual hour burden of 6,124 hours. Collectively, these information collections represent an estimated average of 6,966 respondents annually, for an average annual hour burden of 9,175 hours.

Dated: December 6, 2018.

Christina A. Walsh,

*TSA Paperwork Reduction Act Officer,
Information Technology.*

[FR Doc. 2018–26931 Filed 12–12–18; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–NWRS–2018–N132;
FXRS1263040000–156–FF04R08000; OMB
Control Number 1018–0153]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; National Wildlife Refuge Visitor Check-In Permit and Use Report

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of information collection;
request for comment.

SUMMARY: In accordance with the
Paperwork Reduction Act of 1995, we,
the U.S. Fish and Wildlife Service, are
proposing to renew an information
collection.

DATES: Interested persons are invited to
submit comments on or before January
14, 2019.

ADDRESSES: Send written comments on
this information collection request (ICR)
to the Office of Management and
Budget's Desk Officer for the
Department of the Interior by email at
OIRA_Submission@omb.eop.gov; or via
facsimile to (202) 395–5806. Please
provide a copy of your comments to the
Service Information Collection
Clearance Officer, U.S. Fish and
Wildlife Service, MS: BPHC, 5275
Leesburg Pike, Falls Church, VA 22041–
3803 (mail); or by email to Info_Coll@fws.gov. Please reference OMB Control
Number 1018–0153 in the subject line of
your comments.

FOR FURTHER INFORMATION CONTACT: To
request additional information about
this ICR, contact Madonna L. Baucum,
Service Information Collection
Clearance Officer, by email at Info_Coll@fws.gov, or by telephone at (703)

358–2503. You may also view the ICR
at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In
accordance with the Paperwork
Reduction Act of 1995, we provide the
general public and other Federal
agencies with an opportunity to
comment on new, proposed, revised,
and continuing collections of
information. This helps us assess the
impact of our information collection
requirements and minimize the public's
reporting burden. It also helps the
public understand our information
collection requirements and provide the
requested data in the desired format.

On June 11, 2018, we published a
Federal Register notice requesting
comments on this collection of
information (83 FR 27017). In that
notice, we invited comments for 60
days, ending on August 10, 2018. We
received one comment that did not
address the information collection
requirements. We made no changes in
response to that comment.

We are again soliciting comments on
the proposed ICR that is described
below. We are especially interested in
public comment addressing the
following issues: (1) Is the collection
necessary to the proper functions of the
Service; (2) will this information be
processed and used in a timely manner;
(3) is the estimate of burden accurate;
(4) how might the Service enhance the
quality, utility, and clarity of the
information to be collected; and (5) how
might the Service minimize the burden
of this collection on the respondents,
including through the use of
information technology.

Comments that you submit in
response to this notice are a matter of
public record. Before including your
address, phone number, email address,
or other personal identifying
information in your comment, you
should be aware that your that your
entire comment—including your
personal identifying information—may
be publicly available at any time. While
you can ask us in your comment to
withhold your personal identifying
information from public review, we
cannot guarantee that we will be able to
do so.

Abstract: The National Wildlife
Refuge System Administration Act of
1966 (16 U.S.C. 668dd–668ee), as
amended by the National Wildlife
Refuge System Improvement Act of
1997, and the Refuge Recreation Act of
1962 (16 U.S.C. 460k–460k–4), govern
the administration and uses of national
wildlife refuges and wetland
management districts. The

Administration Act authorizes us to
permit public uses, including hunting
and fishing, on lands of the Refuge
System when we find that the activity
is compatible and appropriate with the
purpose for which the refuge was
established. The Recreation Act allows
the use of refuges for public recreation
when the use is not inconsistent or does
not interfere with the primary
purpose(s) of the refuge.

We use FWS Form 3–2405 (Self-
Clearing Check-In Permit) to collect user
information on hunting and fishing on
refuges. This form offers a self-check-in
feature not found on other similar
forms, reducing the number of staffed
check-in stations. We found this method
increases game harvest reporting and
provides better estimates of total
numbers of game harvested. This form
also requests users to report other
species observed, data then used by
refuge staff and state agencies for
managing wildlife populations. Not all
refuges will use this form and some
refuges may collect the identical
information in a nonform format
(meaning there is no designated form
associated with the collection of
information). We collect:

- Information on the visitor (name,
address, and contact information). We
use this information to identify the
visitor or driver/passengers of a vehicle
while on the refuge. Having this
information readily available is critical
in a search and rescue situation. We do
not maintain or record this information.
- Information on whether or not
hunters/anglers were successful
(number and type of harvest/caught).
- Purpose of visit (hunting, fishing,
wildlife observation, wildlife
photography, auto touring, birding,
hiking, boating/canoeing, visitor center,
special event, environmental education
class, volunteering, other recreation).
- Species observed.
- Date of visit.

The above information is a vital tool
in meeting refuge objectives and
maintaining quality visitor experiences.
It helps us:

- Administer and monitor the quality
of visitor programs and facilities on
refuges.
- Minimize resource disturbance,
manage healthy game populations, and
ensure the protection of fish and
wildlife species through the check-in/
out process.
- Assist in Statewide wildlife
management and enforcement and
develop reliable estimates of the number
of key game fish and wildlife, like the
Louisiana black bear (a recently delisted
species).

- Determine facility and program needs and budgets based on user demand for resources.

Title of Collection: National Wildlife Refuge Visitor Check-In Permit and Use Report.

OMB Control Number: 1018–0153.

Form Number: 3–2405.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals who visit national wildlife refuges.

Total Estimated Number of Annual Respondents: 650,000.

Total Estimated Number of Annual Responses: 650,000.

Estimated Completion Time per Response: 5 minutes.

Total Estimated Number of Annual Burden Hours: 54,167.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: December 10, 2018.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2018–26991 Filed 12–12–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GR18NDOOGQ44100 OMB Control Number 1028—NEW]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Efficacy of Oak Savanna Restoration History Information Request

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before January 14, 2019.

ADDRESSES: Send written comments on this information collection request (ICR)

to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov*; or via facsimile to (202) 395–5806. Please provide a copy of your comments by mail to USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov*. Please reference OMB Control Number 1028—NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Noel B. Pavlovic by email at *npavlovic@usgs.gov*, or by telephone at (219) 926–8336 X428. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: The USGS, in accordance with the Paperwork Reduction Act of 1995, provides the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on 4/25/2018 (FR 2018–08678). We received one comment. The comment did not address the issue of requesting information from land managers about multiple oak savanna management techniques.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made

publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Managers from sites where we will have collected vegetation data will be contacted for information about management activities. The information will be used by the Principal Investigators (PIs) and Co-PIs and research assistant(s) to generate a history of management database for all the sites and treatments sampled. Most sites will include three or four subsites as indicated by these treatment types: Control, burned, thinned, and/or burned and thinned. The data table will include site name and subsite treatment types as identification without any manager's name, title or contact information, since this latter information is irrelevant to the analysis. The data table of management history will be used to relate to the condition and status of the groundlayer vegetation, as expressed in variables such as species richness, species turnover, composition through ordination and other statistical methods including structural equation modeling. Results of analyses may include site names and treatment types, but no specific manager information will be retained or relevant to the results.

Title of Collection: Efficacy of Oak Savanna Restoration History Information Request.

OMB Control Number: 1028—NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: State property managers; local property managers; and private land managers.

Total Estimated Number of Annual Respondents: 30.

Estimated Completion Time per Response: 1 hour.

Total Estimated Number of Annual Burden Hours: 30.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time, sometimes twice for clarification.

Total Estimated Annual Non-hour Burden Cost: \$0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Shonnie Fearon,

Acting Director, Great Lakes Science Center.

[FR Doc. 2018–26983 Filed 12–12–18; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**[LLIDI00000.L111000000.DF0000
LXSS024D0000 241A 4500129292]**Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of public meeting.**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.**DATES:** The RAC will meet in Idaho Falls, Idaho, January 15–16, 2019.**ADDRESSES:** The Idaho Falls District RAC will meet January 15–16 at the BLM Idaho Falls District office located at 1405 Hollipark Drive, Idaho Falls, Idaho 83401. On January 15, the new member orientation will begin at 9:00 a.m. The entire RAC will convene at 1:00 p.m. and adjourn around 4:30 p.m. On January 16, the RAC will convene at 8:30 a.m. and adjourn around 2:30 p.m. The public comment period will be from 2:00–2:30 p.m. The BLM welcomes members of the public to attend the RAC meeting.**FOR FURTHER INFORMATION CONTACT:**Sarah Wheeler, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone: (208) 524–7550. Email: sawheeler@blm.gov.

Persons who use a telecommunications device for the deaf may contact Ms. Wheeler by calling the Federal Relay Service (FRS) at (800) 877–8339. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with Ms. Wheeler. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District, which covers eastern Idaho.

Meeting topics include a recreational fee proposal for the Jensen Cabin on the Caribou-Targhee National Forest, recreation fee increase discussion on the Upper Snake Field Office, possible recreation enhancements to Henry's Lake and a 2018 Fire Update. On Jan. 16, the group will break out into a working session to determine how the Idaho Falls District can better

implement Secretary's Orders 3356 and 3366. Other topics, such as management plans for existing wilderness areas, and wild horses may be discussed if time permits.

All meetings are open to the public. The public may present written comments to the Council. Each Council meeting has time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Before including your phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 1784.4–2.**Sarah Wheeler,***RAC Coordinator.*

[FR Doc. 2018–27035 Filed 12–12–18; 8:45 am]

BILLING CODE 4310–GG–P**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**[19X.LLAZ921000
.L14400000.BJ0000.LXSSA2250000.241A]**Notice of Filing of Plat of Survey; Arizona****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of official filing.**SUMMARY:** The plat of survey of the following described lands was officially filed in the Bureau of Land Management (BLM), Arizona State Office, Phoenix, Arizona, on the date indicated. The survey announced in this notice is necessary for the management of lands administered by the agency indicated.**ADDRESSES:** This plat will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427. Protests of the survey should be sent to the Arizona State Director at the above address.**FOR FURTHER INFORMATION CONTACT:**Gerald Davis, Chief Cadastral Surveyor of Arizona; (602) 417–9558; gtddavis@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, 7 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 Gila and Salt River Meridian, Arizona**

The supplemental plat, in one sheet, showing the amended lotting in section 31, Township 9 North, Range 23 East, accepted November 20, 2018, and officially filed November 21, 2018, for Group 9115, Arizona.

This plat was prepared at the request of the United States Forest Service.

A person or party who wishes to protest against any of these surveys must file a written notice of protest within 30 calendar days from the date of this publication with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within 30 days after the protest is filed. Before including your address, or other personal information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.**Gerald T. Davis,***Chief Cadastral Surveyor of Arizona.*

[FR Doc. 2018–26929 Filed 12–12–18; 8:45 am]

BILLING CODE 4310–32–P**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

[19X.LLAZP02000.L14400000.EQ0000; AZA–036609]

Notice of Realty Action: Recreation and Public Purposes Act Classification; Arizona**AGENCY:** Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined certain public lands in Pinal County, Arizona, and has found them suitable for classification for lease or conveyance to the Pinal County Board of Supervisors under the provisions of the Recreation and Public Purpose Act (R&PP), as amended, the Taylor Grazing Act, and Executive Order No. 6910. The lands will be used as a regional park. The lands consist of approximately 498.04 acres, must conform to the official plat of survey, and are legally described below.

DATES: Submit written comments regarding this proposed classification on or before January 28, 2019. In the absence of any adverse comments, the classification will become effective on February 11, 2019.

ADDRESSES: Comments may be mailed or hand delivered to Realty Specialist JoAnn Goodlow at the BLM Lower Sonoran Field Office, 21605 North 7th Avenue, Phoenix, Arizona 85027. Comments may also be faxed to 623-580-5580. The BLM will not consider comments received via telephone calls or email. Detailed information including, but not limited to, a proposed development and management plan and documentation relating to compliance with applicable environmental and cultural resource laws, is available for review during business hours, 7:45 a.m. to 4 p.m. Mountain Time, Monday through Friday, except during Federal holidays, at this same street address.

FOR FURTHER INFORMATION CONTACT: JoAnn Goodlow, Realty Specialist, telephone: 623-580-5548, email: jgoodlow@blm.gov. Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1-800-877-8339 to leave a message or question for the above individual. The FRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Pinal County Board of Supervisors has not applied for more than the 6,400-acre limitation for recreation uses in a year (or 640 acres if a nonprofit corporation or association), nor more than 640 acres for each of the programs involving public resources other than recreation.

The Pinal County Board of Supervisors has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b). The Pinal County Board of Supervisors proposes to use the land as a regional park. The park would provide recreational opportunities such as hiking, mountain biking, rock

climbing, tent camping, an equestrian area, and picnic locations.

The lands examined and identified as suitable for lease or conveyance under the R&PP Act are legally described as:

Gila and Salt River Meridian, Arizona

T. 1 S., R. 10 E.,

Section 6, lots 6 and 7, and E $\frac{1}{2}$ SW $\frac{1}{4}$;

Section 7, lots 1 and 2, NE $\frac{1}{4}$ and

E $\frac{1}{2}$ NW $\frac{1}{4}$.

The areas described aggregate 498.04 acres.

The lands are not needed for any Federal purposes.

Lease or conveyance of the lands for recreational or public purposes use is consistent with the BLM Lower Sonoran Resource Management Plan, dated September 2012, and would be in the national interest.

All interested parties will receive a copy of this notice once it is published in the **Federal Register**. A copy of the **Federal Register** notice with information about this proposed realty action will be published in the newspaper of local circulation once a week for 3 consecutive weeks. Under the regulations at 43 CFR subpart 2741 addressing requirements and procedures for conveyances under the R&PP Act, the BLM is not required to hold a public meeting regarding this proposal.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including locations under the mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

The lease or conveyance of the land, when issued, will be subject to the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. Provisions of the R&PP Act and all applicable regulations of the Secretary of the Interior.

3. All mineral deposits in the land so patented, and the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations as established by the Secretary of the Interior are reserved to the United States, together with all necessary access and exit rights.

4. Lease or conveyance of the parcel is subject to valid existing rights.

5. An appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or occupations on the leased/patented lands.

6. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Classification Comments: Interested persons may submit comments involving the suitability of the land for development of a regional park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested persons may submit comments regarding the specific use proposed in the application and plan of development and management, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for a regional park.

Any adverse comments will be reviewed by the BLM State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action. The lands will not be offered for conveyance until after the classification becomes effective.

Before including your address, phone number, email address, or other personal identifying information in any comment, be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2741.5.

Edward Kender,

Field Manager, BLM Lower Sonoran Field Office.

[FR Doc. 2018-27033 Filed 12-12-18; 8:45 am]

BILLING CODE 4310-32-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-NER-ACAD-26527; PPNEACADSO, PPMPSPDIZ.YM0000]

Acadia National Park Advisory Commission Notice of Public Meetings

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of

1972, the National Park Service (NPS) is hereby giving notice that the Acadia National Park Advisory Commission (Commission) will meet as indicated below.

DATES: The Commission will meet: Monday, February 4, 2019; Monday, June 3, 2019; and Monday, September 9, 2019. All scheduled meetings will begin at 1:00 p.m. and will end by 4:00 p.m. (Eastern).

ADDRESSES: The February 4, 2019, and June 3, 2019, meetings will be held at the headquarters conference room, Acadia National Park, 20 McFarland Hill Drive, Bar Harbor, Maine 04609. The September 9, 2019, meeting will be held at Schoodic Education and Research Center, Winter Harbor, Maine 04693.

FOR FURTHER INFORMATION CONTACT: Michael Madell, Deputy Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, telephone (207) 288-8701 or email michael_madell@nps.gov.

SUPPLEMENTARY INFORMATION: The Commission was established by section 103 of Public Law 99-420, as amended, (16 U.S.C. 341 note), and in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix 1-16). The Commission advises the Secretary and the NPS on matters relating to the management and development of Acadia National Park, including but not limited to, the acquisition of lands and interests in lands (including conservation easements on islands) and the termination of rights of use and occupancy.

The meetings are open to the public. Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

The Commission meeting locations may change based on inclement weather or exceptional circumstances. If a meeting location is changed, the Superintendent will issue a press release and use local newspapers to announce the change.

Agenda: The Commission meeting will consist of the following proposed agenda items:

1. Committee Reports:
 - Land Conservation
 - Park Use
 - Science and Education
 - Historic
2. Old Business
3. Superintendent's Report
4. Chairman's Report
5. Public Comments
6. Adjournment

Public Disclosure of Information: Before including your address, telephone 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.

Authority: 5 U.S.C. Appendix 2.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2018-27026 Filed 12-12-18; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 190S180110; S2D2S SS08011000 SX064A000 19XS501520; OMB Control Number 1029-0117]

Agency Information Collection Activities: Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing our intention to request renewed approval from the Office of Management and Budget (OMB) to continue collecting information for Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information. The information collection request describes the nature of the information collection and its expected burden and cost.

DATES: Interested persons are invited to submit comments on or before January 14, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at OIRA_Submission@omb.eop.gov; or via facsimile to (202) 395-5806. Please provide a copy of your comments to Harry Payne, Office of Surface Mining Reclamation and Enforcement, 1849 C

Street NW, Mail Stop 4557, Washington, DC 20240; or by email to HPayne@osmre.gov. Please reference OMB Control Number 1029-0117 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Harry Payne by email at HPayne@osmre.gov, or by telephone at (202) 208-2895. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provides the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 5, 2018 (83 FR 45139). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of OSMRE; (2) is the estimate of burden accurate; (3) how might OSMRE enhance the quality, utility, and clarity of the information to be collected; and (4) how might OSMRE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Title of Collection: 30 CFR part 778—Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information.

OMB Control Number: 1029-0117.

Abstract: This collection of information is authorized by Section

507(b) of Public Law 95–87 which provides that persons conducting coal mining activities submit to the regulatory authority all relevant information regarding ownership and control of the mining company, their compliance status and history, and authority to mine the property. This information is used to insure all legal, financial and compliance requirements are satisfied prior to issuance or denial of a permit.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Coal mine operators and State regulatory authorities.

Total Estimated Number of Annual Respondents: 177 Coal mine operators and 24 State regulatory authorities.

Total Estimated Number of Annual Responses: 1,194 Coal mine operator responses and 491 State regulatory authority responses.

Estimated Completion Time per Response: Varies from 1 to 9 hours per response from Coal mine operators, and 1 to 3 hours for State regulatory authorities, depending on collection activity.

Total Estimated Number of Annual Burden Hours: 4,670 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: \$0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Authority: The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2018–26965 Filed 12–12–18; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. TA–131–045 and TPA–105–006]

U.S.-UK Trade Agreement: Advice on the Probable Economic Effect of Providing Duty-Free Treatment for Currently Dutiable Imports; Institution of Investigation and Scheduling of Hearing

AGENCY: United States International Trade Commission.

ACTION: Notice of investigation and scheduling of a public hearing.

SUMMARY: Following receipt on November 9, 2018, of a request from the United States Trade Representative (USTR) for a report containing advice and an assessment, the Commission instituted Investigation Nos. TA–131–045 and TPA–105–006, *U.S.-UK Trade Agreement: Advice on the Probable Economic Effect of Providing Duty-free Treatment for Currently Dutiable Imports*.

DATES: *January 10, 2019:* Deadline for filing requests to appear at the public hearing.

January 14, 2019: Deadline for filing prehearing briefs and statements.

January 31, 2019: Public hearing.

February 11, 2019: Deadline for filing post-hearing briefs and submissions.

February 11, 2019: Deadline for filing all other written statements.

May 8, 2019: Transmittal of Commission report to the USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. 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: Project Leader David Guberman (202–708–1396 or david.guberman@usitc.gov) or Deputy Project Leader Amanda Lawrence (202–205–3185 or amanda.lawrence@usitc.gov) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or william.gearhart@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or margaret.olaughlin@usitc.gov). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website (<https://www.usitc.gov>). 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.

SUPPLEMENTARY INFORMATION:

Background: In his letter of November 8,

2018, the USTR requested that the Commission provide certain advice under section 131 of the Trade Act of 1974 (19 U.S.C. 2151) and an assessment under section 105(a)(2)(B)(i)(III) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA Act) (19 U.S.C. 4204(a)(2)(B)(i)(III)) with respect to the effects of providing duty-free treatment for imports of products from the United Kingdom (UK).

More specifically, the USTR, under authority delegated by the President and pursuant to section 131 of the Trade Act of 1974, requested that the Commission provide a report containing its advice as to the probable economic effect of providing duty-free treatment for imports of currently dutiable products from the UK on (i) industries in the United States producing like or directly competitive products, and (ii) consumers. The USTR asked that the Commission's analysis consider each article in chapters 1 through 97 of the *Harmonized Tariff Schedule of the United States* (HTS) for which U.S. tariffs will remain, taking into account implementation of U.S. commitments in the World Trade Organization. The USTR asked that the advice be based on the HTS in effect during 2018 and trade data for 2017.

In addition, the USTR requested that the Commission prepare an assessment, as described in section 105(a)(2)(B)(i)(III) of the TPA Act, of the probable economic effects of eliminating tariffs on imports from the UK of those agricultural products described in the list attached to the USTR's request letter on (i) industries in the United States producing the products concerned, and (ii) the U.S. economy as a whole. The USTR's request letter and list of agricultural products are posted on the Commission's website at <https://www.usitc.gov>.

For the purposes of these analyses, the USTR requested that the Commission assume the UK will no longer be a Member State of the European Union. The USTR indicated that those sections of the Commission's report that relate to advice and assessment of probable economic effects will be classified. The USTR also indicated that he considers the Commission's report to be an interagency memorandum that will contain pre-decisional advice and be subject to the deliberative process privilege. As requested, the Commission will provide its report to the USTR as soon as possible, and no later than May 8, 2019.

Public Hearing: A public hearing in connection with this investigation will

be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on January 31, 2019. Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m., January 10, 2019, in accordance with the requirements in the "Written Submissions" section below. All prehearing briefs and statements should be filed not later than 5:15 p.m., January 14, 2019, and all post-hearing briefs and statements should be filed not later than 5:15 p.m., February 11, 2019. For further information, call 202-205-2000.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., February 11, 2019. All written submissions must conform to the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. Eastern Time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraphs for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202-205-1802).

Confidential Business Information: Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR. Additionally, all

information, including confidential business information, submitted in this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel (a) for cybersecurity purposes or (b) in monitoring user activity on U.S. government classified networks. The Commission will not otherwise disclose any confidential business information in a way that would reveal the operations of the firm supplying the information.

Summaries of Written Submissions: Persons wishing to have a summary of their position included in the report should include a summary with their written submission and should mark the summary as having been provided for that purpose. The summary should be clearly marked as "summary" at the top of the page. The summary may not exceed 500 words, should be in MS Word format or a format that can be easily converted to MS Word, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject of the investigation. The Commission will list the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: December 7, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018-26933 Filed 12-12-18; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Pickup Truck Folding Bed Cover Systems and Components Thereof*, DN 3356; the Commission is

soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>, and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint, a motion for temporary relief, and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Extang Corporation and Laurmark Enterprises, Inc. d/b/a BAK Industries on December 7, 2018. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pickup truck folding bed cover systems and components thereof. The complaint names as respondents: Stehler Automotive of Walnut, CA; SyneticUSA of Pico Rivera, CA; Topline Autoparts, Inc. of Hacienda Heights, CA; Velocity Concepts Inc. of Hacienda Heights, CA; JL Concepts Inc. of Walnut, CA; DT Trading Inc. of Alhambra, CA; Wenzhou Kouvi Hardware Products Co., Ltd. of China; Syppo Marketing, Inc. of City of Industry, CA; Apex Auto Parts Mfg. Inc. of City of Industry, CA; Ningbo Huadian Cross Country Automobile Accessories Co., Ltd. of China; and Sunwood Industries Co., Ltd. of China. The complainants request that the Commission grant temporary relief in the form of temporary cease and desist

orders during the period of investigation. Complainants also requests issuance of a general exclusion order or in the alternative a limited exclusion order, and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and
- (v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues should be filed no later than by close of business nine calendar days after the date of publication of this notice in the **Federal Register**. Complainant may file a reply to any written submission no later than the date on which complainant's reply would be due under § 210.8(c)(2) of the Commission's

Rules of Practice and Procedure (19 CFR 210.8(c)(2)).

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3356) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337),

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov.3>.

and of 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 10, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018-26994 Filed 12-12-18; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

Certain Electronic Nicotine Delivery 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 October 3, 2018, under section 337 of the Tariff Act of 1930, as amended, on behalf of Juul Labs, Inc. of San Francisco, California. A letter supplementing the complaint was filed on October 17, 2018. An amended complaint was filed on October 26, 2018. The amended 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 electronic nicotine delivery systems and components thereof by reason of infringement of certain claims of U.S. Patent No. 10,070,669 ("the '669 patent"); U.S. Patent No. 10,076,139 ("the '139 patent"); U.S. Patent No. 10,045,568 ("the '568 patent"); U.S. Patent No. 10,058,130 ("the '130 patent"); and U.S. Patent No. 10,104,915 ("the '915 patent"). The amended 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 amended 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: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

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 amended complaint, the U.S. International Trade Commission, on December 6, 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, 4, 5, 7, 8, 10, 12, 13, 16, 17, 20, and 21 of the '669 patent; claims 1–4, 9–11, 13, 14, 19–21, 24, 28, and 29 of the '139 patent; claims 1–3, 5–9, 12, and 17–20 of the '568 patent; claims 1, 2, 4–6, 8–10, 16, 19, 21, and 27 of the '130 patent; and claims 1–4, 6, 9, 11, 12, 18–23, and 27 of the '915 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 “nicotine vaporizer devices and the associated pods sold for use with the devices, and components thereof”;

(3) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as

appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(4) 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: Juul Labs, Inc., 560 20th Street, San Francisco, CA 94107.

(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:

J Well France S.A.S., 50 rue de Miromesnil, 75008 Paris, France
Bo Vaping, 591 Stewart Avenue, Garden City, NY 11530

MMS Distribution LLC, 195 Lake Louise Marie Road, Rock Hill, NY 12775

The Electric Tobacconist, LLC, 3235 Prairie Avenue, Boulder, CO 80301

Vapor 4 Life Holdings, Inc., 4080 Commercial Avenue, Suite A, Northbrook, IL 60062

Eonsmoke, LLC, 1500 Main Ave, 2nd Floor, Clifton, NJ 07011

ZLab S.A., Ave. Golero, 911 Office 27, Punta del Este—Maldonado—Uruguay 20100

Ziip Lab Co., Limited, E district 4F, 5 building, Wen Ge Industrial Zone, Heshuikou Gongming St., Guangming New District, Shenzhen City, Guangdong Province, China 518106

Shenzhen Yibo Technology Co., Ltd., E district 4F, 5 building, Wen Ge Industrial Zone, Heshuikou, Gongming St., Guangming New District, Shenzhen City, Guangdong Province, China 518106

XFire, Inc., 820 Summer Park Dr., Suite 700, Stafford, TX 77477

ALD Group Limited, No. 2, 3rd Industrial Road, Shixin Community, Shiyan Street, Bao'an District, Shenzhen City, Guangdong Province, China 518108

Flair Vapor LLC, 2500 Hamilton Blvd., Suite B, South Plainfield, NJ 07080

Shenzhen Joecig Technology Co., Ltd., 1F–5F, Building 17, Quarter G ShaJing Rd., Gonghe 3rd Industry District, Baoan District, Shenzhen City, Guangdong Province, China 518104

Myle Vape Inc., 8085 Chevy Chase Street, Jamaica, NY 11432

Vapor Hub International, Inc., 1871 Tapo Street, Simi Valley, CA 93063

Limitless Mod Co., 4590 Ish Drive, Suite 100, Simi Valley, CA 93063

Asher Dynamics, Inc., 14345 Pipeline Avenue, Chino, CA 91710

Ply Rock, 14345 Pipeline Avenue, Chino, CA 91710

Infinite-N Technology Limited, 4F, iTone Digital Park, Xin Fa San Road, Sha Jing Shenzhen City, Guangdong Province, China 518200

King Distribution LLC, 281 Route 46 West, Elmwood Park, NJ 07407

Keep Vapor Electronic Tech. Co., Ltd., Block D, XinLong Techno Park, Shajing Town, Bao An District, Shenzhen, China

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 10, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–26995 Filed 12–12–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Appointment of Individuals To Serve as Members of the Performance Review Board

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: December 7, 2018.

FOR FURTHER INFORMATION CONTACT: Eric Mozie, Director of Human Resources, or Ronald Johnson, Senior Human Resources Specialist, U.S. International Trade Commission (202) 205-2651.

SUPPLEMENTARY INFORMATION: The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB):

- Chair of the PRB: Commissioner Irving A. Williamson
- Vice-Chair of the PRB: Commissioner Meredith Broadbent
- Member—John Ascienzo
- Member—Dominic Bianchi
- Member—Nannette Christ
- Member—Catherine DeFilippo
- Member—James Holbein
- Member—Margaret Macdonald
- Member—Stephen A. McLaughlin
- Member—William Powers

Authority: This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4). Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205-1810.

By order of the Commission.
Issued: December 4, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018-26742 Filed 12-12-18; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-392]

Importer of Controlled Substances Application: Siegfried USA, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 14, 2019. Such persons may also file a written request for a hearing on the application on or before January 14, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator,

8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division ("Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on November 05, 2018, Siegfried USA, LLC, 33 Industrial Park Road, Pennsville, New Jersey 08070 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Opium, raw	9600	II
Poppy Straw Concentrate	9670	II

The company plans to import the listed controlled substances to manufacture bulk active pharmaceutical ingredients (API) for distribution to its customers.

Dated: December 3, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018-27032 Filed 12-12-18; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-392]

Importer of Controlled Substances Application: Mylan Pharmaceuticals Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 14, 2019. Such persons may also file a written request for a hearing on the application on or before January 14, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division ("Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on October 10, 2018, Mylan Pharmaceuticals Inc., 2898 Manufacturers Road, Greensboro, North Carolina 27406-4600 applied to be registered as an importer of the following basic class of controlled substance:

Controlled substance	Drug code	Schedule
Nabilone	7379	II

The company plans to import the FDA approved drug product in finished dosage form for distribution to its customers. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2).

Dated: December 3, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018-27036 Filed 12-12-18; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-392]

Bulk Manufacturer of Controlled Substances Application: Eli-Elsohly Laboratories

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 11, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (“Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on November 22, 2017, Eli-Elsohly Laboratories, Mahmoud A. Elsohly Ph.D., 5 Industrial Park Drive, Oxford, Mississippi 38655 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols ..	7370	I
Dihydromorphine	9145	I
Amphetamine	1100	II
Methamphetamine	1105	II

Controlled substance	Drug code	Schedule
Cocaine	9041	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Ecgonine	9180	II
Hydrocodone	9193	II
Morphine	9300	II
Thebaine	9333	II

The company plans to manufacture the listed controlled substances for product development and reference standards. In reference to drug codes 7360 (marihuana) and 7370 (THC), the company plans to isolate these controlled substances from procured 7350 (marihuana extract). In reference to drug code 7360 (marihuana), no cultivation activities are authorized for this registration. No other activities for these drug codes are authorized for this registration.

Dated: December 3, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018-27029 Filed 12-12-18; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-392]

Bulk Manufacturer of Controlled Substances Application: Cambrex High Point, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 11, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in

connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (“Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on July 16, 2018, Cambrex High Point Inc., 4180 Mendenhall Oaks Parkway, High Point, North Carolina 27265 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substances	Drug code	Schedule
Oxymorphone	9652	II
Noroxymorphone	9668	II

The company plans to manufacture the above listed controlled substances in bulk for distribution to its customers.

Dated: December 3, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018-27039 Filed 12-12-18; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-392]

Importer of Controlled Substances Application: Noramco Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 14, 2019. Such persons may also file a written request for a hearing on the application on or before January 14, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (“Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on August 14, 2018, Noramco Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801-4417 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana	7360	I
Tetrahydrocannabinols ..	7370	I
Nabilone	7379	II
Phenylacetone	8501	II
Opium, raw	9600	II
Poppy Straw Concentrate.	9670	II
Tapentadol	9780	II

The company plans to import phenylacetone (8501), and poppy straw concentrate (9670) to bulk manufacture other controlled substances for distribution to its customers. In reference to drug codes 7360 (marihuana) and 7370 (THC), the company plans to import a synthetic cannabidiol and a synthetic tetrahydrocannabinol. No other activity for these drug codes is authorized for this registration. Placement of these drug codes onto the company’s registration does not translate into automatic approval of subsequent permit applications to import controlled substances.

Approval of permit applications will occur only when the registrant’s business activity is consistent with what is authorized under 21 U.S.C 952(a)(2). Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: December 3, 2018.
John J. Martin,
Assistant Administrator.
 [FR Doc. 2018-27037 Filed 12-12-18; 8:45 am]
BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-392]

Importer of Controlled Substances Application: Mylan Technologies, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 14, 2019. Such persons may also file a written request for a hearing on the application on or before January 14, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (“Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on November 7, 2018, Mylan Technologies Inc., 110 Lake Street, Saint Albans,

Vermont 05478 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Methylphenidate	1724	II
Fentanyl	9801	II

The company plans to import the listed controlled substances in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company’s own domestically-manufactured FDF. This analysis is required to allow the company to export domestically manufactured FDF to foreign markets.

Dated: December 3, 2018.
John J. Martin,
Assistant Administrator.
 [FR Doc. 2018-27034 Filed 12-12-18; 8:45 am]
BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On December 4, 2018, the Department of Justice lodged a proposed consent decree with the United States District Court for the Northern District of New York in the lawsuit entitled *United States of America v. Grimmel Industries, LLC, et al.*, Civil Action No. 1:16-cv-1103 (NAM/CFH).

The United States filed the complaint in this Clean Water Act case against the Defendants on September 9, 2016. The complaint alleged that the Defendants, Grimmel Industries, LLC, Rensselaer Iron & Steel, Inc., and Toby Grimmel, violated the Multi-Sector General Permits issued by the New York Department of Environmental Conservation concurrently under Section 402(b) of the Clean Water Act, 42 U.S.C. 1342(b). The Complaint sought civil penalties and injunctive relief for eleven alleged violations of the permits, including effluent discharges in excess of permitted limits; failure to comply with corrective action requirements; inadequate permit coverage and stormwater pollution prevention plans; improper implementation of stormwater pollution prevention plans; failure to conduct quarterly visual monitoring; failure to timely submit reports; failure to perform annual dry weather flow monitoring; inadequate responses to benchmark exceedances; failure to train employees;

failure to maintain records; and failure to properly collect samples.

Under the Proposed Consent Decree, the United States will dismiss Defendant Toby Grimmel. The remaining Defendants must revise their stormwater management plans and investigate several drainage features at the facility. The remaining Defendants must also eliminate stormwater discharges from a catch basin under a material storage pile; remove scrap metal and other waste material accumulated under a pier at the facility; and install a berm on part of the site. The remaining Defendants must pay \$100,000 in civil penalties. The proposed consent decree will resolve all Clean Water Act claims alleged in this action by the United States against Defendants.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Environmental Enforcement Section, and should refer to *United States v. Grimmel Industries, LLC, et al.*, D.J. Ref. No. 90-5-1-1-11209/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$9.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018-27013 Filed 12-12-18; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Information Advisory Council

AGENCY: Employment and Training Administration, Labor.

ACTION: Request for nominations for membership on the Workforce Information Advisory Council.

SUMMARY: The Department of Labor invites interested parties to submit nominations for individuals to serve on the Workforce Information Advisory Council (WIAC) and announces the procedures for those nominations. From the nominations received, the Department will fill all 14 slots on the Council. Information regarding the WIAC can be found at <https://www.doleta.gov/wioa/wiac/>.

DATES: Nominations for individuals to serve on the WIAC must be submitted (postmarked, if sending by mail; submitted electronically; or received, if hand delivered) by February 11, 2019.

ADDRESSES: You may submit nominations and supporting materials described in this **Federal Register** Notice by any one of the following methods:

Electronically: Submit nominations, including attachments, by email using the following address: WIAC@dol.gov (use subject line “Nomination—Workforce Information Advisory Council”).

Mail, express delivery, hand delivery, messenger, or courier service: Submit one copy of the nominations and supporting materials to the following address: Workforce Information Advisory Council Nominations, Office of Workforce Investment, U.S. Department of Labor, 200 Constitution Ave. NW, Room C-4526, Washington, DC 20210. Deliveries by hand, express mail, messenger, and courier service are accepted by the Office of Workforce Investment during the hours of 9:00 a.m.–5:00 p.m., EST, Monday through Friday. Due to security-related procedures, submissions by regular mail may experience significant delays.

Facsimile: The Department will not accept nominations submitted by fax.

FOR FURTHER INFORMATION CONTACT: Steve Rietzke, Division of National Programs, Tools, and Technical Assistance, Office of Workforce Investment (address above); by telephone at (202) 693-3912 (this is not toll-free numbers) or by email at WIAC@dol.gov.

SUPPLEMENTARY INFORMATION: Section 15 of the Wagner-Peyser Act, 29 U.S.C. 491-2, as amended by section 308 of the Workforce Innovation and Opportunity Act of 2014 (WIOA), Public Law 113-128, requires the Secretary of Labor (Secretary) to establish a WIAC.

The statute, as amended, requires the Secretary, acting through the Commissioner of Labor Statistics and the Assistant Secretary for Employment and Training, to formally consult at least twice annually with the WIAC to address: (1) Evaluation and improvement of the nationwide workforce and labor market information system established by the Wagner-Peyser Act, and of the statewide systems that comprise the nationwide system, and (2) how the Department of Labor and the States will cooperate in the management of those systems. The Secretary, acting through the Bureau of Labor Statistics (BLS) and the Employment and Training Administration (ETA), and in consultation with the WIAC and appropriate federal agencies, must also develop a two-year plan for management of the labor market information system. The statute generally prescribes how the plan is to be developed and implemented, outlines the contents of the plan, and requires the Secretary to submit the plan to designated authorizing committees in the House and Senate.

By law, the Secretary must “seek, review, and evaluate” recommendations from the WIAC, and respond in writing to the Council. The WIAC must make written recommendations to the Secretary on the evaluation and improvement of the workforce and labor market information system, including recommendations for the 2-year plan. The 2-year plan, in turn, must describe WIAC recommendations and the extent to which the plan incorporates them.

The Department anticipates that the WIAC will accomplish its objectives by, for example: (1) Studying workforce and labor market information issues; (2) seeking and sharing information on innovative approaches, new technologies, and data to inform employment, skills training, and workforce and economic development decision making and policy; and (3) advising the Secretary on how the workforce and labor market information system can best support workforce development, planning, and program development.

Pertinent information about the WIAC, including recommendations, reports, background information, agendas, and meeting minutes, can be

accessed at the WIAC's website located at <https://www.doleta.gov/wioa/wiac/>.

The Wagner-Peyser Act, at section 15(d)(2)(B), requires the WIAC to have 14 members, appointed by the Secretary, consisting of:

(1) Four members who are representatives of lead State agencies with responsibility for workforce investment activities, or State agencies described in Wagner-Peyser Act section 4 (agency designated or authorized by Governor to cooperate with the Secretary of Labor), who have been nominated by such agencies or by a national organization that represents such agencies;

(2) Four members who are representatives of the State workforce and labor market information directors affiliated with the State agencies responsible for the management and oversight of the workforce and labor market information system as described in Wagner-Peyser Act Section 15(e)(2), who have been nominated by the directors;

(3) One member who is a representative of providers of training services under WIOA section 122 (Identification of Eligible Providers of Training Services);

(4) One member who is a representative of economic development entities;

(5) One member who is a representative of businesses, who has been nominated by national business organizations or trade associations;

(6) One member who is a representative of labor organizations, who has been nominated by a national labor federation;

(7) One member who is a representative of local workforce development boards, who has been nominated by a national organization representing such boards; and

(8) One member who is a representative of research entities that use workforce and labor market information.

The Secretary must ensure that the membership of the WIAC is geographically diverse, and that no two members appointed under clauses (1), (2), and (7), above, represent the same State. Each member will be appointed for a term that may be 2 or 3 years in order to establish a rotation of the members. The Secretary will not appoint a member for any more than two consecutive terms, which allows all current WIAC members to be re-nominated if they still meet all of the other membership requirements.

Any member whom the Secretary appoints to fill a vacancy occurring before the expiration of the

predecessor's term will be appointed only for the remainder of that term. Members of the Council will serve on a voluntary and generally uncompensated basis, but will be reimbursed for travel expenses to attend WIAC meetings, including per diem in lieu of subsistence, as authorized by the Federal travel regulations.

The WIAC is a permanent advisory council and, as such, is not governed by the Federal Advisory Committee Act's (FACA) Section 14, on termination of advisory committees. In other respects, however, WIAC membership will be consistent with the FACA requirement that membership be "fairly balanced in terms of the points of view represented and the functions to be performed" (5 U.S.C. App. 5(b)(2)), as specified in Wagner-Peyser section 15(2)(B) & (C), and the requirement that members come from "a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions" of the WIAC (41 CFR 102-3.60(b)(3)). Under the FACA regulation, the composition of the WIAC will, therefore, depend upon several factors, including: (i) The WIAC's mission; (ii) the geographic, ethnic, social, economic, or scientific impact of the WIAC's recommendations; (iii) the types of specific perspectives required; (iv) the need to obtain divergent points of view on the issues before the WIAC, such as those of consumers, technical experts, the public at large, academia, business, or other sectors; and (v) the relevance of State, local, or tribal governments to the development of the WIAC's recommendations (41 CFR 102-3, Subpart B, Appendix A.).

To the extent permitted by FACA and other applicable laws, WIAC membership should also be consistent with achieving the greatest impact, scope, and credibility among diverse stakeholders. The diversity in such membership includes, but is not limited to, race, gender, disability, sexual orientation, and gender identity.

Nominations Process: During the nominations period, any interested person or organization may nominate one or more qualified individuals for membership. If you would like to nominate an individual or yourself for appointment to the WIAC, please submit, to one of the addresses listed below, the following information:

- A copy of the nominee's resume or curriculum vitae;
- A cover letter that provides your reason(s) for nominating the individual, the constituency area that they represent (as outlined above in the WIAC membership identification discussion), and their particular expertise for

contributing to the national policy discussion on: (1) The evaluation and improvement of the nationwide workforce and labor market information system and statewide systems that comprise the nationwide system, and (2) how the Department of Labor and the States will cooperate in the management of those systems, including programs that produce employment-related statistics and State and local workforce and labor market information; and

- Contact information for the nominee (name, title, business address, business phone, fax number, and business email address).

In addition, the cover letter must state the nomination is being made in response to this **Federal Register** Notice and the nominee (if nominating someone other than oneself) has agreed to be nominated and is willing to serve on the WIAC. Nominees will be appointed based on their qualifications, professional experience, and demonstrated knowledge of issues related to the purpose and scope of the WIAC, as well as diversity considerations. The Department will publish a list of the new WIAC members on the WIAC's website at <https://www.doleta.gov/wioa/wiac/>.

Authority: Pursuant to the Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 *et seq.*; Workforce Innovation and Opportunity Act, Pub. L. 113-128; Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Molly E. Conway,

Acting Assistant Secretary.

[FR Doc. 2018-26928 Filed 12-12-18; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; 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: CMS Pre-FDR Review Panel for the Division of Physics (1208) Reverse Site Visit.

Date and Time: January 31, 2019; 8:00 a.m.-5:30 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, Conference Room E 2030.

Type of Meeting: Part-Open.

Contact Person: Mark Coles, Senior Advisor for Facilities, Division of Physics, National Science Foundation, 2415 Eisenhower Avenue, Room W9219, Alexandria, VA 22314; Telephone: (703) 292-4432.

Purpose of Meeting: Reverse Site visit to give a status presentation with responses from a review panel an evaluation of the progress of the CMS Pre-FDR Review Panel for the Division of Physics at the National Science Foundation.

Agenda

January 31, 2019

8:00 a.m.–8:30 a.m. Executive Session with the review panel—Closed
 8:30 a.m.–12:00 p.m. Presentations by Compact Muon Solenoid collaboration
 12:00 p.m.–1:00 p.m. Lunch
 1:00 p.m.–3:30 p.m. Presentations by Compact Muon Solenoid collaboration
 3:30 p.m.–5:00 p.m. Panel deliberations—Closed
 5:00 p.m.–5:30 p.m. Closeout presentation by the review panel—Closed

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: December 8, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–26951 Filed 12–12–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; 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: ATLAS Pre-FDR Review Panel for the Division of Physics (1208) Reverse Site Visit.

Date and Time: January 30, 2019; 8:00 a.m.–5:30 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, Conference Room E 2030.

Type of Meeting: Part-Open.

Contact Person: Mark Coles, Senior Advisor for Facilities, Division of Physics, National Science Foundation, 2415 Eisenhower Avenue, Room W9219, Alexandria, VA 22314; Telephone: (703) 292–4432.

Purpose of Meeting: Reverse site visit to give a status presentation with responses from a review panel an evaluation of the progress of the ATLAS pre-Final Design Review for the Division of Physics at the National Science Foundation.

Agenda

January 30, 2019

8:00 a.m.–8:30 a.m. Executive Session with the review panel—Closed
 8:30 a.m.–12:00 p.m. Presentations by ATLAS collaboration
 12:00 p.m.–1:00 p.m. Lunch
 1:00 p.m.–3:30 p.m. Presentations by ATLAS
 3:30 p.m.–5:00 p.m. Panel deliberations—Closed
 5:00 p.m.–5:30 p.m. Closeout presentation by the review panel—Closed

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: December 8, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–26952 Filed 12–12–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Astronomy and Astrophysics Advisory Committee (#13883)

Date and Time: January 29, 2019; 9:00 a.m.–5:00 p.m.

January 30, 2019, 9:00 a.m.–12:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Room E2020.

Type of Meeting: Open.

Attendance information for the meeting will be forthcoming on the website: <https://www.nsf.gov/mps/ast/aaac.jsp>.

Contact Person: Dr. Christopher Davis, Program Director, Division of Astronomical Sciences, Suite W 9136, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–4910.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and

astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: December 8, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–26954 Filed 12–12–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; 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: Advisory Committee for Environmental Research and Education (9487).

Date and Time: March 18, 2019; 9:00 a.m.–5:30 p.m. (EDT).

March 19, 2019; 9:00 a.m.—3:00 p.m. (EDT).

Place: National Science Foundation, 2415 Eisenhower Avenue, Room E 2020, Alexandria, VA 22314.

Type of Meeting: Open.

Contact Person: Dr. Leah Nichols, Staff Associate, Office of Integrative Activities/Office of the Director/ National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; (Email: lnichol@nsf.gov/ Telephone: (703) 292–2983).

Minutes: May be obtained from <https://www.nsf.gov/ere/ereweb/minutes.jsp>.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda: Approval of minutes from past meeting. Updates on agency support for environmental research and activities. Discussion with NSF Director and Assistant Directors. Plan for future advisory committee activities. Updated agenda will be available at <https://www.nsf.gov/ere/ereweb/minutes.jsp>.

Dated: December 8, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–26953 Filed 12–12–18; 8:45 am]

BILLING CODE 7555–01–P

POSTAL SERVICE**Product Change—Priority Mail Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 13, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 6, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 488 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2019–39, CP2019–41.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–26940 Filed 12–12–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Privacy Act of 1974; System of Records****AGENCY:** Postal Service™.**ACTION:** Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the United States Postal Service® (Postal Service) is revising the notice for Privacy Act System of Records USPS 910.000, Identity and Document Verification Services.

DATES: These revisions will become effective without further notice on January 14, 2019 unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be mailed or delivered to the Privacy and Records Management Office, United States Postal Service, 475 L'Enfant Plaza SW, Room 1P830, Washington, DC 20260–1101. Copies of all written comments will be available at this address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and

Records Management Officer, Privacy and Records Management Office, 202–268–3069 or privacy@usps.gov.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records. As detailed below, the Postal Service has determined that USPS 910.000, Identity and Document Verification Services should be revised to modify Categories of Individuals Covered by the System, Categories of Records in the System, Purpose(s), and Retention and Disposal.

The changes are being made to:

a. Support the new Address Matching Database, which will be used to identify, prevent and mitigate fraudulent activity within the Change of Address and Hold Mail processes.

b. Allow for the scanning of Government issued IDs at retail locations for the purposes of verifying identity for customers who need postal products and services.

c. To enhance the Postal Service's existing remote identity proofing with a Phone Validation and One-Time Passcode solution.

The new Address Matching Database is being implemented to identify, prevent and mitigate fraudulent activity within the Change of Address and Hold Mail processes. The Postal Service is establishing a dataflow between existing customer systems and the Address Matching Database. This dataflow will allow the Address Matching Database to: confirm if there is an address match when a new Hold Mail request is submitted; confirm the presence of a Change of Address request when a Hold Mail request is submitted during a 30 day time frame; and confirm the presence of a Hold Mail request when a Change of Address request is submitted during a 30 day time frame. The Address Matching Database will also send confirmation notifications to customers who submit a Hold Mail request.

The capability to scan Government issued IDs is being implemented to verify identity when requesting government-issued ID to reduce fraudulent cases surrounding USPS programs and the disposition of certain customer mail services. This will provide the Postal Service the ability to capture and store information provided in the 2-Dimensional barcode on government issued photo IDs (e.g. State-issued driver or non-driver licenses and military IDs).

The Phone Validation and One-Time Passcode solution is being implemented

to enhance the Postal Service's existing remote identity proofing solution and to detect, to the best extent possible, the presentation of fraudulent identities by a malicious user. The Postal Service's objective in implementing the Phone Validation and One-Time Passcode solution is to ensure the user is who they claim to be to a stated level of certitude. The validation and verification of the minimum attributes necessary is used to accomplish identity proofing.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect these amended systems of records to have any adverse effect on individual privacy rights. The notice for USPS 910.000, Identity and Document Verification Services, provided below in its entirety, is as follows:

SYSTEM NAME AND NUMBER:

USPS 910.000, Identity and Document Verification Services.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

USPS Marketing, Headquarters; Integrated Business Solutions Services Centers; and contractor sites.

SYSTEM MANAGER(S)

Chief Information Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1500; (202) 268–6900.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404, and 411.

PURPOSE(S) OF THE SYSTEM:

1. To provide services related to identity and document verification services.
2. To issue and manage public key certificates, user registration, email addresses, and/or electronic postmarks.
3. To provide secure mailing services.
4. To protect business and personal communications.
5. To enhance personal identity and privacy protections.
6. To improve the customer experience and facilitate the provision of accurate and reliable delivery information.
7. To identify, prevent, or mitigate the effects of fraudulent transactions.
8. To support other Federal Government Agencies by providing authorized services.

9. To ensure the quality and integrity of records.

10. To enhance the customer experience by improving the security of Change of Address (COA) and Hold Mail processes.

11. To protect USPS customers from becoming potential victims of mail fraud and identity theft.

12. To identify and mitigate potential fraud in the COA and Hold Mail processes.

13. To verify a customer's identity when applying for COA and Hold Mail services.

14. To provide an audit trail for COA and Hold Mail requests (linked to the identity of the submitter).

15. To enhance remote identity proofing with a Phone Validation and One-Time Passcode solution.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Customers who apply for identity and document verification services.

2. Customers who may require identity verification for Postal products and services.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Customer information:* Name, address, customer ID(s), telephone number, text message number and carrier, mail and email address, date of birth, place of birth, company name, title, role, and employment status.

2. *Customer preference information:* Preferred means of contact.

3. *Authorized User Information:* Names and contact information of users who are authorized to have access to data.

4. *Verification and payment information:* Credit and/or debit card information or other account number, government issued ID type and number, verification question and answer, and payment confirmation code. (*Note:* Social Security Number and credit and/or debit card information are collected, but not stored, in order to verify ID.)

5. *Biometric information:* Fingerprint, photograph, height, weight, and iris scans. (*Note:* Information may be collected, secured, and returned to customer or third parties at the direction of the customer, but not stored.)

6. *Digital certificate information:* Customer's public key(s), certificate serial numbers, distinguished name, effective dates of authorized certificates, certificate algorithm, date of revocation or expiration of certificate, and USPS-authorized digital signature.

7. *Online user information:* Device identification.

8. *Transaction information:* Clerk signature; transaction type, date and

time, location, source of transaction; product use and inquiries; Change of Address (COA) and Hold Mail transactional data.

9. *Electronic information:* Information related to encrypted or hashed documents.

10. *Recipient information:* Electronic signature ID, electronic signature image, electronic signature expiration date, and timestamp.

RECORD SOURCE CATEGORIES:

Customers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Standard routine uses 1. through 7., 10., and 11. apply.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By customer name, customer ID(s), distinguished name, certificate serial number, receipt number, and transaction date.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Records related to Pending Public Key Certificate Application Files are added as received to an electronic database, moved to the authorized certificate file when they are updated with the required data, and records not updated within 90 days from the date of receipt are destroyed.

2. Records related to the Public Key Certificate Directory are retained in an electronic database, are consistently updated, and records are destroyed as they are superseded or deleted.

3. Records related to the Authorized Public Key Certificate Master File are retained in an electronic database for the life of the authorized certificate.

4. When the certificate is revoked, it is moved to the certificate revocation file.

5. The Public Key Certificate Revocation List is cut off at the end of each calendar year and records are retained 30 years from the date of cutoff. Records may be retained longer with customer consent or request.

6. Other records in this system are retained 7 years, unless retained longer by request of the customer.

7. Records related to electronic signatures are retained in an electronic database for 3 years.

8. Other categories of records are retained for a period of up to 30 days.

9. Driver's License data will be retained for 5 years.

10. COA and Hold Mail transactional data will be retained for 5 years.

Records existing on paper are destroyed by burning, pulping, or

shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

Key pairs are protected against cryptanalysis by encrypting the private key and by using a shared secret algorithm to protect the encryption key, and the certificate authority key is stored in a separate, tamperproof, hardware device. Activities are audited, and archived information is protected from corruption, deletion, and modification.

For authentication services and electronic postmark, electronic data is transmitted via secure socket layer (SSL) encryption to a secured data center. Computer media are stored within a secured, locked room within the facility. Access to the database is limited to the system administrator, database administrator, and designated support personnel. Paper forms are stored within a secured area within locked cabinets.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification Procedures* below and *Record Access Procedures* above.

NOTIFICATION PROCEDURES:

Customers wanting to know if other information about them is maintained in this system of records must address inquiries in writing to the system

manager, and include their name and address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:
None.

HISTORY:

December 22, 2017, *82 FR 60776*;
August 29, 2014, *79 FR 51627*; October
24, 2011, *76 FR 65756*; April 29, 2005,
70 FR 22516.

* * * * *

Brittany M. Johnson,
Attorney, Federal Compliance.

[FR Doc. 2018-26428 Filed 12-12-18; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

**Product Change—Priority Mail
Negotiated Service Agreement**

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:*
December 13, 2018.

FOR FURTHER INFORMATION CONTACT:
Elizabeth Reed, 202-268-3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 6, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 489 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2019-40, CP2019-42.

Elizabeth Reed,
Attorney, Corporate and Postal Business Law.

[FR Doc. 2018-26941 Filed 12-12-18; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

**Product Change—Priority Mail
Negotiated Service Agreement**

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:*
December 13, 2018.

FOR FURTHER INFORMATION CONTACT:
Elizabeth Reed, 202-268-3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 6, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 487 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2019-38, CP2019-40.

Elizabeth Reed,
Attorney, Corporate and Postal Business Law.

[FR Doc. 2018-26939 Filed 12-12-18; 8:45 am]

BILLING CODE 7710-12-P

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 34-84761; File No. SR-NYSE-2011-55]

**Self-Regulatory Organizations; New
York Stock Exchange LLC; Order
Granting an Extension to Limited
Exemptions From Rule 612(c) of
Regulation NMS in Connection With
the Exchange's Retail Liquidity
Program Until June 30, 2019**

December 10, 2018.

On July 3, 2012, the Securities and Exchange Commission ("Commission") issued an order pursuant to its authority under Rule 612(c) of Regulation NMS ("Sub-Penny Rule")¹ that granted the New York Stock Exchange LLC ("NYSE") a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Liquidity Program ("Program").² The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt its Program for a one-year pilot term.³ The exemption was granted coterminous with the effectiveness of the pilot Program; both the pilot Program and exemption are scheduled to expire on December 31, 2018.⁴

¹ 17 CFR 242.612(c).

² See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR-NYSE-2011-55; SR-NYSEAmex-2011-84) ("Order").

³ See *id.*

⁴ On July 30, 2013, the Exchange requested an extension of the exemption for the Program. See Letter from Janet McGinness, SVP and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated July 30, 2013. The pilot period for the Program was extended until July 31, 2014. See Securities Exchange Act Release No. 70096 (August 2, 2013), 78 FR 48520 (August 8, 2013) (SR-NYSE-2013-48). On July 30, 2014, the Exchange requested another extension of the

The Exchange now seeks a six month extension of the exemption, which would be until June 30, 2019.⁵ The Exchange's request was made in

exemption for the Program. See Letter from Martha Redding, Chief Counsel, NYSE, to Kevin M O'Neill, Deputy Secretary, Commission, dated July 30, 2014. The pilot period for the Program was extended until March 31, 2015. See Securities Exchange Act Release No. 72629 (July 16, 2014), 79 FR 42564 (July 22, 2014) (SR-NYSE-2014-35). On February 27, 2015, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Senior Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated February 27, 2015. The pilot period for the Program was extended until September 30, 2015. See Securities Exchange Act Release No. 74454 (March 6, 2015), 80 FR 13054 (March 12, 2015) (SR-NYSE-2015-10). On September 17, 2015, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Senior Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated September 17, 2015. The pilot period for the Program was extended until March 31, 2016. See Securities Exchange Act Release No. 75993 (September 28, 2015), 80 FR 59844 (October 2, 2015) (SR-NYSE-2015-41). On March 17, 2016, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Senior Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated March 17, 2016. The pilot period for the Program was extended until August 31, 2016. See Securities Exchange Act Release No. 77426 (March 23, 2016), 81 FR 17533 (March 29, 2016) (SR-NYSE-2016-25). On August 8, 2016, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Associate General Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated August 8, 2016. The pilot period for the Program was extended until December 31, 2016. See Securities Exchange Act Release No. 78600 (August 17, 2016), 81 FR 57642 (August 23, 2016) (SR-NYSE-2016-54). On November 28, 2016, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Associate General Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated November 28, 2016. The pilot period for the Program was extended until June 30, 2017. See Securities Exchange Act Release No. 79493 (December 7, 2016), 81 FR 90019 (December 13, 2016) (SR-NYSE-2016-82). On May 23, 2017, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Associate General Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated May 23, 2017. The pilot period for the Program was extended until December 31, 2017. See Securities Exchange Act Release No. 80844 (June 1, 2017), 82 FR 26562 (June 7, 2017) (SR-NYSE-2017-26). On November 30, 2017, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated November 30, 2017. The pilot period for the Program was extended until June 30, 2018. See Securities Exchange Act Release No. 82230 (December 7, 2017), 82 FR 58667 (December 13, 2017) (SR-NYSE-2017-64). On June 14, 2018, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE to Brent J. Fields, Secretary, Commission, dated June 14, 2018. The pilot period for the Program was extended until December 31, 2018. See Securities Exchange Act Release No. 83540 (June 28, 2018), 83 FR 31234 (July 3, 2018) (SR-NYSE-2018-29).

⁵ See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE to Brent J. Fields, Secretary, Commission, dated November 30, 2018, at 1.

conjunction with an immediately effective filing that extends the operation of the Program through the same date.⁶ In its request to extend the exemption, the Exchange notes that the participation in the Program has increased more recently with additional Retail Liquidity Providers. Accordingly, the Exchange has asked for additional time to both allow for additional opportunities for greater participation in the Program and allow for further assessment of the results of such participation. For this reason and the reasons stated in the Order originally granting the limited exemptions, the Commission finds that extending the exemption, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

Therefore, it is hereby ordered that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted a limited exemption from Rule 612 of Regulation NMS that allows it to accept and rank orders priced equal to or greater than \$1.00 per share in increments of \$0.001, in connection with the operation of its Retail Liquidity Program, until June 30, 2019.

The limited and temporary exemption extended by this Order is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the Federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018-27018 Filed 12-12-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84762; File No. SR-NYSEArca-2013-107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting an Extension to Limited Exemptions From Rule 612(c) of Regulation NMS In Connection With the Exchange's Retail Liquidity Programs Until June 30, 2019

December 10, 2018.

On December 23, 2013, the Securities and Exchange Commission ("Commission") issued an order pursuant to its authority under Rule 612(c) of Regulation NMS ("Sub-Penny Rule")¹ that granted NYSE Arca, Inc. ("Exchange") a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Liquidity Program ("Program").² The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt its Program for a one-year pilot term.³ The exemption was granted coterminous with the effectiveness of the pilot Program; both the pilot Program and exemption are scheduled to expire on December 31, 2018.⁴

¹ 17 CFR 242.612(c).

² See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEArca-2013-107) ("Order").

³ See *id.*

⁴ On March 19, 2015, the Exchange requested an extension of the exemption for the Program. See letter from Martha Redding, Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated March 19, 2015. The pilot period for the Program was extended until September 30, 2015. See Securities Exchange Act Release No. 74572 (Mar. 24, 2015), 80 FR 16705 (Mar. 30, 2015) (SR-NYSEArca-2015-22). On September 17, 2015, the Exchange requested another extension of the exemption for the Program. See letter from Martha Redding, Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated September 17, 2015. The pilot period for the Program was extended until March 31, 2016. See Securities Exchange Act Release Nos. 75994 (Sept. 28, 2015), 80 FR 59834 (Oct. 2, 2015) (SR-NYSEArca-2015-84) and 77236 (Feb. 25, 2016), 81 FR 10943 (Mar. 2, 2016) (SR-NYSEArca-2016-30). On March 17, 2016, the Exchange requested another extension of the exemption for the Program. See letter from Martha Redding, Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated March 17, 2016. The pilot period for the Program was extended until August 31, 2016. See Securities Exchange Act Release No. 77425 (Mar. 23, 2016), 81 FR 17523 (Mar. 29, 2016) (SR-NYSEArca-2016-47). On August 8, 2016, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated August 8, 2016. The pilot period for the Program was extended until December 31, 2016. See Securities Exchange Act Release No. 78601 (Aug. 17, 2016), 81 FR 57632 (Aug. 23, 2016) (SR-NYSEArca-2016-113). On November 28, 2016, the Exchange requested another extension of the exemption for the program.

The Exchange now seeks to extend the exemptions until June 30, 2019.⁵ The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the Program through the same date.⁶ In its request to extend the exemption, the Exchange notes that the participation in the Program has increased more recently with additional Retail Liquidity Providers. Accordingly, the Exchange has asked for additional time to both allow for additional opportunities for greater participation in the Program and allow for further assessment of the results of such participation. For this reason and the reasons stated in the Order originally granting the limited exemptions, the Commission finds that extending the exemption, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

Therefore, it is hereby ordered that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted a limited exemption from Rule 612 of Regulation NMS that allows it to accept and rank orders priced equal to or greater than \$1.00 per share in increments of \$0.001, in connection with the operation of its Retail Liquidity Program, until June 30, 2019.

The limited and temporary exemption extended by this Order is subject to

See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated November 28, 2016. The pilot period for the Program was extended until June 30, 2017. See Securities Exchange Act Release No. 79495 (Dec. 7, 2016), 81 FR 90033 (Dec. 13, 2016) (SR-NYSEArca-2016-157). On May 23, 2017, the Exchange requested another extension of the exemption for the program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated May 23, 2017. The pilot period for the Program was extended until December 31, 2017. See Securities Exchange Act Release No. 80851 (June 2, 2017), 82 FR 26722 (June 8, 2017) (SR-NYSEArca-2017-63). On November 30, 2017, the Exchange requested another extension of the exemption to the program. See Letter from Martha Redding, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated November 30, 2017. The pilot period for the Program was extended until June 30, 2018. See Securities Exchange Act Release No. 82289 (December 11, 2017), 82 FR 59677 (December 15, 2017) (SR-NYSEArca-2017-137). On June 14, 2018, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE to Brent J. Fields, Secretary, Commission, dated June 14, 2018. The pilot period for the Program was extended until December 31, 2018. See Securities Exchange Act Release No. 83538 (June 28, 2018), 83 FR 31210 (July 3, 2018) (SR-NYSE-2018-46).

⁵ See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE to Brent J. Fields, Secretary, Commission, dated November 30, 2018.

⁶ See SR-NYSEArca-2018-89.

⁶ See SR-NYSE-2018-59.

⁷ 17 CFR 200.30-3(a)(83).

modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the Federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84755; File No. SR-NYSE-2018-60]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 15 Relating to the Reference Price for Exchange-Listed Securities

December 7, 2018.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on December 4, 2018, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 15 relating to the Reference Price for Exchange-listed securities. 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 Rule 15 relating to a security’s Reference Price that is used in determining whether to publish a pre-opening indication prior to an opening auction in a security that is already listed on the Exchange. The Exchange proposes to use the “Official Closing Price” (“OCP”) rather than the last reported sale price⁴ as an Exchange-listed security’s Reference Price and to clarify that such Reference Price would be adjusted as applicable based on the publicly disclosed terms of a corporate action.

Rule 15(a) states that a pre-opening indication will include the security and the price range within which the opening price is anticipated to occur and that a pre-opening indication is published via the securities information processor and the Exchange’s proprietary data feeds. Rule 15(b) provides that a designated market maker (“DMM”) will publish a pre-opening indication either: (i) Before a security opens if the opening transaction on the Exchange is anticipated to be at a price that represents a change of more than the “Applicable Price Range,” as specified in Rule 15(d),⁵ from a specified “Reference Price,” as specified in Rule 15(c); or (ii) if a security has not opened by 10:00 a.m. Eastern Time. Accordingly, the Reference Price operates as a trigger for whether to publish a pre-opening indication. The pre-opening indication price range that is published is based on where the

opening price is anticipated to occur; the Reference Price is not published as part of the pre-opening indication.

Rule 15(c)(1)(A) specifies that the Reference Price for a security (other than an American Depository Receipt) that is already listed on the Exchange will be the security’s last reported sale price on the Exchange.⁶ The Exchange proposes to amend Rule 15(c)(1)(A) to: (i) Use the Official Closing Price rather than the last reported sale price as an Exchange-listed security’s Reference Price; and (ii) specify that the Official Closing Price would be adjusted as applicable based on the publicly disclosed terms of a corporate action.

Official Closing Price. Currently, the reference in Rule 15(c)(1)(A) to a security’s “last reported sale price” means the last round-lot sale price on the Exchange that is reported to the Consolidated Tape, which includes the closing transaction price of a round lot or more in a security, and if there was no closing transaction, the last round-lot sale price on the Exchange in that security. For example, if there was no closing transaction, and the last reported sale price of a round lot or more on the Exchange was from 3:30 p.m., the Exchange would use that 3:30 p.m. last reported sale price as the Reference Price for Rule 15(c)(1)(A). If there was no reported sale price the prior day, the Exchange will use the last reported sale price, regardless of how long ago it was published.

The Exchange proposes to update the terminology used in Rule 15(c)(1)(A) to reference the term OCP rather than reference a security’s “last reported sale price.” When the OCP is determined under Rule 123C(1)(e)(i),⁷ use of such OCP for purposes of Rule 15(c)(1)(A) would result in the same Reference Price as under the current rule using the last reported sale price.⁸ In addition, by

⁶ See Rule 15(c)(1). Rule 15(c)(1)(B)–(D) also specifies what the Reference Price will be for a security that is the subject of an initial public offering, that is transferred from another securities market, or that is listed under Footnote (E) to Section 102.01B of the Listed Company Manual.

⁷ In 2015, the Exchange amended Rule 123C to define the term OCP and specified how the Exchange would determine the OCP for a security. See Securities Exchange Act Release No. 76598 (December 9, 2015), 80 FR 77688 (December 15, 2015) (SR-NYSE-2015-62) (Notice of filing and immediate effectiveness of proposed rule change).

⁸ Rule 123C(1)(e)(i) provides that “[t]he Official Closing Price is the price established in a closing transaction under paragraphs (7) and (8) of [Rule 123C] of one round lot or more. If there is no closing transaction in a security or if a closing transaction is less than a round lot, the Official Closing Price will be the most recent last-sale eligible trade in such security on the Exchange on that trading day.” Rule 123C(7) and (8) specify the allocation process for the closing transaction. Rule 123C(1)(e)(i)(A) provides that “[i]f there were no last-sale eligible

⁴ All references to “last reported sale price” or “last-sale eligible trade” are to a trade that is of at least one round lot.

⁵ Under Rule 15(d)(1), the Applicable Price Range for determining whether to publish a pre-opening indication is 5% for securities with a Reference Price over \$3.00 and \$0.15 for securities with a Reference Price equal to or lower than \$3.00.

⁷ 17 CFR 200.30-3(a)(83).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

referencing the OCP, the proposed amendment to Rule 15(c)(1)(A) would provide for a new method for determining the Reference Price if the Exchange is unable to conduct a closing transaction due to a systems or technical issue. In such case, Rules 123C(1)(e)(ii) and (iii) specify that the OCP would be determined via one of the contingency procedures specified in that rule, the selection of which depends on whether the Exchange determines that it cannot conduct a closing auction before or after 3:00 p.m. Eastern Time.⁹

The Exchange believes that it is appropriate to amend Rule 15(c)(1)(A) to reference the OCP instead of the last reported sale price because using the OCP as determined under Rules 123C(1)(e)(i), (ii), or (iii) as the Reference Price would cover all potential contingencies and reflect the most recent valuation in a security, including situations where the Exchange is unable to conduct a closing auction due to a systems or technical issue. For example, if for a security the last reported sale price on the Exchange was at 2:00 p.m., and then the Exchange uses either Rule 123C(1)(e)(ii) or (iii) to determine an OCP, the Exchange believes that the OCP that is determined as of the close of trading is more reflective of the value of such security as compared to the Exchange's last reported sale price at 2:00 p.m.

Corporate Actions. The Exchange also proposes to amend Rule 15(c)(1)(A) to specify that the OCP used as the Reference Price would be adjusted as applicable based on the publicly disclosed terms of a corporate action. The Exchange notes that currently, the Reference Price under Rule 15(c)(1)(A) for a security that is the subject of a corporate action would be adjusted based on the publicly disclosed terms of the corporate action before it is used to determine whether to publish a pre-opening indication. For example, if an Exchange-listed security that closed the previous day with an Official Closing Price of \$50 per share is subject to a 2-

trades in a security on the Exchange on a trading day, the Official Closing Price of such security will be the prior day's Official Closing Price." Taken together, these provisions would result in the same Reference Price as under the current rule using the last reported sale price.

⁹In 2016, the Exchange further amended Rule 123C to modify how the Exchange would determine an OCP if the Exchange is unable to conduct a closing transaction due to a systems or technical issue. In general, Rules 123C(1)(e)(ii) or (iii) provide that the OCP would be either an official closing price from a designated alternate exchange or a volume weighted average price of the consolidated last-sale eligible trades of the last five minutes of trading during regular trading hours. See Securities Exchange Act Release No. 78015 (June 8, 2016), 81 FR 38747 (June 14, 2016) (SR-NYSE-2016-18).

for-1 stock split, the Reference Price used for Rule 15(c)(1)(A) would be \$25 per share, consistent with current practice.¹⁰

Similarly, if a security is the subject of a non-standard corporate action, such as a merger or recapitalization, currently, the last reported sale price would be adjusted based on the publicly disclosed terms of the corporate action. For example, assume a listed company is being recapitalized in a merger transaction in which the Exchange-listed security (Class A) is exchanged for a cash dividend of \$10 per share of Class A stock plus two shares of the common stock of a new holding company (New Holdco Common). If the Class A stock is trading at a price of \$90 prior to the corporate action, the Reference Price under Rule 15(c)(1)(A) for each share of New Holdco Common Stock would be \$40 per share (*i.e.*, $(\$90 - \$10) \div 2$). The Exchange believes that this process ensures that a Reference Price accurately reflects the value of the security after a corporate action. To promote transparency in its rules, the Exchange proposes to codify this practice in Rule 15(c)(1)(A) so that member organizations and market participants are appropriately advised of how the Reference Price is determined for securities that are subject to a corporate action.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),¹¹ in general, and furthers the objectives of Section 6(b)(5),¹² in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that using the OCP instead of the last reported sale price on the Exchange would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would align Rule 15(c)(1)(A) with how the Exchange determines the OCP for a security and would cover all potential

contingencies if there is no closing transaction on the Exchange, including if the Exchange is unable to conduct a closing transaction due to a systems or technical issue. The proposed amendment would maintain that the Reference Price is the price of a last sale of at least one round lot, and therefore promotes just and equitable principles of trade because it is consistent with Rule 123C(1)(e)(i) which requires that the OCP be either the price of the closing transaction, or the last-sale eligible trade on the Exchange when there is no closing transaction or the closing transaction is less than one round lot. The proposal would, therefore, continue to ensure that the Reference Price is an accurate indicator for determining whether a pre-opening indication of interest should be published. The proposed amendment would also enable the determination of a Reference Price under Rule 15(c)(1)(A) to account for when the OCP is determined via one of the contingency procedures set forth in Rules 123C(1)(e)(ii) and (iii). The Exchange believes that referencing the OCP rather than the last reported sale price would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would result in a Reference Price that is more reflective of the most recent value of the security value because the OCP as determined under Rules 123C(1)(e)(ii) or (iii) would be a price determined as of the close of trading, rather than the Exchange's last reported sale price, which may occur earlier in the trading day.

The Exchange believes that amending Rule 15(c)(1)(A) to specify that the OCP would be adjusted as applicable based on the publicly disclosed terms of a corporate action would remove impediments to and perfect the mechanism of a free and open market and a national market system by promoting transparency in Exchange rules of how the Reference Price is determined if a security listed on the Exchange is subject to a corporate action. The Exchange believes it is consistent with the protection of investors and the public interest to adjust the OCP that would be used as a Reference Price under Rule 15(c)(1)(A) based on the publicly disclosed terms of a corporate action as such adjusted price would better reflect the price of the security for purposes of the opening auction on the first day that a corporate action is in effect. The Exchange notes that the Reference Price is used as a trigger for determining whether to publish a pre-opening indication, and

¹⁰This represents an example of a "standard" corporate action, such as a stock split, reverse stock split, or dividend payment.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

having a Reference Price more closely aligned to the updated value of the security, based on the terms of the corporate action, would promote a more efficient opening process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to promote clarity and transparency in Exchange rules regarding how a Reference Price under Rule 15 is determined for an Exchange-listed security. The proposed rule change is therefore not designed to address any competitive concerns but rather inform member organizations that the OCP would be used as the Reference Price for listed securities, adjusted as applicable based on the publicly disclosed terms of a corporate action.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such

action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing to provide greater transparency to investors regarding how a security's Reference Price would be adjusted if that security is subject to a publicly disclosed corporate action and avoid potential investor confusion that could arise during the operative delay period. According to the Exchange, waiver of the operative delay period would also avoid potential investor confusion because the proposal will clarify when a pre-opening indication would be published based on the security's Reference Price.

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will provide transparency to investors on the determination of the Reference Price for Exchange listed securities, which is used as the basis for determining when pre-opening indications will be published, as well as provide transparency on the adjustments that will be made to the Reference Price as a result of corporate actions. For these reasons, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹⁸

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)¹⁹ 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:

¹⁸ For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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-2018-60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2018-60. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2018-60, and should be submitted on or before January 3, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Brent J. Fields,
Secretary.

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²⁰ 17 CFR 200.30-3(a)(12).

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84754; File No. SR-ICEEU-2018-015]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the ICE Clear Europe Limited Liquidity Plan

December 7, 2018.

I. Introduction

On October 22, 2018, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change (SR-ICEEU-2018-015) to amend its Liquidity Plan³ to (i) refer to approved financial institutions (“AFI”) (such as investment agents and custodians) more generally, rather than to specific institutions; (ii) add an additional default scenario; (iii) revise procedures related to liquid resources and make other miscellaneous updates, including (a) clarifying the sources of liquidity to be relied upon in stress scenarios, (b) indicating which resources are excluded from those considered potential sources of liquidity, (c) updating key risk and performance indicators used in determining credit and liquidity standards of investments, and (d) removing unnecessary risk default scenarios and correcting typographical errors; and (iv) streamline its internal reporting process. The proposed rule change was published for comment in the **Federal Register** on November 9, 2018.⁴ On November 30, ICE Clear Europe filed Amendment No. 1 to the proposed rule change to make a technical change to the Liquidity Plan. The Commission did not receive comments on the proposed rule change. The Commission is publishing this notice to solicit comment on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

A. Changes to Approved Financial Institution

ICE Clear Europe proposes to amend its Liquidity Plan to reflect changes in its treasury arrangements and certain other enhancements.⁵ Specifically, the approved AFI default and AFI plus Member default liquidity stress testing scenarios have been revised to refer to AFIs more generally, rather than to specific institutions.⁶ Currently, these two scenarios refer to specific institutions. However, ICE Clear Europe believes that because it may use a number of different financial institutions in these roles at various times, not naming a specific institution would assist in keeping its Liquidity Plan up to date as these service providers change.⁷

B. Additional Default Scenario

ICE Clear Europe proposes to amend the Liquidity Plan to add a new Central Securities Depository (CSD) default scenario, which is defined as a CSD being unable to process settlements.⁸ Currently, the Liquidity Plan does not have a stress testing scenario assessing the liquidity impact of the possibility that CSDs such as Euroclear Bank or Euroclear UK & Ireland cease to be functional and not able to process settlements. Under the scenario being proposed, available liquidity is assessed against the expected net cash payment outflow for a single day on a per currency basis, to determine if such a default could result in a delay in payment to clearing members.⁹

C. Updates and Clarifications to Liquidity Stress Testing Scenarios

Other proposed updates and clarifications to the Liquidity Plan include: adding intra-day overdraft facilities to the sources used for the risk tolerance and risk appetite evaluations in the liquidity stress testing scenarios; eliminating references to an ICE Inc. (ICE Clear Europe’s parent company) credit facility; in calculating the investment loss component of liquidity stress losses in clearing member default scenario, time deposits are assumed to have a 100% liquidity loss; for liquidity stress testing scenarios that look at cash invested with a one-day maturity, U.S. dollar investments in reverse repurchase agreements in assets denominated in

Euro or pounds sterling will be excluded from available liquidity resources and cross-currency investments for Euro and British pounds sterling balances are not permitted; key risk and performance indicators used by ICE Clear Europe to determine if investments meet its credit and liquidity standards have been added; typographical errors corrected and a cross-reference to various treasury operating procedures was updated; and certain risk default scenarios have been removed.¹⁰

D. Changes in Reporting and Governance

ICE Clear Europe has also proposed changes related to its internal reporting process. Specifically, several weekly and monthly liquidity reports will no longer be sent to the Board Risk Committee and the Board. Instead, the Audit Committee will receive certain liquidity metrics, the Business Risk Committee will receive a liquidity management summary and other summary data, and the Board will receive collateral and investment data, certain liquidity metrics and assessments, and key risk and performance indicators.¹¹

Other proposed revisions to the Liquidity Plan include that the Executive Risk Committee, as opposed to the Business Control Committee, will review the plan annually and that aspects of the Liquidity Plan will be tested annually.¹²

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.¹³ For the reasons given below, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Act, and Rule 17Ad-22(e)(7).

A. Consistency With Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms used in this order, but not defined herein, have the same meaning as in the ICE Clear Europe Rules.

⁴ Securities and Exchange Act Release No. 34-84533 (November 5, 2018), 83 FR 56107 (November 9, 2018) (SR-ICEEU-2018-015) (“Notice”).

⁵ Notice, 83 FR 56107.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ 15 U.S.C. 78s(b)(2)(C).

contracts and transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.¹⁴

The Commission believes that the proposed changes described above, taken as a whole, should improve ICE Clear Europe's ability to monitor and test its liquidity in a variety of scenarios. First, by referring to AFIs generally, ICE Clear Europe can efficiently plan for the default by any AFI rather than having its plans linked to a particular financial institution. This gives ICE Clear Europe the ability to replace an AFI with another AFI without needing to first change the text of its Liquidity Plan. This in turn would promote ICE Clear Europe's ability to manage the liquidity needed to promptly and accurately clear and settle securities transactions and to safeguard the securities and funds which are in its custody or control or for which it is responsible by helping to ensure that ICE Clear Europe always has an AFI to serve as an investment agent and/or custodian.

Similarly, the Commission believes that the other amendments described above serve to enhance the Liquidity Plan, thereby promoting prompt and accurate clearance and settlement and the safeguarding of funds and securities. For example, the Commission believes that adding a new default scenario to liquidity stress testing and clarifying the sources used to evaluate risk tolerance and appetite would enhance ICE Clear Europe's ability to use the Liquidity Plan to anticipate liquidity risks and the sources necessary to cope with such risks. Further, the Commission believes that excluding investments in repurchase agreements with foreign currency as collateral from available liquid resources would assist ICE Clear Europe in avoiding reliance on assets considered to contain more risk, thereby bolstering ICE Clear Europe's overall approach to liquidity management. Likewise, the Commission believes that the manner in which ICE Clear Europe has added to and revised its key risk and performance indicators would enhance the compliance tool used to test if investments made by investment agents meet credit and liquidity requirements. As a result, the Commission believes that these proposed changes to the Liquidity Plan would in turn assist ICE Clear Europe in maintaining a level of liquidity sufficient to promptly and accurately clear and settle transactions and

safeguard securities and funds. The Commission therefore finds that the proposed rule changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.¹⁵

B. Consistency With Rule 17Ad-22(e)(7)

Rule 17Ad-22(e)(7) requires in relevant part that a clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by it, including through liquidity testing and by holding qualified liquid resources.¹⁶ As described above, ICE Clear Europe proposes to refer in its liquidity stress testing procedures to third party financial institutions that serve as investment agents or custodians in general terms rather than naming a specific institution. The Commission believes that this change would bolster the Liquidity Plan by enhancing the efficiency of the process ICE Clear Europe will use to account for changes in such agents. This in turn would contribute to ICE Clear Europe's ability to manage its liquidity risks.

As described above, ICE Clear Europe proposes to add a CSD default scenario to its stress testing procedures. The Commission believes that adding another default scenario would enhance ICE Clear Europe's Liquidity Plan by anticipating specifically how to prepare for a default of a key participant in the clearing process, thereby furthering ICE Clear Europe's ability to effectively measure, monitor, and manage its liquidity risk.

The Commission believes that the various other updates to the Liquidity Plan described above would help ICE Clear Europe to effectively measure, monitor, and manage its liquidity risk. For instance, clarifying in the Liquidity Plan that ICE Clear Europe has intra-day overdraft facilities to rely upon in various stress scenarios would explain with greater specificity what sources of liquidity are available to ICE Clear Europe to manage its liquidity risk. Additionally, as noted above, other changes to the Liquidity Plan include the fact that time deposits are assumed to have 100% liquidity loss similar to other unsecured investments and that in scenarios which include cash invested with a one day maturity, collateral underlying investments that are denominated in foreign currency are excluded from available liquid resources. The Commission believes that these changes would enhance ICE

Clear Europe's ability to manage liquidity risk by specifying more clearly which resources constitute potential measures to manage liquidity risk for the purposes of Rule 17Ad-22(e)(7) and which resources do not.

As described above, the Liquidity Plan also updates the table of key performance indicators that it uses to determine if investments meet credit and liquidity standards. For instance, the Liquidity Plan now includes, among others, ratings checks for unsecured investments and repo balance per counterparty. The Commission believes the proposed changes to the key risk and performance indicators would enhance ICE Clear Europe's liquidity monitoring by giving it more tools to monitor investments and hence its liquidity.

As described above, ICE Clear Europe also is revising its reporting process so that certain reports would no longer be routinely provided to the Board but rather to the Audit and Business Risk Committees. The Commission believes these changes would enhance the Liquidity Plan by prioritizing reporting to the most relevant level. Additionally, ICE Clear Europe is revising its procedures so that certain testing is done on an annual rather than periodic basis, the Liquidity Plan is reviewed by the Executive Risk Committee, and certain irrelevant risk default scenarios have been removed. Overall, the Commission believes that these changes will enable ICE Clear Europe to efficiently measure and monitor its liquidity risk by ensuring that relevant scenarios are reviewed by appropriate staff on a regular basis.

As a result of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(7).¹⁷

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-ICEEU-2018-015 on the subject line.

¹⁴ *Id.*

¹⁵ 17 CFR 240.17Ad-22(e)(7).

¹⁷ *Id.*

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

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-ICEEU-2018-015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation#rule-filing>. 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-ICEEU-2018-015 and should be submitted on or before January 3, 2019.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

In its filing, ICE Clear Europe requested that the Commission grant accelerated approval of the proposed rule change pursuant to Section 19(b)(2) of the Exchange Act.¹⁸ Under Section 19(b)(2)(C)(iii) of the Act,¹⁹ the Commission may grant accelerated approval of a proposed rule change if the Commission finds good cause for doing so. ICE Clear Europe believes that accelerated approval is warranted because the proposed rule change, as

modified by Amendment No. 1, is not expected to change the rights or obligations of clearing members or other persons using the clearing service or the terms or conditions of any cleared contract. Accordingly, ICE Clear Europe does not believe that any delay in implementing amendments with respect to such matters will benefit clearing members, their customers or any other market participants. Rather, ICE Clear Europe is seeking to enable the full onboarding of additional treasury service providers as soon as possible.

The Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,²⁰ for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, prior to the 30th day after the date of publication of notice in the **Federal Register**, because the proposed rule change is required as soon as possible in order to facilitate ICE Clear Europe's efforts to provide further treasury services. The Commission also finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of the notice of Amendment No. 1 in the **Federal Register**. As discussed above, ICE Clear Europe submitted Amendment No. 1 to make a technical change to the Liquidity Plan. The Commission believes that Amendment No. 1 does not raise any novel issues or alter the proposed changes in any way. In addition, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act and applicable rules thereunder for the reasons discussed above. Accordingly, the Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of Section 17A of the Act,²¹ and Rule 17Ad-22(e)(7)²² thereunder.

It is therefore ordered pursuant to Section 19(b)(2) of the Act²³ that the proposed rule change (File Number SR-ICEEU-2018-015), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.²⁴

²⁰ 15 U.S.C. 78s(b)(2)(C)(iii).

²¹ 15 U.S.C. 78q-1.

²² 17 CFR 240.17Ad-22(e)(7).

²³ 15 U.S.C. 78s(b)(2).

²⁴ In approving the proposed rule change, the Commission considered the proposal's impact on

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Brent J. Fields,
Secretary.

[FR Doc. 2018-26945 Filed 12-12-18; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice: 10627]

Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual Committee Meeting on Wednesday, January 16, 2019 from 1:00 p.m. until 4:00 p.m. at the Melrose Georgetown Hotel, Clifton Room, 2430 Pennsylvania Ave. A second meeting will be held on Thursday, January 17, 2019 from 9:00 a.m. until approximately 2:00 p.m. in Conference Room 1482, Department of State, 2201 C Street NW, Washington, DC The meetings are open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving American-sponsored schools overseas that are assisted by the Department of State and attended by dependents of U.S. government employees, and the children of employees of U.S. corporations and foundations abroad.

These meetings will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. There will be a report and discussion about the status of the Council-sponsored projects on child protection and special needs. Moreover, the Regional Education Officers in the Office of Overseas Schools will make presentations on the activities and initiatives in the American-sponsored overseas schools.

Members of the public may attend the meetings and join in the discussion, subject to the instructions of the Chair. Admission of public members will be limited to the seating available. Access to the Department of State is controlled, and individual building passes are required for all attendees. Persons who plan to attend should advise the office of Mr. Thomas Shearer, Department of State, Office of Overseas Schools, telephone 202-261-8200, prior to January 9, 2019. Each visitor will be asked to provide his/her date of birth and either driver's license or passport

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁵ 17 CFR 200.30-3(a)(12).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 15 U.S.C. 78s(b)(2)(C)(iii).

number at the time of registration and at the time of attendance, and must be able to produce a valid photo ID to gain access to the Department of State.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at <https://www.state.gov/documents/organization/242611.pdf> for additional information.

Any requests for reasonable accommodation should be made at the time of registration. All such requests will be considered, however, requests made after January 7 might not be possible to fill. All attendees must use the 21st Street entrance to the building for Thursday's meeting.

Thomas P. Shearer,

Executive Secretary, Overseas Schools Advisory Council, Department of State.

[FR Doc. 2018–27040 Filed 12–12–18; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of Record of Decision for the Environmental Impact Statement, Tucson International Airport, Tucson, Pima County, Arizona.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for record of decision.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that it has published a Record of Decision (ROD) signed by the FAA and the United States Air Force for the Final Environmental Impact Statement (EIS). The EIS evaluated proposed Airfield Safety Enhancement Project at Tucson International Airport (TUS), Tucson, Pima County, Arizona.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, AICP, Regional Environmental Protection Specialist, AWP–610.1, Office of Airports, Federal Aviation Administration, Western-Pacific Region, 777 South Aviation Boulevard, Suite 150, El Segundo, California 90245, Telephone: 424–405–7315.

SUPPLEMENTARY INFORMATION: The FAA as lead agency, along with the United States Air Force, as a cooperating agency on behalf of the United States Air Force and the National Guard Bureau, have completed and are publishing a Record of Decision (ROD) for proposed improvements and various land transactions identified at TUS. The ROD was prepared pursuant to Title 40, Code of Federal Regulations (CFR) 1505.2.

The FAA published its Final EIS for these proposed improvements on August 31, 2018. The FAA prepared the Final EIS pursuant to the National Environmental Policy Act of 1969; the Council of Environmental Quality implementing regulations, 40 CFR parts 1500–1508, FAA Order 1050.1F, and FAA Order 5050.4B. FAA assessed the potential environmental impacts of the Airfield Safety Enhancement Project (ASEP), as well as the No Action Alternative where the FAA would make no improvements at TUS.

In the Final EIS, the FAA identified the ASEP as the preferred alternative in meeting the purpose and need for enhancement of safety at TUS. The ASEP includes relocation of Runway 11R/29L (proposed to be 10,996 feet long by 150 feet wide); the demolition of the existing Runway 11R/29L; the construction of a new center parallel and connecting taxiway system; acquisition of land for the runway object-free area, runway safety area, and the runway protection zone from Air Force Plant (AFP) 44. The ASEP also includes relocation of navigational aids and development and/or modification of associated arrival and departure procedures for the relocated runway. The ASEP also includes demolition of 12 Earth Covered Magazines (ECMs) on AFP 44 and their replacement elsewhere on AFP 44. The ASEP also includes both connected and similar land transfer actions from the Tucson Airport Authority (TAA) to the USAF for land at AFP 44; and another parcel of airport land, on behalf of the National Guard Bureau, for construction of a Munitions Storage Area for the Arizona Air National Guard 162nd Wing at the Tucson Air National Guard Base.

Copies of the ROD are available for public review at the following locations during normal business hours:

- U.S. Department of Transportation, Federal Aviation Administration, Western-Pacific Region, Office of Airports, 777 South Aviation Boulevard, Suite 150, El Segundo, California 90245.
- U.S. Department of Transportation, Federal Aviation Administration, Phoenix Airports District Office, 3800

North Central Avenue, Suite 1025, 10th Floor, Phoenix, Arizona 85012.

- Tucson International Airport Administrative Offices, 7250 South Tucson Boulevard, Suite 300, Tucson, Arizona 85756.

The ROD may also be viewed at FAA's website: https://www.faa.gov/airports/environmental/records_decision/ and the TUS EIS website <https://www.airportprojects.net/tus-eis/>.

Copies of the ROD is also available at the following libraries:

- Joel D. Valdez Main Library, 101 North Stone Avenue, Tucson, Arizona 85701
- Murphy-Wilmot Library, 530 North Wilmot Road, Tucson, Arizona 85711
- Dusenberry-River Library 5605 East River Road, Suite 105, Tucson, Arizona 85750
- Mission Public Library, 3770 South Mission Road, Tucson, Arizona 85713
- El Pueblo Library, 101 West Irvington Road, Tucson, Arizona 85706
- Valencia Library, 202 West Valencia Road, Tucson, Arizona 85706
- El Rio Library, 1390 W Speedway Blvd., Tucson, AZ 85745
- Santa Rosa Library, 1075 S 10th Ave, Tucson, AZ 85701
- Quincie Douglas library, 1585 East 36th Street, Tucson, Arizona 85713
- Eckstrom-Columbus Library, 4350 East 22nd Street, Tucson, AZ 85711
- Himmel Park Library, Himmel Park, 1035 North Treat Avenue, Tucson, AZ 85716
- Martha Cooper Library 1377 North Catalina Avenue, Tucson, Arizona 85712
- Woods Memorial Library, 3455 North 1st Avenue, Tucson, Arizona 85719
- University of Arizona Main Library—1510 East University Boulevard, Tucson, Arizona 85721

Questions may be directed to the individual above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in El Segundo, California, on December 7, 2018.

Mark A. McClardy,

Director, Office of Airports, Western-Pacific Region, AWP–600.

[FR Doc. 2018–27021 Filed 12–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2018–89]

Petition for Exemption; Summary of Petition Received; Textron Aviation Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before January 2, 2019.

ADDRESSES: Send comments identified by docket number FAA-2018-1043 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

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

FOR FURTHER INFORMATION CONTACT: Deana Stedman, AIR-673, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, phone and fax 206-231-3187, email deana.stedman@faa.gov; or Alphonso

Pendergrass, ARM-200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, phone 202-267-4713, email Alphonso.Pendergrass@faa.gov.

This notice is published pursuant to 14 CFR 11.85.

Issued in Des Moines, Washington, on December 10, 2018.

Victor Wicklund,
Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA-2018-1043.

Petitioner: Textron Aviation Inc.

Section(s) of 14 CFR Affected: §§ M25.1 and M25.2(b).

Description of Relief Sought: Textron Aviation Inc. is seeking relief from Appendix M to 14 CFR part 25, Fuel Tank System Flammability Reduction Means. Specifically, the petitioner is seeking relief from the fuel tank flammability exposure requirements of §§ M25.1 and M25.2(b) for the Textron Model 700 airplane fuel system design. [FR Doc. 2018-26992 Filed 12-12-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at the Cullman Regional-Folsom Field Airport, Vinemont, Alabama

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: The FAA is considering a request from the Cullman Regional Airport Board to waive the requirement that 1.23± acres of airport property located at the Cullman Regional-Folsom Field Airport in Vinemont, Alabama, be used for aeronautical purposes.

DATES: Comments must be received on or before January 14, 2019.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA to the following address: Jackson Airports District Office Attn: Wesley E. Mittlesteadt, Program Manager, 100 West Cross Street, Suite B, Jackson, MS 39208-2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Cullman Regional-Folsom Field Airport, Attn: Ben Harrison, General Manager, 231 County Road 1360, Vinemont, AL 35179.

FOR FURTHER INFORMATION CONTACT:

Wesley E. Mittlesteadt, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208-2307, (601) 664-9884. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by Cullman Regional Airport Board to release 1.23± acres of airport property at the Cullman Regional-Folsom Field Airport (CMD) under the provisions of Title 49, U.S.C. Section 47107(h). The property will be purchased by Vinemont/Providence Volunteer Fire Department for non-aeronautical purposes. The property is adjacent to residential property on the west quadrant of airport property just off County Road 1371. The net proceeds from the sale of this property will be used for eligible airport improvement projects for general aviation facilities at the Cullman Regional-Folsom Field Airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Cullman Regional-Folsom Field Airport (CMD).

Issued in Jackson, Mississippi, on December 7, 2018.

William J. Schuller,

Acting Manager, Jackson Airports District Office Southern Region.

[FR Doc. 2018-27027 Filed 12-12-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2018-0078]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of Title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that on September 19, 2018, Pan Am Railways (PAR) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA-2018-0078.

Applicant: Pan Am Railways, Mr. Timothy R. Kunzler, AVP, Engineering, 1700 Iron Horse Park, No. Billerica, MA 01862.

The applicant's corporate name is Springfield Terminal Railway Company (ST). The applicant is the operator of the line as lessor from Boston and Maine Corporation (BM), owner. Both the applicant and BM are wholly owned subsidiaries of PAR.

ST seeks approval to discontinue the signal system on the single main track on the Northern Main Line between control point number (CPN) 1 in Chelmsford, MA, and milepost number (MPN) 28.70 in Manchester, NH.

ST proposes to discontinue the interlockings and associated appliances at CPN-9; CPN-13; CPN-18; CPN-20 and CPN-28. ST intends to replace the power-operated switch with a hand-operated switch at CPN-20 and replace the spring switch with a hand-operated switch at CPN-9. ST seeks to discontinue block signals 306/307; 352/353; 144/145; 160/161; 400/500; 539/540; and the block signal at MPN 28.70. ST plans to install holding signal, CPN-3, at MPN 28.70 and distant signal at MPN 5.

ST states the reasons for the proposed changes are that (1) no passenger service operates on the line; (2) traffic volumes do not warrant a traffic control system; (3) there are no active interchange points on this portion of the main line; and (4) to employ resources more effectively elsewhere.

Operation over this territory will be conducted in accordance with Northeast Operating Rules Advisory Committee Form D Control System rules.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12-140, Washington, DC 20590.

- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by January 28, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy. See also <http://www.regulations.gov/#/privacyNotice> for the privacy notice of [regulations.gov](http://www.regulations.gov).

Issued in Washington, DC.

Robert C. Lauby,

*Associate Administrator for Railroad Safety,
Chief Safety Officer.*

[FR Doc. 2018-27009 Filed 12-12-18; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2018-0070]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that by letter dated August 21, 2018, the Union Pacific Railroad Company (UP) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 236. FRA assigned the petition Docket Number FRA-2018-0070.

UP seeks a waiver of compliance from 49 CFR 236.1006, *Equipping locomotives operating in PTC territory*. Specifically, UP requests relief to operate UP Heritage Steam Locomotives

UP 844, 4-8-4 Type—1944; UP 4014, 4-8-8-4 Type—1941; and UP 3985, 4-6-6-4 Type—1943 for excursion trips in positive train control (PTC) territory. UP states these units are specifically designated and utilized on an extremely limited number of excursion trips annually. Excursions utilizing this equipment historically and continually involve the highest level of preparation in planning and operational safety during operation, giving special designation to each move. No less than two operators are present at any given time ensuring continual functional safety awareness during operational moves. UP explains they have been operating steam powered excursions without PTC-initiated application and have found no adverse mechanical effect on operational safety.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE, W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12-140, Washington, DC 20590.

- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by January 28, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications

and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dottransportation.gov/privacy. See also <http://www.regulations.gov/#!privacyNotice> for the privacy notice of www.regulations.gov.

Robert C. Lauby,

Associate Administrator for Safety, Chief Safety Officer.

[FR Doc. 2018-27008 Filed 12-12-18; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2018-0102]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that on November 16, 2018, the Regional Transportation District (RTD), the City of Arvada, Colorado, and the City of Wheat Ridge, Colorado, petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 222. FRA assigned the petition Docket Number FRA-2018-0102.

Specifically, petitioners seek a waiver from the provisions of 49 CFR 222.35(b)(1) to establish a new quiet zone consisting of thirteen public highway-rail grade crossings with active grade crossing warning devices comprising both flashing lights and gates that are not equipped with constant warning time devices. The crossing warning devices on the proposed "RTDC/BNSF Gold Line-Arvada Quiet Zone" on the RTD G-Line are primarily activated by a wireless crossing activation system (WCAS) using "GPS-determined train speed and location to predict how many seconds a train is from the crossing." Petitioners assert that this information is communicated wirelessly to the crossing warning devices and seeks to provide constant warning times. Additionally, this system is supplemented by a conventional track

warning system in case the WCAS is unavailable.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by January 28, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacyNotice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2018-27010 Filed 12-12-18; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Assistance to Eligible Individuals in Acquiring Specially Adapted Housing; Cost-of-Construction Index

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) announces that the aggregate amounts of assistance available under the Specially Adapted Housing (SAH) grant program will increase by 5.63 percent for Fiscal Year (FY) 2019.

DATES: The increases in aggregate amounts are effective on October 1, 2018.

FOR FURTHER INFORMATION CONTACT:

Gregory Nelms, Assistant Director for Loan Policy and Valuation, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632-8978. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In accordance with 38 United States Code (U.S.C.) 2102(e), 38 U.S.C. 2102A(b)(2), 38 U.S.C. 2102B(b)(2), and 38 Code of Federal Regulations (CFR) 36.4411, the Secretary of Veterans Affairs announces for FY 2019 the aggregate amounts of assistance available to veterans and servicemembers eligible for SAH program grants.

Section 2102(e)(2) authorizes the Secretary to increase the aggregate amounts of SAH assistance annually based on a residential home cost-of-construction index. Per 38 CFR 36.4411(a), the Secretary uses the Turner Building Cost Index for this purpose.

In the most recent quarter for which the Turner Building Cost Index is available, 2nd Quarter 2018, the index showed an increase of 5.63 percent over the index value listed by 2nd Quarter 2017. Turner Construction Company, Cost Index, <http://www.turnerconstruction.com/cost-index> (last visited October 2, 2018). Pursuant to 38 CFR 36.4411(a), therefore, the aggregate amounts of assistance for SAH grants made pursuant to 38 U.S.C. 2101(a) and 2101(b) will increase by 5.63 percent for FY 2019.

Sections 2102A(b)(2) and 2102B(b)(2) require the Secretary to apply the same percentage calculated pursuant to section 2102(e) to grants authorized pursuant to sections 2102A and 2102B. As such, the maximum amount of assistance available under these grants will also increase by 5.63 percent for FY 2019.

The increases are effective as of October 1, 2018. 38 U.S.C. 2102(e), 2102A(b)(2), and 38 U.S.C. 2102B(b)(2).

Specially Adapted Housing: Aggregate Amounts of Assistance Available During Fiscal Year 2019

Section 2101(a) Grants and Temporary Residence Adaptation (TRA) Grants

Effective October 1, 2018, the aggregate amount of assistance available for SAH grants made pursuant to 38 U.S.C. 2101(a) will be \$85,645 during FY 2019. The maximum TRA grant

made to an individual who satisfies the eligibility criteria under 38 U.S.C. 2101(a) and 2102A will be \$37,597 during FY 2019.

Section 2101(b) Grants and TRA Grants

Effective as of October 1, 2018, the aggregate amount of assistance available for SAH grants made pursuant to 38 U.S.C. 2101(b) will be \$17,130 during FY 2019. The maximum TRA grant made to an individual who satisfies the eligibility criteria under 38 U.S.C. 2101(b) and 2102A will be \$6,713 during FY 2019.

Section 2102B Grants

Effective as of October 1, 2018, the amount of assistance available for SAH grants made pursuant to 38 U.S.C. 2102B will be \$85,645 during FY 2019; however, the Secretary may waive this

limitation for a veteran if the Secretary determines a waiver is necessary for the rehabilitation program of the veteran.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. The Secretary of Veterans Affairs, Department of Veterans Affairs, approved this document on December 4, 2018 for publication.

Dated: December 4, 2018.

Luvenia Potts,

Program Specialist, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

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Part II

Securities and Exchange Commission

17 CFR Parts 230, 242, 249, et al.

Covered Investment Fund Research Reports; Final Rule

SECURITIES AND EXCHANGE COMMISSION**17 CFR Parts 230, 242, 249, and 270**

[Release Nos. 33–10580; 34–84710; IC–33311; File No. S7–11–18]

RIN 3235–AM24

Covered Investment Fund Research Reports**AGENCY:** Securities and Exchange Commission.**ACTION:** Final rules and technical amendment.

SUMMARY: The Commission is adopting a new rule under the Securities Act of 1933 to establish a safe harbor for an unaffiliated broker or dealer participating in a securities offering of a covered investment fund to publish or distribute a covered investment fund research report. If the conditions in the rule are satisfied, the publication or distribution of a covered investment fund research report would be deemed *not* to be an offer for sale or offer to sell the covered investment fund’s securities for purposes of sections 2(a)(10) and 5(c) of the Securities Act of 1933. The Commission is also adopting a new rule under the Investment Company Act of 1940 to exclude a covered investment fund research report from the coverage of section 24(b) of the Investment Company Act, except to the extent the research report is otherwise not subject to the content standards in self-regulatory organization rules related to research reports. We are also adopting a conforming amendment to rule 101 of Regulation M, and a technical amendment to Form 12b–25.

DATES: This rule is effective January 14, 2019 except that amendatory instruction 4 amending § 230.139b(a)(1)(i)(A)(1) is effective May 1, 2020. Comments regarding the collection of information requirements within the meaning of the Paperwork Reduction Act of 1995 should be received on or before February 11, 2019.

FOR FURTHER INFORMATION CONTACT: Asaf Barouk, Attorney-Adviser, John Lee, Senior Counsel; Amanda Hollander Wagner, Branch Chief; Thoreau Bartmann, Senior Special Counsel; or Brian McLaughlin Johnson, Assistant Director, at (202) 551–6792, Investment Company Regulation Office, Division of Investment Management; Steven G. Hearne, Senior Special Counsel, at (202) 551–3430, Division of Corporation Finance; Laura Gold or Samuel Litz, Attorney-Advisers; or John Guidroz, Branch Chief, at (202) 551–5777, Office of Trading Practices, Division of Trading

and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is adopting 17 CFR 230.139b (“new rule 139b”) under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*]; 17 CFR 270.24b–4 (“new rule 24b–4”) under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*]; a conforming amendment to 17 CFR 242.101(a) (rule 101) of Regulation M [17 CFR 242.100–242.105]; and a technical amendment to Form 12b–25 under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*].

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I. Introduction

As directed by the Fair Access to Investment Research Act of 2017,¹ we

¹ Fair Access to Investment Research Act of 2017, Public Law 115–66, 131 Stat. 1196 (2017) (the “FAIR Act”).

are adopting new rule 139b² under the Securities Act of 1933 (the “Securities Act”) to extend the current safe harbor available under rule 139 to a “covered investment fund research report.”³ Rule 139 provides a safe harbor for the publication or distribution of research reports⁴ concerning one or more issuers by a broker or dealer (a “broker-dealer”) participating in a registered offering of one of the covered issuers’ securities.⁵ Rule 139’s safe harbor currently is not available for a broker-dealer’s publication or distribution of research reports pertaining to specific registered investment companies or business development companies (“BDCs”).⁶ The

² See Covered Investment Fund Research Reports, Securities Act Release No. 10498 (May 23, 2018) [83 FR 26788 (June 8, 2018)] (“Proposing Release”).

³ See section 2(a) of the FAIR Act; see also Proposing Release, *supra* note 2, at section I.B. The FAIR Act also includes an interim effectiveness provision that became effective as of July 3, 2018 and by its terms will terminate upon the adoption of new rule 139b. See section 2(d) of the FAIR Act.

⁴ See Proposing Release, *supra* note 2, at 26789 n.11 and accompanying text. See also *infra* notes 5–6.

⁵ Specifically, rule 139 provides that a broker-dealer’s publication or distribution of research reports—whether about a particular issuer or multiple issuers, including within the same industry—that satisfy certain conditions under the rule are “deemed for purposes of sections 2(a)(10) and 5(c) of the [Securities] Act not to constitute an offer for sale or offer to sell.” Rule 139(a) under the Securities Act [17 CFR 230.139(a)]. A broker-dealer’s publication or distribution of a research report in reliance on rule 139 would therefore be deemed not to constitute an offer that otherwise could be a non-conforming prospectus in violation of section 5 of the Securities Act. Sections 5(a) and 5(c) of the Securities Act generally prohibit any person (including broker-dealers) from using the mails or interstate commerce as a means to sell or offer to sell, either directly or indirectly, any security unless a registration statement is in effect or has been filed with the Commission as to the offer and sale of such security, or an exemption from the registration provisions applies. See 15 U.S.C. 77e(a) and (c). Section 5(b)(1) of the Securities Act requires that any “prospectus” relating to a security to which a registration statement has been filed must comply with the requirements of section 10 of the Securities Act. See 15 U.S.C. 77e(b)(1). Section 5(b)(2) of the Securities Act requires that any sale of securities (or delivery after sale) must be accompanied or preceded by a prospectus meeting the requirements of section 10(a) of the Securities Act. See 15 U.S.C. 77e(b)(2).

⁶ For example, rule 139 is available for research reports regarding issuers that meet the registrant requirements for securities offerings on Form S–3 or Form F–3. See rule 139(a)(1)(i)(A)(1). In contrast, registered investment companies register their securities offerings on forms such as Forms N–1A, N–2, N–3, N–4, and N–6. To the extent that commodity- or currency-based trusts or funds (as defined in section II.A.3 below) register their securities offering under the Securities Act and meet the eligibility requirements of Forms S–3 or F–3, as well as the other conditions of rule 139, the rule 139 safe harbor is currently available for a broker-dealer’s publication or distribution of research reports pertaining to these issuers.

Section 2(a)(3) of the Securities Act provides a safe harbor for broker-dealers with respect to research reports about “emerging growth

FAIR Act requires us to revise rule 139 to extend the safe harbor to broker-dealers' publication or distribution of covered investment funds upon such terms, conditions, or requirements, as we may determine necessary or appropriate in the public interest, for the protection of investors, and for the promotion of capital formation.⁷

In May of 2018 we proposed new rules and rule amendments designed to meet the requirements of the FAIR Act. We received seven comment letters on the proposal.⁸ Commenters generally supported our proposed implementation of the FAIR Act. However, most commenters requested that we consider eliminating or modifying certain of the conditions in current rule 139, as applied to covered investment fund research reports (such as the minimum public float requirement and the requirement to publish research reports in the regular course of business).⁹ Other commenters raised concerns about the potential conflicts of interest that may arise in the context of a broker-dealer's receipt of compensation from covered investment funds included in research reports, and commenters disagreed on the best ways of mitigating these conflicts.¹⁰ Finally, commenters expressed varying views on our request for input on whether research reports that include performance information should be required to present that performance information consistently with the way fund performance must be presented in fund advertisements pursuant to rule 482 and related requirements.¹¹

companies," as defined in section 2(a)(19) of the Securities Act. Broker-dealers may therefore currently rely on this safe harbor with respect to research reports about BDCs that are emerging growth companies.

⁷ See section 2(a) of the FAIR Act.

⁸ Comment Letter of Morningstar, Inc. (July 5, 2018) ("Morningstar Comment Letter"); Comment Letter of BlackRock, Inc. (July 9, 2018) ("BlackRock Comment Letter"); Comment Letter of Eversheds Sutherland (US) LLP (July 9, 2018) ("Sutherland Comment Letter"); Comment Letter of Fidelity Investments (July 9, 2018) ("Fidelity Comment Letter"); Comment Letter of the Investment Company Institute (July 9, 2018) ("ICI Comment Letter"); Comment Letter of the Securities Industry and Financial Markets Association (July 9, 2018) ("SIFMA Comment Letter I"); Comment Letter of the Securities Industry and Financial Markets Association (Sept. 14, 2018) ("SIFMA Comment Letter II").

⁹ See, e.g., SIFMA Comment Letter I; ICI Comment Letter; see also BlackRock Comment Letter.

¹⁰ See, e.g., Morningstar Comment Letter; Fidelity Comment Letter.

¹¹ See, e.g., SIFMA Comment Letter I; ICI Comment Letter; see also BlackRock Comment Letter.

II. Discussion

Rule 139b's framework is modeled after and generally tracks rule 139. However, rule 139b differs from rule 139 in certain respects. Some of these differences are specifically directed or contemplated by the FAIR Act.¹² Others, while not specifically directed by the FAIR Act, clarify and tailor the provisions of rule 139 more directly or specifically to the context of broker-dealers' publication or distribution of covered investment fund research reports.¹³ For the reasons described below, we believe that the provisions of rule 139b that differ from the provisions of rule 139, and that are not specifically contemplated in the FAIR Act, are necessary or appropriate in the public interest, for the protection of investors, and for the promotion of capital formation.¹⁴ We believe that maintaining a similar approach in rule 139b to rule 139 with modifications to the extent necessary or appropriate is consistent with the FAIR Act's directive to revise rule 139 to extend the current safe harbor available under rule 139 to broker-dealer's publication or distribution of covered investment fund research reports. We do not believe that the FAIR Act intended for us to make a new or disparate regulatory regime for research reports on covered investment funds that subjects these funds to different conditions where it is not necessary or appropriate for differentiation from research reports on other issuers published under rule 139. Therefore, we have sought to maintain similar treatment and conditions for funds under rule 139b and other issuers subject to rule 139 unless we believed that a deviation was necessary or appropriate for the particular operational or structural characteristics of a type of covered investment fund. In addition to rule 139b, we are also adopting rule 24b-4, a conforming amendment to rule 101 of Regulation M, and a technical amendment to Form 12b-25.¹⁵

A. Scope of Rule 139b

Rule 139b establishes a safe harbor for the publication or distribution of "covered investment fund research

¹² See, e.g., *infra* section II.A.1 (discussing the "affiliate exclusion" (defined below)).

¹³ See, e.g., *infra* section II.B.1.a (discussing reporting history and timeliness requirements for issuer-specific research reports).

¹⁴ See *supra* note 7 and accompanying text.

¹⁵ If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

reports" by unaffiliated broker-dealers (as described below) participating in a securities offering of a "covered investment fund."¹⁶ We define the term "covered investment fund research report," as well as the "covered investment fund" and "research report" components of this definition.

1. Definition of "Covered Investment Fund Research Report"

We are adopting the definition of "covered investment fund research report" as proposed.¹⁷ The definition is consistent with the FAIR Act, which defined the term "covered investment fund research report" to mean a research report published or distributed by a broker-dealer about a covered investment fund or any securities issued by the covered investment fund, but does not include a research report to the extent that the research report is published or distributed by the covered investment fund or any affiliate¹⁸ of the covered investment fund, or any research report published or distributed by any broker or dealer that is an investment adviser (or an affiliated person¹⁹ of an investment adviser) for the covered investment fund (the "affiliate exclusion").²⁰

The affiliate exclusion prohibits two separate categories of research reports from being deemed to be "covered investment fund research reports" under rule 139b's safe harbor. The first category covers research reports published or distributed by the covered investment fund or any affiliate of the covered investment fund. This exclusion prevents such persons from indirectly using the safe harbor to avoid the applicability of the Securities Act prospectus requirements and other provisions applicable to written offers by such persons. The second category covers research reports published or distributed by any broker-dealer that is an investment adviser (or an affiliated

¹⁶ Under the safe harbor, such publication or distribution is deemed not to constitute an offer for sale or offer to sell the covered investment fund's securities for purposes of sections 2(a)(10) and 5(c) of the Securities Act. The safe harbor is available even if the broker-dealer is participating or may participate in a registered offering of the covered investment fund's securities.

¹⁷ See rule 139b(c)(3).

¹⁸ "Affiliate" is defined in rule 405 under the Securities Act. See 17 CFR 230.405; Proposing Release, *supra* note 2, at 26790.

¹⁹ "Affiliated person" is defined in section 2(a) of the Investment Company Act of 1940 (the "Investment Company Act"). See 15 U.S.C. 80a-2(a); Proposing Release, *supra* note 2, at 26790; section 2(f)(1) of the FAIR Act and rule 139b(c)(1).

²⁰ See section 2(f)(3) of the FAIR Act.

person of an investment adviser) for the covered investment fund.²¹

As we noted in the Proposing Release, one factor to consider in evaluating whether a research report has been published or distributed by a person covered by the affiliate exclusion is the extent of such person's involvement in the preparation of the research report.²² These determinations would necessarily be based on the extent to which a person covered by the affiliate exclusion, or any person acting on its behalf, has been involved in preparing the information or explicitly or implicitly endorsed or approved the information, also known as the entanglement theory and adoption theory, respectively.²³

While we did not receive comments on the definition of "covered investment fund research report," we received comments on the affiliate exclusion embedded in the definition.²⁴ One commenter raised concerns about the incorporation of the adoption and entanglement theories, which could prohibit broker-dealers from engaging in certain activities designed to ensure the accuracy of research reports.²⁵ Other commenters suggested that while the entanglement theory may have

relevance to research reports under proposed rule 139b, the adoption theory may not.²⁶ Some commenters requested clarification on whether certain conduct—for example, a covered investment fund providing information or confirmation of certain factual matters such as performance data, holdings, or investment objectives or strategies—is prohibited by the affiliate exclusion.²⁷

As we noted in the Proposing Release, the entanglement and adoption theories are helpful guideposts in establishing whether a research report about a covered investment fund was published or distributed by the fund.²⁸ However, those theories of liability have been set forth by courts in interpreting the federal securities laws, and how a court would apply such theories with respect to covered investment fund research reports would be based on the facts and circumstances presented.²⁹

Under rule 139b, we believe it would be inappropriate for any person covered by the affiliate exclusion, or for any person acting on its behalf, to publish or distribute a research report indirectly that the person could not publish or distribute directly under the rule.³⁰ For example, if a broker-dealer distributes a research report including materials that a person covered by the affiliate exclusion authorized or approved for inclusion in the report, this could (depending on the facts and circumstances) inappropriately

circumvent the affiliate exclusion in rule 139b.

Also in relation to the affiliate exclusion, one commenter suggested that the proposal did not adequately address conflicts of interest such as revenue sharing agreements.³¹ Other commenters disagreed stating that self-regulatory organization ("SRO") rules and federal securities laws addressing conflicts of interest would apply to covered investment fund research reports.³² One commenter stated that additional restrictions are unnecessary because the proposed affiliate exclusion would be broad and effective.³³ One commenter recommended that the final rule should not have any specific revenue sharing agreement requirements, but suggested that if the Commission believes it should address such potential conflicts in the final rule, the final rule should require a general disclosure similar to mutual fund prospectus disclosure alerting investors of potential revenue sharing agreements.³⁴

While we appreciate the concerns noted with respect to potential conflicts of interest, and specifically those arising from revenue sharing agreements, we are not adding additional explicit conflicts-of-interest-related restrictions in the final rule. The antifraud provisions of the federal securities laws and certain existing Commission and SRO rules continue to apply to covered investment fund research reports, some of which, depending on the facts and circumstances, may require disclosure of such conflicts.³⁵ For example, many covered investment fund research reports may be subject to FINRA's research report rules, which require disclosure in a research report if the member or its affiliates have received compensation from the subject company other than for investment banking services in the previous year.³⁶

²¹ Like the first category of exclusion, this second category of exclusion addresses the concern that a person covered by the affiliate exclusion may be able to circumvent the disclosure and prospectus delivery requirements of the Securities Act. For example, this second category helps to limit a person covered by the affiliate exclusion from publishing or distributing communications indirectly through the third-party broker-dealer that otherwise would have to be included in a statutory prospectus meeting the requirements of section 10 of the Securities Act. It also addresses the concern that a broker-dealer that is a covered investment fund's adviser or an affiliated person of a fund's adviser may have financial incentives that could give rise to a conflict of interest. For example, a broker-dealer that is an affiliated person of the fund's adviser may have an incentive to promote the covered investment fund's securities relative to other securities because sales of the covered investment fund's securities may benefit not only the fund but also the broker-dealer.

²² See Proposing Release, *supra* note 2, at 26791–92.

²³ See Securities Offering Reform, Securities Act Release No. 8591 (July 19, 2005) [70 FR 44722 (Aug. 3, 2005)] ("Securities Offering Reform Adopting Release") (noting that "[l]iability under the entanglement theory depends upon the level of pre-publication involvement in the preparation of the information"). See Use of Electronic Media, Securities Act Release No. 7856 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)] ("2000 Electronics Release") (interpretive release on the use of electronic media); Asset-Backed Securities, Securities Act Release No. 8518 (Dec. 22, 2004) [70 FR 1506 (Jan. 5, 2005)] ("Asset-Backed Securities Adopting Release") (adopting asset-backed securities regulations).

²⁴ See Morningstar Comment Letter; Fidelity Comment Letter; ICI Comment Letter; SIFMA Comment Letter I; *see also* BlackRock Comment Letter.

²⁵ See SIFMA Comment Letter I.

²⁶ See Fidelity Comment Letter; ICI Comment Letter; *see also* BlackRock Comment Letter.

²⁷ See ICI Comment Letter; SIFMA Comment Letter I; *see also* BlackRock Comment Letter.

²⁸ See Proposing Release, *supra* note 2, at 26792.

²⁹ See 2000 Electronics Release, *supra* note 23 (with respect to entanglement theory cases, citing *Elkind v. Liggett & Myers, Inc.*, 635 F.2d 156 (2d Cir. 1980); *In the Matter of Syntex Corp. Sec. Litig.*, 855 F.Supp. 1086 (N.D. Cal. 1993); *In the Matter of Caere Corp. Sec. Litig.*, 837 F. Supp. 1054 (N.D. Cal. 1993) and with respect to adoption theory cases, citing *In the Matter of Cypress Semiconductor Sec. Litig.*, 891 F. Supp. 1369, 1377 (N.D. Cal. 1995), *aff'd sub nom. Eisenstadt v. Allen*, 113 F.3d 1240 (9th Cir. 1997); *In the Matter of Presstek, Inc.*, Exchange Act Release No. 39472 (Dec. 22, 1997)). See *also* Asset-Backed Securities Adopting Release, *supra* note 23.

³⁰ See Proposing Release, *supra* note 2, at 26791. See *also* section 5(a), 5(b), and 5(c) of the Securities Act [15 U.S.C. 77e(a), (b), and (c)] (prohibiting both direct and indirect violations of the prospectus requirements); section 48(a) of the Investment Company Act [15 U.S.C. 80a–47(a)] (It shall be unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under the provisions of this subchapter or any rule, regulation, or order thereunder.); section 208(d) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–8(d)] (It shall be unlawful for any person indirectly, or through or by any other person, to do any act or thing which it would be unlawful for such person to do directly under the provisions of this subchapter or any rule or regulation thereunder.).

³¹ Morningstar Comment Letter (stating that SRO rules would be inadequate in this respect and that the Commission should require elimination or mitigation of these conflicts).

³² See Fidelity Comment Letter; ICI Comment Letter; SIFMA Comment Letter I; *see also* BlackRock Comment Letter.

³³ See ICI Comment Letter; *see also* BlackRock Comment Letter.

³⁴ See Fidelity Comment Letter.

³⁵ We note that the FAIR Act expressly stated that research reports published or distributed under its provisions would continue to be subject to the antifraud and anti-manipulation provisions of the federal securities laws, and rules adopted thereunder, including section 17 of the Securities Act, section 34(b) of the Investment Company Act, and sections 9 and 10 of the Exchange Act. See section 2(c)(1) of the FAIR Act.

³⁶ See, e.g., FINRA rule 2241(c)(4)(D). See *also*, e.g., FINRA rule 2210(d)(1)(A) (requiring all member communications with the public to be

Depending on the facts and circumstances, covered investment fund research reports may also need to include information about the compensation received by the broker-dealer from covered investment funds included in the report if such compensation is of the type covered by section 17(b) of the Securities Act.³⁷

We understand that disclosure about conflicts of interest created by the receipt of compensation by the broker-dealer from covered investment funds is consistent with current industry practices in communications that are Securities Act section 10(b) prospectuses and are currently styled as “research reports” subject to the requirements of rule 482.³⁸ Considering current industry practice, and the protections offered by the other regulatory provisions discussed above, we do not believe that additional conflict-of-interest requirements are necessary in rule 139b. Accordingly, we are adopting the definition of covered investment fund research report as proposed.

2. Definition of “Research Report”

We are defining, as proposed,³⁹ the term “research report” in rule 139b as a written communication, as defined in rule 405 under the Securities Act, that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an

based on principles of fair dealing and good faith, be fair and balanced, and provide a sound basis for evaluating the facts in regards to any particular security; and barring members from omitting any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading).

³⁷ See 15 U.S.C. 77q(b) (making it unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof).

³⁸ 17 CFR 230.482. An investment company advertisement that complies with rule 482 is deemed to be a section 10(b) prospectus (also known as an “advertising prospectus” or “omitting prospectus”) for purposes of section 5(b)(1) of the Securities Act. As a section 10(b) prospectus, an investment company advertisement is subject to liability under section 12(a)(2) of the Securities Act, as well as the antifraud provisions of the federal securities laws.

³⁹ See Proposing Release, *supra* note 2, at 26792–93.

investment decision.⁴⁰ This definition is identical to the corresponding definition of “research report” in rule 139.⁴¹ As discussed in the Proposing Release, while this definition is not identical to that in the FAIR Act, it is consistent with the FAIR Act because we interpret it to have the same meaning as the FAIR Act’s definition of “research report.”⁴² We received one comment agreeing with this definition.⁴³

3. Definition of “Covered Investment Fund”

The FAIR Act defines the term “covered investment fund” to include registered investment companies, BDCs, and certain commodity- or currency-based trusts or funds.⁴⁴ We are adopting

⁴⁰ See rule 139b(c)(6). Rule 405 defines “written communication” to mean that “[e]xcept as otherwise specifically provided or the context otherwise requires, a written communication is any communication that is written, printed, a radio or television broadcast, or a graphic communication as defined in [rule 405].” 17 CFR 230.405.

⁴¹ See rule 139(d) [17 CFR 230.139(d)]. Rule 139 defines “research report” to mean a written communication, as defined in Rule 405, that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision. See rule 139(d) [17 CFR 230.139(d)]. A “written communication,” as defined in rule 405, includes a “graphic communication.” As further defined in rule 405, a “graphic communication” includes all forms of electronic media, including electronic communications except those, which at the time of the communication, originate in real-time to a live audience and does not originate in recorded form or otherwise as a graphic communication, although it is transmitted through graphic means. See rule 405 [17 CFR 230.405].

⁴² See section 2(f)(6) of the FAIR Act; see also Proposing Release, *supra* note 2, at 26792–93 (explaining that the rule 139b definition tracks the FAIR Act definition except that it does not expressly reference “electronic communications” and that consistent with Commission rules on electronic communications, rule 139b definition’s reference to a “written communication,” as defined in rule 405, includes a “graphic communication,” which in turn includes electronic communications (other than telephone and other live communications)).

⁴³ See SIFMA Comment Letter I (stating that it would reduce potential interpretive confusion for market participants who are familiar with the rule 139 definition).

⁴⁴ See section 2(f)(2)(B) of the FAIR Act. The term also includes other persons issuing securities in an offering registered under the Securities Act (i) whose securities are listed for trading on a national securities exchange, (ii) whose assets consist primarily of commodities, currencies, or derivative instruments that reference commodities or currencies or interests in the foregoing, and (iii) whose registration statement reflects that its securities are purchased or redeemed, subject to certain conditions or limitations, for a ratable share of its assets (such exchange-listed funds or trusts, “commodity- or currency-based trusts or funds”). See section 2(f)(2)(B) of the FAIR Act. Based on the definition in section 2(f)(2) of the FAIR Act, the term “covered investment fund” would not include an investment company that is registered solely under the Investment Company Act, such as certain master funds in a master-feeder structure.

a definition of the term “covered investment fund” in rule 139b that is substantially the same as the one used in the FAIR Act, with the addition that the definition specifies that the term “investment company” includes “a series or class thereof.”⁴⁵ We received no comments on this proposed definition. The final rule adopts the definition as proposed.

4. Non-Exclusivity of Safe Harbor

Broker-dealers publishing or distributing research reports for some covered investment funds, such as commodity- or currency-based trusts or funds that have a class of securities registered under the Securities Exchange Act of 1934 (the “Exchange Act”), rather than relying on new rule 139b, instead may be able to rely on rule 139. Rule 139b does not preclude a broker-dealer from relying on existing rule 139 if applicable. In order to clarify that a broker-dealer may rely on existing research safe harbors, we proposed that rule 139b state that it does not affect the availability of any other exemption or exclusion from sections 2(a)(10) or 5(c) of the Securities Act that may be available to a broker-dealer.⁴⁶ We received no comments on this aspect of the proposed rule and are adopting it as proposed.⁴⁷

B. Conditions for the Safe Harbor

As discussed in the Proposing Release, the Commission has previously acknowledged the value of research reports in providing the market and investors with information about reporting issuers.⁴⁸ To mitigate the risk of research reports being used to circumvent the prospectus requirements of the Securities Act,⁴⁹ the Commission

⁴⁵ See rule 139b(c)(2). This approach reflects the approach taken in other Commission rules that define the term “fund” to include a separate series of an investment company. See, e.g., rule 22e–4(a)(4) under the Investment Company Act [17 CFR 270.22e–4(a)(4)]; rule 22c–1(a)(3)(v)(A) under the Investment Company Act [17 CFR 270.22c–1(a)(3)(v)(A)].

⁴⁶ See proposed rule 139b(a); see also addition to rule 139(a) (for purposes of the Fair Access to Investment Research Act of 2017 [Pub. L. 115–66, 131 Stat. 1196 (2017)], a safe harbor has been established for covered investment fund research reports, and the specific terms of that safe harbor are set forth in rule 139b (§ 230.139b)).

⁴⁷ See rule 139b(a).

⁴⁸ See Proposing Release, *supra* note 2, at 26794 (for example, the Commission has recognized that, for public operating entities that are well-followed, the research-report-related rules enhance the efficiency of the markets by allowing a greater number of research reports to provide a continuous flow of essential information about reporting entities into the marketplace).

⁴⁹ See *supra* note 5 and accompanying text (noting that the rule 139 safe harbor permits a broker-dealer to publish or distribute a research

Continued

has placed conditions on a broker-dealer's publication or distribution of research reports.⁵⁰ Under Rule 139, these conditions include restrictions on the issuers to which the research may relate, as well as requirements that such reports be published in the regular course of business. These conditions vary depending on whether a research report covers a specific issuer ("issuer-specific research reports") or a substantial number of issuers in an industry or sub-industry ("industry research reports"). Rule 139b carries over these conditions for covered investment fund research reports and incorporates certain modifications intended to adapt these conditions to covered investment funds that we discuss below.

1. Issuer-Specific Research Reports

a. Reporting History and Timeliness Requirements

In order for a broker-dealer to include a covered investment fund in a research report published or distributed in reliance on the rule 139b safe harbor, the fund must meet certain reporting history and timeliness requirements. We are adopting as proposed that any such covered investment fund must have been subject to the relevant requirements under the Investment Company Act and/or the Exchange Act to file certain periodic reports for at least 12 calendar months prior to a broker-dealer's reliance on rule 139b and that these reports have been filed in a timely manner.⁵¹ This requires

report without this publication or distribution being deemed to constitute an offer that otherwise could be a non-conforming prospectus in violation of section 5 of the Securities Act). *See also* Securities Offering Reform Adopting Release, *supra* note 23 (discussing how the Sarbanes-Oxley Act, Regulation AC, and a global research analyst settlement required structural changes and increased disclosures in connection with certain abuses identified with analyst research); *supra* notes 35–36 and accompanying text (discussing certain rules and regulations under the federal securities laws, as well as certain SRO rules, that help address certain conflicts of interest and abuses identified with analyst research).

⁵⁰ Many research reports that broker-dealers publish or distribute in reliance on the rule 139 safe harbor may also be subject to other federal securities rules and regulations under the Exchange Act and SRO rules governing their content and use. *See supra* notes 35–36.

⁵¹ Rule 139b(a)(1)(i)(A). We believe that this condition also gives effect to FAIR Act section 2(e), which makes the safe harbor contemplated by the FAIR Act unavailable with respect to broker-dealers' publication or distribution of research reports about closed-end registered investment companies BDCs during these covered investment fund issuers' first year of operation. *See* section 2(e) of the FAIR Act (The safe harbor under subsection (a) of the FAIR Act shall not apply to the publication or distribution by a broker-dealer of a covered investment fund research report, the subject of which is a BDC or a registered closed-end

covered investment funds that are registered investment companies to have been subject to the reporting requirements of the Investment Company Act for a period of at least 12 calendar months prior to a broker-dealer's reliance on the new rule and to have filed in a timely manner all required reports, as applicable, on Forms N–CSR,⁵² N–Q,⁵³ N–PORT,⁵⁴ N–MFP,⁵⁵ and N–CEN⁵⁶ during the immediately preceding 12 calendar months.⁵⁷ If the covered investment fund is *not* a registered investment company, it must have been subject to the reporting requirements under section 13 or section 15(d) of the Exchange Act for a period of at least 12 calendar months and have filed all required reports in a timely manner on Forms 10–K⁵⁸ and 10–Q⁵⁹ and 20–F⁶⁰ during the immediately preceding 12 calendar months.⁶¹

investment company, during the time period described in 17 CFR 230.139(a)(1)(i)(A)(1), except where expressly permitted by the rules and regulations of the Commission under the federal securities laws.)

⁵² 17 CFR 249.331 and 17 CFR 274.128.

⁵³ 17 CFR 249.332 and 17 CFR 274.130. Form N–Q will be rescinded May 1, 2020. Larger fund groups will begin submitting reports on Form N–PORT by April 30, 2019, and smaller fund groups by April 30, 2020. *See* Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)] ("Reporting Modernization Release"); Investment Company Reporting Modernization, Investment Company Act Release No. 32936 (Dec. 8, 2017) [82 FR 58731 (Dec. 14, 2017)]. At the time of these compliance dates, covered investment funds would no longer be required to file reports on Form N–Q, and filing these reports would not be required as a condition to rely on the rule 139b safe harbor. Accordingly, rule 139b, as adopted, will be amended effective May 1, 2020 by removing the reference to Form N–Q. *See infra* section VI (instruction 4 under Text of Proposed Rules and Amendments).

⁵⁴ 17 CFR 274.150. Form N–PORT will be filed with the Commission on a monthly basis, but only information reported for the third month of each fund's fiscal quarter on Form N–PORT will be publicly available (and not until 60 days after the end of the fiscal quarter). *See* Reporting Modernization Release, *supra* note 53. Therefore, we would consider Form N–PORT to have been timely filed for purposes of the timeliness requirement if the public filing of Form N–PORT every third month is timely filed and publicly available.

⁵⁵ 17 CFR 274.201.

⁵⁶ 17 CFR 249.330 and 17 CFR 274.101.

⁵⁷ Rule 139b(a)(1)(i)(A)(1). As discussed in the Proposing Release, Form N–SAR was rescinded on June 1, 2018, which is the compliance date for Form N–CEN. As such, reliance on new rule 139b is not conditioned on covered investment funds reporting on Form N–SAR and the reference to Form N–SAR, as proposed, is not included in paragraph (a)(1)(i)(A)(1) of rule 139b. *See id.*; *see also* Proposing Release, *supra* note 2, at 26794.

⁵⁸ 17 CFR 249.310.

⁵⁹ 17 CFR 249.308a.

⁶⁰ 17 CFR 249.220f.

⁶¹ Rule 139b(a)(1)(i)(A)(2).

Reporting History

Several commenters requested we eliminate the reporting history requirement for issuer-specific research reports under rule 139b.⁶² One commenter suggested that the requirement is unnecessary because funds have "detailed and comprehensive regulatory filing and disclosure obligations" providing investors with "a wealth of information about funds."⁶³ Another commenter argued that the reporting history requirement should be eliminated because ensuring compliance with the requirement would create "operational hurdles" for broker-dealers that provide investors with research on a large numbers of funds on a largely automated basis.⁶⁴ Commenters also argued that the reporting history requirement unduly restricts research on newer funds.⁶⁵

As discussed in the Proposing Release, rule 139b tracks the reporting history requirement of rule 139.⁶⁶ We believe satisfying such a requirement indicates a likelihood that more current and timely information has been disseminated to and digested by the marketplace to inform investors of material information about the fund, including risks, and provides investors with SEC-filed information to compare against the contents of the research report.⁶⁷ We also continue to believe that maintaining a reporting history requirement is consistent with the FAIR Act, which permits a reporting history requirement so long as it does not exceed the period required in rule 139.⁶⁸

We do not believe that funds should be treated differently from other issuers subject to the reporting requirement of rule 139. The Commission included a reporting history requirement in rule

⁶² *See* Fidelity Comment Letter; ICI Comment Letter; SIFMA Comment Letter I; *see also* BlackRock Comment Letter.

⁶³ *See* ICI Comment Letter; *see also* BlackRock Comment Letter.

⁶⁴ *See* Fidelity Comment Letter.

⁶⁵ *See* ICI Comment Letter; SIFMA Comment Letter I; *see also* BlackRock Comment Letter.

⁶⁶ Rule 139 predicates issuer-specific research reports on an issuer's eligibility to use Form S–3 or F–3, which are short form or shelf registration statements that are available to register an issuer's securities offering only after it has been subject to and in compliance with the Exchange Act periodic reporting requirements for at least 12 months.

⁶⁷ *See* Proposing Release, *supra* note 2, at 26795 nn.75–78 and accompanying text. The safe harbor would be unavailable to broker-dealers' publication or distribution of research reports about closed-end registered investment companies or BDCs during these covered investment fund issuers' first year of operation. *See supra* note 51.

⁶⁸ *See* Proposing Release, *supra* note 2, at 26795 n.77 (explaining the reporting and timeliness requirements of rule 139).

139 because it helps to ensure that the market has information, beyond the research report, to allow investors to weigh how much value they will assign to the research report. The fund's reporting history should be particularly important when the broker-dealer publishing the research report is participating or may participate in the fund's offering, as is the case under rule 139b (similar to rule 139). As noted above, one commenter suggested that the reporting history requirement is unnecessary because funds' "detailed and comprehensive regulatory filing and disclosure obligations" provide investors "a wealth of information about funds."⁶⁹ Eliminating the reporting history requirement would reduce the information available to investors when evaluating research reports published or distributed by broker-dealers when those broker-dealers are also participating in the offering of the fund's shares. The requirement also allows time for the market to absorb the previously released periodic reports and for investors to assess an issuer's track record.

Corporate issuers are subject to, under rule 139, filing and disclosure obligations similar to what is required of covered investment funds under rule 139b. Although funds differ from corporate issuers in many respects, investors would benefit similarly from having access to fund information to evaluate the research reports on which they may consider relying. Accordingly, for the same reasons the Commission determined to include this requirement in rule 139, we have determined to include this requirement in rule 139b.

We also believe that broker-dealers will be able to comply with the reporting history requirement in a manner similar to how they comply with the parallel requirement in rule 139 and that the effect of the requirement on new funds would be similar to the effect on new issuers under rule 139.⁷⁰ Other issuers also have "detailed and comprehensive

regulatory and disclosure obligations" much like funds. In this regard, we are not persuaded that there is a material difference between covered investment funds and other issuers that would justify treating them in a disparate fashion. We continue to believe that the concerns underlying the reporting history requirement of rule 139 apply to research reports issued under rule 139b, and therefore are not persuaded that the reporting history requirement should be eliminated from rule 139b as suggested by some commenters.

One commenter also requested the reporting history requirement be shortened from 12 months to 25 days after a fund initially starts offerings shares. The commenter argued that this would align with broker-dealers' market practice of waiting 25 days after an initial public offering.⁷¹

Rule 139 is available only to broker-dealers that both publish or distribute a research report on an issuer and are participating or will participate in a registered offering of the issuer's securities. The 25-day standard referenced by the commenter relates to the issuance of a research report after the prospectus delivery obligation in an initial public offering ends, not while the offering is ongoing and the broker-dealer is participating in it.

Accordingly, the prospectus delivery obligation described by the commenter is distinct from the delivery obligation that applies to continuous offerings. Thus, the commenter's suggested provision and rationale do not appropriately apply to a broker-dealer participating in a continuous offering. The 25-day standard referenced by the commenter is premised on statutory provisions addressing prospectus delivery, a different investor protection consideration from rules 139 and 139b. Accordingly, we believe the 25-day standard is inapposite to rule 139b, as rule 139b applies to broker dealers that are participating in the offering of the subject fund's securities, not after the offering has ended. For these reasons, we are adopting the reporting history provision as proposed.

Timeliness

Two commenters opposed the proposed timeliness requirement for issuer-specific research reports.⁷² They argued that broker-dealers would face operational hurdles in confirming a covered investment fund's timely filing of periodic reports.⁷³ One commenter suggested that broker-dealer firms be allowed to accept compliance representations from covered investment funds for the reporting history and timeliness requirements.⁷⁴ The other commenter requested that the timeliness requirement apply only when a broker-dealer initiates research coverage on a fund, rather than for each research report.⁷⁵ Alternatively, the commenter also requested the Commission to permit broker-dealers to rely on the lack of any Form 12b-25 (indicating that a filing is late) filed by covered investment funds within the prior 12 months.⁷⁶

Satisfaction of the timeliness requirement indicates a greater likelihood that a covered investment fund will make information available in a timely manner to inform investors of material information about the fund, including risks. We believe it is important for covered investment fund investors to have timely information from the fund when evaluating research reports, as it is for operating company investors. Rule 139 requires that an issuer satisfy the reporting history and timeliness requirements at the time the broker-dealer publishes or distributes a research report.⁷⁷ Modifying rule 139b to allow confirming the timeliness of a fund's reporting only upon initiation of coverage, or to accept the compliance representations of covered investment funds, would provide less protection to investors than the Commission determined to be appropriate in rule 139. We also do not believe providing disparate treatment between funds and other issuers with respect to reporting

⁷² See Fidelity Comment Letter; SIFMA Comment Letter I; SIFMA Comment Letter II.

⁷³ See Fidelity Comment Letter; SIFMA Comment Letter I. In a subsequent letter, one commenter noted the difficulty broker-dealers would have in identifying reports filed by registered investment companies that are part of series companies, pointing to a lack of functionality in EDGAR's mutual-fund specific search page. See SIFMA Comment Letter II. All registered investment company filings are available on EDGAR, however, and there are multiple ways to search the EDGAR system in addition to the mutual-fund specific page the commenter identified—including using a fund's filing number, which can be found in a fund's prospectus, or by using a Central Index Key ("CIK") number.

⁷⁴ See Fidelity Comment Letter.

⁷⁵ See SIFMA Comment Letter I.

⁷⁶ See SIFMA Comment Letter II.

⁷⁷ See rule 139(a)(1)(i)(A)(1)–(2).

⁶⁹ See ICI Comment Letter; see also BlackRock Comment Letter.

⁷⁰ We believe that a broker-dealer would be relying on rule 139 or rule 139b because it would be involved in distributing securities of the issuer covered in the report, and would therefore have information about the issuer to confirm it has been subject to filing obligations for the preceding 12 calendar months. For example, this information is accessible through the Commission's publicly available Electronic Data Gathering Analysis, and Retrieval ("EDGAR") system. Moreover, we believe that broker-dealers that choose to automate publication of research reports may invest in technologies to implement this automation including by leveraging their existing technological infrastructures to verify the reporting history requirement for covered investment funds.

⁷¹ See SIFMA Comment Letter I; SIFMA Comment Letter II. Additionally, this commenter presented an example of a new ETF based on a new industry classification standard that has garnered interest from the market and satisfies the minimum public market value requirement, but would be unable to satisfy a 12-month reporting history requirement. See SIFMA Comment Letter II. This situation and result equally occurs in the operating company context, where a well-followed operating company that has an initial public offering might satisfy the minimum public market value requirement, but not the reporting history requirement, and thus could not be covered as a rule 139 issuer-specific research report until the 12-month reporting history requirement is also satisfied.

history and timeliness conditions is necessitated by operational or structural differences between the issuer types. As with the 12-month reporting history requirement, we believe that confirming the timeliness of periodic filings for covered investment funds would be substantially similar to confirming the timeliness of periodic filings in the operating company context.⁷⁸ We do, however, agree with the commenter that a fund filing a Form 12b-25 (or lack thereof) would serve as a useful indication of the fund's timeliness. We believe that a broker-dealer may rely on the lack of a Form 12b-25 filing as confirmation that a fund's filings are timely under the rule unless the broker-dealer is actually aware through other means that the issuer has not in fact made timely filings. Accordingly, we are adopting the timeliness requirement as proposed.

b. Market Following Requirement

We are adopting a requirement that, in order for broker-dealers to use the rule 139b safe harbor to publish or distribute issuer-specific research reports, the covered investment fund that is the subject of a report must satisfy a minimum public market value threshold at the date of reliance on the new rule (the "float requirement"). Specifically we are adopting a requirement that the aggregate market value of a covered investment fund, or the net asset value⁷⁹ in the case of a registered open-end investment company (other than an exchange-traded fund ("ETF"))⁸⁰ *i.e.*, a mutual fund, must equal or exceed the aggregate market value required by General

Instruction I.B.1 to Form S-3.⁸¹ This amount is currently \$75 million.⁸² The FAIR Act permits us to set a float requirement for covered investment funds, as long as the minimum public float is not greater than what is required by rule 139.⁸³

We are adopting the float requirement and level as proposed. However, as discussed below, the final rule includes two changes to the float calculation methodology for most covered investment funds. First, the final rule generally no longer requires that the fund issuer's aggregate market value or net asset value be calculated net of its affiliates' holdings.⁸⁴ Second, the minimum float requirement must be satisfied at the initiation (or reinitiation) of research coverage and then once a quarter thereafter. The proposal, on the other hand, would have required that the minimum float requirement be satisfied each time a broker or dealer relied on the safe harbor to publish or distribute a research report on a covered investment fund.

Float Level

Several commenters argued that a float requirement should be eliminated or reduced in the context of covered investment funds because such a requirement would limit the extent of research that could be produced.⁸⁵ Two commenters argued that for funds, NAV relates to the underlying value of the portfolio and therefore makes it an inapt proxy for market following.⁸⁶ Historically, the Commission has used public float as an approximate measure of a security's market following, through which the market absorbs information that is reflected in the price of the security.⁸⁷ We continue to view as

significant the relationship between public float, information dissemination to the market, and following by investment institutions.⁸⁸ While market following for funds that price at or near NAV may not have the same degree of impact on the price of the fund shares that it may have for other issuers, market following serves other purposes as well, including ensuring that a mix of information about the fund's securities is available. We believe that providing a different calculation method for mutual funds is necessary to achieve the intent of the FAIR Act and is also consistent with the goals of the float requirement in rule 139. We also do not believe there is a reason to set the level of the minimum public float requirement based on a different set of considerations than for operating companies (*i.e.*, the level of the security's market following).

As noted by commenters, we recognize that the minimum public float requirement may impact the amount of research on covered investment funds. However, we continue to believe that this requirement is consistent with rule 139's framework and intent.⁸⁹ As discussed previously, we believe that the intent of the FAIR Act was to extend the rule 139 framework to covered investment funds in a manner consistent with the treatment of other issuers subject to rule 139, except where necessary or appropriate. We do not believe it is necessary or appropriate to treat covered investment funds and other issuers differently here, except with respect to the calculation method for mutual funds as discussed below. We also believe that concern about coverage for smaller issuers—and balancing that concern with investor protection concerns when the broker-dealer distributing the report is participating in the issuer's offering—is not unique to covered investment funds. As discussed in the Proposing Release, in the context of covered investment funds, we would expect market information to be most limited for new funds (which the reporting history and timeliness requirements could help to address) and for funds that are marketed to a limited segment of investors (which the float requirement could help to address).⁹⁰ The float requirement is designed to protect investors by excluding research reports on covered

⁷⁸ See Proposing Release, *supra* note 2, at 26794–95. A broker-dealer has diligence and investigative obligations under section 11 of the Securities Act in order to be able to claim a due diligence defense available thereunder. See Securities Offering Reform Adopting Release, *supra* note 23; rule 176 of the Securities Act [17 CFR 230.176]. Like the reporting history requirement, broker-dealers could confirm the timeliness of a covered investment fund's reports through a check of the Commission's EDGAR system, which is free and readily available. This may allow the leveraging of operating efficiencies for broker-dealers already familiar with the requirement.

⁷⁹ For mutual funds, net asset value would be computed using the investment company's current net asset value, as used in determining its share price. See rule 22c-1 under the Investment Company Act [17 CFR 270.22c-1] (requiring registered mutual funds, their principal underwriters, and dealers in the investment company's shares (and certain others) to sell and redeem the investment company's shares at a price determined at least daily based on the current net asset value next computed after receipt of an order to buy or redeem).

⁸⁰ See rule 139b(a)(1)(i)(B); rule 139b(c)(4) (defining "exchange-traded fund" for purposes of the new rule to have the meaning given the term in General Instruction A to Form N-1A).

⁸¹ The new rule refers to General Instruction I.B.1 to Form S-3. Under this instruction, aggregate market value is "computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing." General Instruction I.B.1 to Form S-3. The definition of "market price" in the General Instructions of Form N-1A contemplates valuing an ETF's shares similarly. See General Instruction A to Form N-1A.

⁸² General Instruction I.B.1 to Form S-3.

⁸³ See section 2(b)(2)(B) of the FAIR Act.

⁸⁴ However, as discussed below, this change would not apply to the calculation of a commodity- or currency-based trust or fund's float.

⁸⁵ See SIFMA Comment Letter; ICI Comment Letter; Fidelity Comment Letter.

⁸⁶ See SIFMA Comment Letter; ICI Comment Letter.

⁸⁷ See, *e.g.*, Revisions To The Eligibility Requirements For Primary Securities Offerings On Forms S-3 and F-3, Securities Act Release No. 8878 (Dec. 19, 2007) [72 FR 73533 (Dec. 27, 2007)] ("S-3 Revisions Adopting Release"); see also Securities Offering Reform, Securities Act Release No. 8501

(Nov. 3, 2004) [69 FR 67391 (Nov. 17, 2004)] (discussing public float of a certain level as a factor indicating that an issuer has a demonstrated market following).

⁸⁸ See, *e.g.*, S-3 Revisions Adopting Release, *supra* note 87.

⁸⁹ See Proposing Release, *supra* note 2, at 26796.

⁹⁰ See *id.*

investment funds with a relatively small amount of total assets, which serves as a reasonable proxy for a limited market following.⁹¹

With respect to the level of the minimum public float, the float requirement is not intended to include or exclude a certain percentage of funds or other issuers from research coverage. The float requirement is intended to act as a proxy for market following. As we have previously analyzed in other contexts, analyst research coverage of an issuer is one indicia of market following. We have previously observed that analyst coverage drops off significantly with smaller issuers, and few if any issuers with less than \$75 million in public float have significant analyst coverage.⁹² Moreover, while certain data aggregators provide analyst research report coverage for a number of funds, most funds are not followed by dedicated research analysts akin to the analyst coverage that we have previously identified as being one indicia of market interest and following for operating companies.⁹³ As a consequence, we have observed that covered investment fund issuers with a public float of less than \$75 million generally do not have a market following that would add to the mix of information in the marketplace. Some commenters suggested using a lower public float requirement for funds on the basis of seeking to equalize the percentage of funds that would be subject to coverage with the percentage

⁹¹ We believe that conditioning the availability of the safe harbor on the aforementioned reporting history and market valuation requirements will help restrict the availability of the safe harbor in situations where we expect the information environment to be most limited: For new funds and for funds with limited trading or interest. *See also infra* discussion in the Economic Analysis at notes 350–354.

⁹² *See* Simplification of Registration Procedures for Primary Securities Offerings, Securities Act Release No. 6943 (July 16, 1992) [57 FR 32461 (July 22, 1992)] (stating that one indicia of market interest and following of a company is the number of research analysts covering the company and that approximately two-thirds of the newly eligible companies, based on the reduction of the float requirement to \$75 million, are followed by at least three research analysts). *See also* Securities Offering Reform Adopting Release, *supra* note 23, at 44728 n.53 (stating that issuers with a market capitalization of between \$75 million and \$200 million, in most cases, have between zero to five analysts following them, with approximately 50% having zero to two analysts following them).

⁹³ The Commission and the staff intend to monitor changes in analyst research coverage of funds and the impact of the minimum public market value requirement on the availability of research on covered investment funds and may in the future reduce, change, or eliminate the requirement to the extent that empirical evidence demonstrates that a lower threshold or different metric would be consistent with investor protection.

of issuers similarly subject to coverage in rule 139.⁹⁴ Market following, however, appears to be a characteristic related to the size of a particular issuer, not to the statistical distribution of issuers in the market. In other words, there is no reason to believe that equalizing the percentage of issuers covered under rule 139 with the percentage of funds covered under rule 139b would result in a meaningful indication of market following because the result would depend on the distribution of issuers and funds by size. In addition, using a minimum public market value threshold that is the same as the parallel threshold in rule 139 may benefit market participants through regulatory consistency and reduce opportunities for investor confusion.⁹⁵

While a broker-dealer publishing a research report about a fund that does not meet the minimum public float could not rely on rule 139b, other methods may be available to provide information about these funds by a broker-dealer participating in the offering, such as choosing to cover a smaller fund in a rule 482 communication.⁹⁶ In addition, the public market value requirement is limited to issuer-specific research reports, and does not apply to industry research reports.

Float Calculation

While we continue to believe that the float requirement serves a useful purpose, we recognize that the proposed float requirement could pose unique operational challenges for analysts covering certain covered investment funds. Accordingly, as discussed below, we are making certain changes to the timing and method of the float calculation that are designed to address these concerns for covered investment funds.

One commenter stated that calculating a covered investment fund's public float, and determining the specific amount of affiliate holdings to be excluded in calculating the public float as proposed, is a practical challenge for broker-dealers because it was not clear to the commenter that third-party vendors or filings on EDGAR contain data regarding the value of covered investment funds, net of value held by affiliates.⁹⁷ This commenter also

⁹⁴ *See* Fidelity Comment Letter; SIFMA Comment Letter I.

⁹⁵ *See infra* discussion following note 319.

⁹⁶ *See* rule 482 [17 CFR 230.482]. Rule 482 sets forth certain filing and other investor protection requirements. *Id.*

⁹⁷ *See* SIFMA Comment Letter II. This commenter stated that broker-dealers satisfy the parallel minimum public float requirement under rule 139

noted that broker-dealers are unlikely to have information about beneficial owners of funds that are affiliates but hold the fund's shares through another record owner. Commenters also stated that the proposed float requirement more generally creates operational challenges given the need to track and test fluctuating market values to comply with it, given that many funds are continuously offered.⁹⁸

We appreciate these concerns and are therefore adopting two modifications to the final rule. First, the final rule does not require that the fund's aggregate market value or net asset value be calculated net of affiliates' holdings for most covered investment funds.⁹⁹ However, the final rule, like the proposal, would require that a commodity- or currency-based trust or fund's public float be calculated net of affiliate holdings, as under rule 139. Broker-dealers today can rely on rule 139 to publish research reports regarding these covered investment funds and we believe it appropriate to maintain consistency for issuers that can be covered under both rules, where consistent with the FAIR Act. Otherwise, exactly the same activity could be subject to different standards based on the rule that a broker-dealer chose to use. One commenter argued that determining affiliate ownership for such funds based on Forms 10-K and S-1 may quickly become outdated.¹⁰⁰ We believe that for purposes of calculating affiliate ownership when determining a covered investment fund's public float, broker-dealers may rely on the covered investment fund's most recent ownership disclosures filed with the Commission for identifying the beneficial owners, despite the potential data limitations. As a consequence, we believe that a broker-dealer need not seek to identify unknown beneficial owners held through disclosed record owners, and also does not need to generally exclude record owners from the calculation of public float, except to the extent that they represent known beneficial owners. We believe this approach is reasonable and comparable to that used in the operating company context.

Unlike rule 139, rule 139b does not permit affiliates of covered investment funds to rely on the safe harbor,

by relying upon third-party data vendors, such as Bloomberg. We understand that third-party service providers do not currently calculate this number for covered investment funds, although they may do so in the future.

⁹⁸ *See* Fidelity Comment Letter; SIFMA Comment Letter I.

⁹⁹ *See* rule 139b(a)(1)(i)(B).

¹⁰⁰ *See* SIFMA II Comment Letter.

mitigating the risk that a fund with significant affiliate holdings would be the subject of market moving research by those same affiliates. We also appreciate that there is more limited information currently available regarding the holdings of affiliates of covered investment funds relative to operating companies, as noted by commenters.¹⁰¹ That many covered investment fund are continuously offered also adds operational challenges. A covered investment fund's investor base, and thus potential affiliates, may change day to day, making it more difficult to identify affiliate holdings. In addition, covered investment funds are subject to unique legal provisions that generally restrict affiliate ownership and provide additional legal protections when affiliate ownership is permitted.¹⁰² Accordingly, not requiring a broker-dealer to identify and exclude affiliate holdings is designed to address these challenges and appropriately tailors this requirement for covered investment funds.¹⁰³

Second, the final rule will permit a broker-dealer to satisfy the minimum float requirement when it initiates (or reinitiates) coverage and then once a quarter thereafter (so long as it continues issuing or distributing research on that fund), rather than each time the broker-dealer publishes or distributes a research report, as proposed.¹⁰⁴ We recognize that in the operating company context where most issuers are not engaged in a continuous distribution, broker-dealers can rely on other research report rules that do not include a public float requirement. The requirement in proposed rule 139b that a covered investment fund have the requisite public float each time the broker-dealer publishes a research report could therefore have involved greater operational challenges than those associated with the corresponding requirement in rule 139. A broker-dealer would generally only need to comply with the requirement in rule 139 for a

discrete period of time while the issuer is in distribution, but would have been required to comply with the corresponding requirement in rule proposed 139b every time the broker-dealer published a research report about a covered investment fund that was in continuous distribution where the broker-dealer is participating in the offering. We believe that requiring a broker-dealer to determine the float upon initiation or reinitiation of coverage will ensure that the float requirement is met at the outset of research coverage. We are requiring a quarterly re-assessment of the float requirement to mitigate the risk that a covered investment fund's float declines over time and no longer meets the float requirement. We believe a quarterly assessment is appropriate as it aligns with the quarterly reporting schedule of most funds, and balances the risks of only periodically verifying a fund's float with the costs of more frequent or continuous assessments.

We believe these adjustments appropriately tailor rule 139 to covered investment funds. For the reasons discussed below, we believe that the changes to the calculation and time of testing of the minimum public float requirement for covered investment funds under rule 139b are necessary or appropriate in the public interest, and for the protection of investors, and for the promotion of capital formation as they allow appropriately tailoring of rule 139 in applying it to covered investment funds while considering their unique structure and operational aspects.

We proposed that the float threshold be calculated in terms of NAV rather than aggregate market value for mutual funds in order to reflect the market structure differences between mutual funds and all other covered investment funds.¹⁰⁵ Absent this modification, the float requirement would categorically exclude broker-dealers from relying on rule 139b in their publication or distribution of mutual fund issuer-specific research reports, which would appear inconsistent with the FAIR Act's directives. Mutual funds redeem their shares each day and therefore must compute their net asset value each day, providing a timely and reliable measure of the fund's size, akin to other issuers' public float; and investors' ability to purchase and redeem fund shares at net asset value provides timely share prices akin to the price discovery that occurs in a public trading market. As discussed further below, for other types of covered investment funds, such as closed-end

funds and BDCs, which may or may not have public float, we believe it is appropriate, and consistent with the FAIR Act, to provide the same public float requirements—the manner of calculation and amount—as applies to issuer-specific research reports under rule 139. Accordingly, we are adopting this NAV calculation method as proposed.

Non-Traded Funds

Finally, one commenter suggested that we revise rule 139b to permit an issuer-specific research report to cover a non-traded closed-end fund or BDC that does not have a “public float,” and thus which, under proposed rule 139b, could not be included in an issuer-specific research report.¹⁰⁶ This commenter noted that the proposed rule did not extend the NAV calculation method beyond open-end funds, but pointed to a footnote in the proposal that discussed the potential for non-traded BDCs or CEFs to be able to use a variant of the NAV approach, and asked that we amend the final rule to allow them to do so.¹⁰⁷

Although under the proposed rule the NAV calculation method was only available to mutual funds, we acknowledge that the Proposing Release discussion was inconsistent with the proposed rule text in that the Proposing Release discussed the possibility of non-traded BDCs and CEFs calculating a NAV based on their last publicly disclosed share price for purposes of proposed rule 139b.¹⁰⁸

We decline to amend the rule text to allow the NAV calculation method for non-traded BDCs and closed-end funds. We believe that it is inappropriate for non-traded BDCs and closed-end funds to satisfy the float requirement using a

¹⁰⁶ See Sutherland Comment Letter.

¹⁰⁷ *Id.* The commenter argued that all non-traded covered investment funds that have a net asset value (less the value of shares held by affiliates) that equals or exceeds the aggregate market value required in General Instruction I.B.1. to Form S-3 should be covered by new rule 139b.

¹⁰⁸ Compare Proposing Release, *supra* note 2, at 26796 n.83 (“For covered investment funds that are not actively traded (such as non-traded closed-end funds and non-traded business development companies), we anticipate that, for purposes of proposed rule 139b, net asset value and aggregate market value would be calculated based on the fund's last publicly-disclosed share price (for non-traded business development companies, this would be the common equity share price).”) with proposed rule 139b(a)(1)(i)(B): “The aggregate market value of voting and non-voting common equity held by non-affiliates of the covered investment fund, or, in the case of a registered open-end investment company (*emphasis added*) (other than an exchange-traded fund) its net asset value (subtracting the value of shares held by affiliates), equals or exceeds the aggregate market value specified in General Instruction I.B.1 of Form S-3.”

¹⁰¹ See SIFMA Comment Letter II (noting that third party vendors do not currently provide float information net of affiliates for funds, and that for certain funds whose ownership is held in street name, affiliate ownership may be “unknowable”).

¹⁰² See, e.g., Investment Company Act sections 12, 17, and 57 and rules thereunder.

¹⁰³ The instructions to Form S-3 discuss methodologies for calculating float net of affiliates. When calculating float for purposes of rule 139b, those instructions related to the exclusion of affiliate ownership must be disregarded.

¹⁰⁴ See rule 139b(a)(1)(i)(B). If a broker-dealer were to cease publication or distribution of a covered fund research report and then initiate coverage again, this provision would require the fund's float to be above the minimum at the time that the broker or dealer begins relying on the safe harbor provided by rule 139b once more.

¹⁰⁵ *Id.* at 26796 n.86.

NAV calculation because doing so would undermine the purpose of the requirement. As discussed previously, historically, the Commission has used public float as a proxy for a security's market following.¹⁰⁹ We believe that the NAV method for mutual funds acts as an effective proxy for market following for mutual funds because mutual funds redeem their shares daily and therefore must compute their net asset value each day, providing a timely and reliable measure of the fund's size, akin to other issuers' public float; and investors' ability to purchase and redeem fund shares at net asset value provides timely share prices akin to the price discovery that occurs in a public trading market. Non-traded BDCs and CEFs do not have an equivalent daily metric available, and often compute NAV on a significantly more infrequent basis, such as quarterly.

In addition, we do not believe that providing a different calculation method for non-traded closed-end funds and non-traded BDCs is appropriate, because such funds do not have the same kind of structural differences that necessitate different treatment provided to open-end funds. For example, unlike mutual funds, non-traded closed-end funds and BDCs could meet the float requirement if they chose to be listed and would not have to undertake any structural changes. By opting not to list, non-traded BDCs and closed-end funds are similar to non-listed operating company issuers that, by choosing not to list, cannot meet the public float requirement of rule 139.

Finally, we do not believe that our approach is inconsistent with the statute or congressional intent. Specifically, we note that the FAIR Act includes an interim effectiveness provision, whereby if the Commission has not adopted a covered investment fund research report rule within 270 days of the Act's enactment, broker-dealers could begin publishing or distributing covered investment fund research reports provided that certain rule 139 conditions are satisfied.¹¹⁰ One such specified condition is that an issuer-specific research report about a covered

investment fund must satisfy the existing public float requirement of rule 139 during this interim effectiveness. As such, even during the interim effectiveness period provided under the FAIR Act and as a result of the conditions in rule 139, non-traded BDCs and CEFs would not be able to satisfy the public float requirement and thus by congressional design would not receive the benefit of the FAIR Act's safe harbor. In light of the reasons discussed above, we have determined not to amend the proposed rule text as the commenter recommended to expressly include non-traded BDCs and CEFs within the safe harbor.

c. Regular-Course-of-Business Requirement

We are adopting as proposed a condition to rule 139b that a broker-dealer's publication or distribution of research reports be "in the regular course of its business"¹¹¹ (the "regular-course-of-business" requirement). Although the regular-course-of-business requirement is generally similar to the existing provisions of rule 139, it differs in one respect as required by the FAIR Act. Rule 139 provides, in addition to the requirement that a broker-dealer "publish or distribute research reports in the regular course of its business," that such publication or distribution may not represent either the initiation of publication of research reports about the issuer or its securities or the reinitiation of such publication following a discontinuation thereof (the "initiation or reinitiation" requirement).¹¹²

The FAIR Act, however, provides that the safe harbor shall not apply the "initiation or reinitiation" requirement to a report concerning a covered investment fund with a class of securities "in substantially continuous distribution."¹¹³ Accordingly, rule 139b incorporates the "initiation or reinitiation" requirement from rule 139 and specifies that it applies only to research reports regarding a covered investment fund that does not have a class of securities in substantially continuous distribution.¹¹⁴ Determining whether a class of securities is in substantially continuous distribution would be based on an analysis of the relevant facts and circumstances.

One commenter asked for clarification that the scope and meaning of "substantially continuous distribution" includes traded registered closed-end investment companies and BDCs

engaged in at-the-market ("ATM") offering programs over consecutive quarters pursuant to rule 415(a)(4) under the Securities Act.¹¹⁵ Determining whether a class of securities is in "substantially continuous distribution" is an analysis based on the relevant facts and circumstances. With respect to traded funds that offer ATM programs over consecutive quarters pursuant to rule 415(a)(4) under the Securities Act, we believe that a covered investment fund that engages in ongoing distributions of its shares on a frequency consistent with open-end investment companies is in substantially continuous distribution, but one that does so on a less frequent basis may not be.

One commenter asked that we clarify whether broker-dealers that have published and distributed communications styled as "research reports" in compliance with rule 482 would meet the regular-course-of-business requirement.¹¹⁶ This commenter also mentioned that some broker-dealers have published and distributed research reports on other issuers (such as non-covered investment funds, or on operating companies) in reliance on the rule 139 safe harbor. We believe that a broker-dealer can satisfy the regular-course-of-business requirement through either of the methods discussed by this commenter.¹¹⁷ A broker-dealer publishing or distributing an issuer-specific research report can satisfy the regular-course-of-business requirement if at the time of reliance on rule 139b it has distributed or published at least one research report about the issuer or its securities, or has distributed or published at least one such report following a period of discontinued coverage. In addition, the condition may be satisfied by publishing or distributing research reports on a covered investment fund when a broker-dealer is

¹¹⁵ See Sutherland Comment Letter. This commenter also asked for clarification regarding non-traded registered closed-end investment companies and non-traded BDCs offering shares on a continuous basis under Securities Act rule 415(a)(1)(ix). Although these funds would not be covered in issuer-specific research reports because they would not have the requisite public float, we believe that a "continuous" offering under rule 415(a)(1)(ix) would include a "substantially continuous offering" for purposes of rule 139b. See *infra* section II.B.2.b.

¹¹⁶ See Fidelity Comment Letter.

¹¹⁷ See also Securities Offering Reform Adopting Release, *supra* note 23, at 44763-64. There is no minimum time period for the broker or dealer to have distributed or published research reports, only that the particular broker or dealer has initiated or reinitiated coverage. *Id.*

¹⁰⁹ See *supra* note 87 and accompanying text.

¹¹⁰ See *supra* note 3; section 2(d) of the FAIR Act. The FAIR Act's interim effectiveness provision became effective as of July 3, 2018 and by its terms will terminate upon the adoption of a covered investment fund research report rule. Currently, at least one broker-dealer is issuing covered investment fund research reports in reliance on the interim effectiveness provision. See, e.g., Rachel Evans, *In a Passive World, Bank of America's New ETF Team Picks Stocks* (Oct. 17, 2018), available at <https://www.bloomberg.com/news/articles/2018-10-17/in-a-passive-world-bank-of-america-s-new-etf-team-picks-stocks?srnd=etfs>.

¹¹¹ Rule 139b(a)(1)(ii).

¹¹² Rule 139(a)(1)(iii) [17 CFR 230.139(a)(1)(iii)].

¹¹³ Section 2(b)(1) of the FAIR Act.

¹¹⁴ See rule 139b(a)(1)(ii).

not participating in the offering of that fund.¹¹⁸

One commenter indicated that broker-dealers should not be required to have a traditional research department in order to rely on the rule.¹¹⁹ A traditional research department is not a requirement to meet the condition, but would be a factor in indicating compliance with the regular-course-of-business requirement. We discussed a number of other factors that may evidence compliance with this condition in the Proposing Release.¹²⁰

Several commenters expressed concerns that the regular-course-of-business requirement was too restrictive.¹²¹ For example, one commenter stated that requiring broker-dealers to satisfy the regular-course-of-business requirement by having a history of publishing or distributing research on the same types of securities as covered in the research report is inconsistent with the FAIR Act and congressional intent, and may preclude coverage by new broker-dealer entrants.¹²² We do not believe that the regular-course-of-business requirement is inconsistent with the FAIR Act, congressional intent, or would preclude new broker-dealer entrants from relying on the rule 139b safe harbor, as suggested by the commenter. We believe the FAIR Act and congressional intent are clear in their directive to extend the rule 139 safe harbor to covered investment fund research reports. Rule 139 includes a regular-course-of-business requirement, and we believe it is appropriate for rule 139b to also include the same type of requirement. Commenters did not identify, and we are not aware of, any distinguishable differences in the operation of covered fund issuers that would necessitate

¹¹⁸ This would also include other types of research or rule 482 stylized “research reports,” discussed below.

¹¹⁹ See SIFMA Comment Letter I (also asking the Commission to clarify that the regular-course-of-business requirement would definitively be satisfied where the research is produced by traditional research analysts within a traditional research department—regardless of whether it previously produced research on a particular type of security).

¹²⁰ See Proposing Release, *supra* note 2, at 26796–99 (These factors included whether the broker-dealer: Has a compliance structure in place with relevant policies and procedures governing their publication of research and their distribution of registered investment company advertisements; has a research department with research analysts covering particular issuers or industries; maintains policies and procedures governing its research protocols; and regularly publishes or distributes research on any other type of company or business other than covered investment funds.).

¹²¹ See SIFMA Comment Letter I; ICI Comment Letter; Fidelity Comment Letter; *see also* BlackRock Comment Letter.

¹²² See SIFMA Comment Letter I.

different treatment from other issuers subject to rule 139 with respect to a regular-course-of-business requirement.

Moreover, broker-dealers that wish to newly begin publishing or distributing research reports on funds could meet this condition through any of the methods discussed above.¹²³ Once a broker-dealer has established a history of issuing such research reports pursuant to any of these (or potentially other) methods in the regular course of business, it could satisfy the condition and begin relying on rule 139b.

Similarly, another commenter stated that in place of the regular-course-of-business requirement, we should require broker-dealers’ policies and procedures to include rule 139b compliance.¹²⁴ We are not incorporating this suggested change. Maintaining policies and procedures to comply with rule 139b is one of several factors we would assess in determining whether the broker-dealer has engaged in research report publication and distribution in the regular course of business, but such a factor alone does not establish that the regular-course-of-business requirement has been met.

Since rule 139 was first adopted, the regular-course-of-business requirement has been a condition for a broker-dealer’s publication or distribution of research reports in reliance on the rule.¹²⁵ We continue to believe requiring that research reports be published or distributed in the regular course of a broker-dealer’s business under rule 139b, consistent with the requirements of rule 139, could reduce the potential that covered investment fund research reports could be used to circumvent the prospectus requirements of the Securities Act.¹²⁶ For the reasons discussed in this section, we are adopting the regular-course-of-business requirement as proposed.

2. Industry Research Reports

Rule 139b sets forth conditions for industry research reports that parallel the corresponding conditions under rule 139 and are intended to provide appropriate parameters to address the

¹²³ See *supra* notes 116–118 and accompanying text.

¹²⁴ See ICI Comment Letter; *see also* BlackRock Comment Letter.

¹²⁵ See Adoption of Rules Relating to Publication of Information and Delivery of Prospectus by Broker-Dealers Prior to or After the Filing of a Registration Statement Under the Securities Act of 1933, Securities Act Release No. 5105 (Nov. 19, 1970) [35 FR 18456 (Dec. 4, 1970)].

¹²⁶ See Proposing Release, *supra* note 2, at 26797; *see also* Securities Offering Reform Adopting Release, *supra* note 23.

risk of circumvention of the prospectus requirements of the Securities Act.¹²⁷

a. Reporting Requirement

Under the rule 139b safe harbor, each covered investment fund included in an industry research report must be subject to the reporting requirements of section 30 of the Investment Company Act (or, for covered investment funds that are not registered investment companies under the Investment Company Act, the reporting requirements of section 13 or section 15(d) of the Exchange Act). This reporting requirement generally tracks an existing requirement for industry research reports under rule 139 but has been modified so that it would be applicable to industry research reports that include covered investment fund issuers.¹²⁸ Like the parallel provision of rule 139, the reporting requirement under rule 139b helps ensure that there is publicly available information about the relevant issuers and that investors are able to use such information in making their investment decisions. Commenters did not present any concerns regarding the reporting requirement for purposes of industry research reports, and we are adopting it as proposed.

b. Regular-Course-of-Business Requirement

Under rule 139b, as proposed, a broker-dealer must publish or distribute research reports in the regular course of its business in order to rely on the new rule’s safe harbor.¹²⁹ The regular-course-of-business requirement for industry research reports similarly applies to issuer-specific research reports,¹³⁰ and it also tracks an existing requirement for industry research reports under rule 139.¹³¹

Like the parallel provision in rule 139, rule 139b’s regular-course-of-business requirement for industry research reports includes the requirement that, at the time of publication or distribution of the

¹²⁷ See *supra* notes 49–50 and accompanying text; *see also supra* paragraph accompanying notes 12–15.

¹²⁸ See rule 139(a)(2)(i) [17 CFR 230.139(a)(2)(i)] (The issuer is required to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 or satisfies the conditions in paragraph (a)(1)(i)(B) of this section.).

¹²⁹ Rule 139b(a)(2)(iv) (the broker-dealer publishes or distributes research reports in the regular course of its business and, at the time of the publication or distribution of the research report (in the case of a research report regarding a covered investment fund that does not have a class of securities in substantially continuous distribution) is including similar information about the issuer or its securities in similar reports).

¹³⁰ See *supra* section II.B.1.c.

¹³¹ See rule 139(a)(2)(v) [17 CFR 230.139(a)(2)(v)].

industry research report, the broker-dealer is including similar information about the issuer or its securities in similar reports.¹³² However, unlike rule 139, the “similar information” requirement under rule 139b applies only to circumstances in which a broker-dealer is publishing or distributing a research report regarding a covered investment fund that does not have a class of securities in substantially continuous distribution. As discussed above, the FAIR Act provides that the safe harbor shall not apply the “initiation or reinitiation” requirement to a research report concerning a covered investment fund with a class of securities “in substantially continuous distribution.”¹³³ We believe that the “similar information” requirement is akin to the “initiation or reinitiation” requirement, in that both would have the effect of limiting a broker-dealer’s ability to rely on the rule 139b safe harbor to publish or distribute a research report about a particular covered investment fund if the broker-dealer had not previously published research on that issuer. Therefore, as in the “initiation or reinitiation” requirement, we are also excluding covered investment funds from the “similar information” requirement if they have a class of securities in substantially continuous distribution.

We provided guidance in section II.B.1.c above on how a broker-dealer can meet the regular-course-of-business requirement in the context of issuer-specific research reports, and such guidance would be equally applicable in meeting the requirement in the context of industry research reports. We are adopting the requirement as proposed for the reasons discussed in this section and in the similar section for issuer-specific research reports.

c. Content Requirements for Industry Research Reports

Rule 139b’s safe harbor for publication or distribution of industry research reports is also conditioned on certain content requirements. We are adopting these requirements as proposed.

Specifically, under rule 139b, industry research reports either must include similar information about a substantial number of covered investment fund issuers of the same type or investment focus (the “industry representation requirement”),¹³⁴ or alternatively contain a comprehensive

list of covered investment fund securities currently recommended by the broker-dealer (the “comprehensive list requirement”).¹³⁵ These requirements are designed to result in industry research reports that cover a broad range of investment companies or securities.¹³⁶ At the same time, the comprehensive list requirement would permit a different presentation of research about multiple covered investment funds than the industry representation requirement would permit.¹³⁷ Because the affiliate exclusion applies to all covered investment fund research reports—*i.e.*, both issuer-specific research reports and industry research reports—a broker-dealer seeking to rely on rule 139b by satisfying either the industry representation requirement or the comprehensive list requirement cannot include any covered investment fund issuer that is an affiliate of the broker-dealer, or for which the broker-dealer serves as an investment adviser (or is an affiliated person of the investment adviser) in a covered investment fund research report, including industry research reports.¹³⁸

Several commenters argued that a broker-dealer should be able to include affiliated funds in industry research reports about covered investment funds.¹³⁹ Another commenter argued that industry research reports with a substantial number of funds should satisfy the purposes of the affiliate exclusion if they contain similar information about each fund and no

particular fund is afforded materially greater space or prominence.¹⁴⁰ Another commenter suggested that, in some instances, because affiliated funds may be as or more suitable than non-affiliated funds, broker-dealers should be allowed to include affiliated funds in industry research reports.¹⁴¹ Several commenters also argued that we should permit broker-dealers to include both affiliated and non-affiliated funds in industry research reports, but only provide the rule 139b safe harbor for the non-affiliated funds included in the report. They suggested that any information about affiliated funds included in such a report not benefit from the safe harbor, and thus any discussions of those funds be subject to the requirements of rule 482.¹⁴²

We believe extending the rule 139b safe harbor to affiliated funds in industry research reports (whether industry representation or comprehensive list reports) would not be consistent with the intent and plain language of section 2(f)(3) of the FAIR Act.¹⁴³ We also believe that allowing for a mix of affiliated funds and non-affiliated funds to appear together in a single research report, as suggested by commenters, in reliance on two separate and distinct characterizations of that communication (*i.e.*, under rule 139b such a research report would be deemed not an offer under the Securities Act, and under rule 482 such a research report would be deemed to be a 10(b) omitting prospectus) would be an untenable regulatory framework. Not only would there be differing presentation, liability, and filing standards for the different portions of the report, but we believe that it could create challenges for regulators and others and confusion for investors because the information presented for each type of fund would likely differ.¹⁴⁴

¹³⁵ Rule 139b(a)(2)(ii)(B).

¹³⁶ See Research Reports, Securities Act Release No. 6492 (Oct. 6, 1983) [48 FR 46801 (Oct. 14, 1983)].

¹³⁷ Under rule 139b, a “comprehensive list” research report would have to include a list of all of the broker’s currently-recommended covered investment fund securities, whereas an “industry representation” report would not be required to list each currently-recommended security but instead could cover a more limited number of issuers as long as a “substantial number” of covered investment fund issuers of the same type or investment focus were included.

¹³⁸ See rule 139b(a)(2)(ii)(B) (excluding from the comprehensive list securities of a covered investment fund that is an affiliate of the broker-dealer, or for which the broker-dealer serves as investment adviser (or for which the broker-dealer is an affiliated person of the investment adviser)); see also *supra* section II.A.1. In the final rule, we also made a change to rule 139b(a)(2)(ii) to clarify that the industry research report provisions are with respect to covered investment fund research reports and the affiliate exclusion set forth therein. Thus, a broker-dealer cannot include a covered investment fund issuer in any industry specific report (*i.e.*, industry representation requirement or the comprehensive list requirement) if the broker-dealer’s relationship to the issuer meets any of the affiliations designated in the affiliate exclusion.

¹³⁹ See ICI Comment Letter; Fidelity Comment Letter; SIFMA Comment Letter I; see also BlackRock Comment Letter.

¹⁴⁰ See SIFMA Comment Letter I.

¹⁴¹ See Fidelity Comment Letter.

¹⁴² See SIFMA Comment Letter I; Fidelity Comment Letter.

¹⁴³ This section excludes from the definition of covered investment fund research report any research report to the extent that the research report is published or distributed by the covered investment fund or any affiliate of the covered investment fund, or any research report published or distributed by any broker-dealer that is an investment adviser (or an affiliated person of an investment adviser) for the covered investment fund.

¹⁴⁴ For example, communications subject to rule 482 must be filed with the Commission pursuant to section 24(b) of the Investment Company Act. 15 U.S.C. 80a-24(b). Rule 24b-3 under the Investment Company Act deems these materials to have been filed with the Commission if filed with FINRA. 17 CFR 270.24b-3. Unless the entirety of the research report was filed, reviewing isolated and selective portions of a research report related to affiliated

¹³² Rule 139b(a)(2)(iv).

¹³³ See *supra* notes 113–114 and accompanying text.

¹³⁴ Rule 139b(a)(2)(ii)(A).

Accordingly, we clarify that broker-dealers may not selectively apply the rule 139b safe harbor to certain aspects of a research report. The safe harbor must apply to the entirety of the report or it does not apply at all. Broker-dealers may, however, instead choose to issue a rule 482 communication that is styled as an industry research report about affiliated funds or about affiliated and non-affiliated funds; in either case, such a communication would be subject to the requirements of rule 482 and not gain the benefit of the rule 139b safe harbor.

One commenter raised the concern that excluding affiliated funds from an industry research report subject to the comprehensive list requirement may create a false impression that an affiliated fund is excluded because it does not meet an investor's criteria.¹⁴⁵ We acknowledge this possibility. If a broker-dealer is concerned that a research report purporting to include a comprehensive list of funds may confuse investors, the broker-dealer could include an explanation of why affiliated funds are excluded from the research report. For example, a broker-dealer could include a statement in the report indicating that it does not include information about affiliated funds due to relevant securities regulations.

One commenter argued that rule 139b should not include industry report content requirements because covered investment funds do not have the same market conditioning or "gun-jumping" concerns as securities covered in research reports published or distributed in reliance on rule 139.¹⁴⁶ Since many covered investment funds continuously distribute their securities, conditioning the market concerns can remain throughout the offering for issuers covered under rule 139b. Market conditioning is a concern that information about a fund or its securities might supersede the information provided in their offering prospectus. With respect to research reports, this concern is heightened for issuer-specific research reports and therefore they are subject to more

funds may not allow for effective review of such materials.

¹⁴⁵ See Fidelity Comment Letter.

¹⁴⁶ See ICI Comment Letter (citing an SEC staff report issued in 1969 noting that "gun-jumping" concerns primarily arise during the pre-filing stage of a securities offering and casting doubt on the doctrine's applicability to non-participants in a securities offering). This commenter made the same argument regarding industry report presentation requirements. See *infra* note 152. See also BlackRock Comment Letter. Rule 139b is not limited to non-participants. Broker-dealers participating in the distribution of the covered investment fund's securities may rely on the rule provided the applicable conditions are satisfied.

stringent conditions than industry research reports. Market conditioning, however, remains a concern for industry research reports, as well. The content requirements for industry reports are designed to help ensure that industry reports become a part of the mix of information in the marketplace, rather than circumventing the prospectus requirements of the Securities Act or the issuer-specific conditions.

The language from rule 139's industry representation requirement is replicated in rule 139b, with modifications designed to apply the language to the covered investment fund context. Under rule 139's corresponding requirement, an industry research report must include "similar information with respect to a substantial number of issuers in the issuer's industry or sub-industry."¹⁴⁷ As discussed in the Proposing Release, while operating companies are typically grouped based on their business category, entities that are included in the definition of "covered investment fund" are typically grouped based either on their type or investment focus.¹⁴⁸ Therefore, the industry representation requirement would require an industry research report to include similar information about a substantial number of issuers either of the same type (*e.g.*, ETFs or mutual funds that are large cap funds, bond funds, balanced funds, money market funds, etc.) or investment focus (*e.g.*, primarily invested in the same industry or sub-industry, or the same country or geographic region).¹⁴⁹ We believe that this requirement tracks rule 139 to the extent practicable and appropriate, and we did not receive comments on this aspect of the proposal. For the reasons discussed above, we are adopting the industry research report content requirements as proposed.

d. Presentation Requirement for Industry Research Reports

As proposed, the rule 139b safe harbor for industry research reports is conditioned on a presentation requirement. Under the new rule, analysis of any covered investment fund issuer or its securities included in an industry research report cannot be given materially greater space or prominence in the publication than that given to any other covered investment fund issuer or its securities.¹⁵⁰

We believe that the concerns underlying the rule 139 presentation

requirements apply equally in the context of covered investment fund research reports.¹⁵¹ The industry should already be familiar with this long-established and well-understood condition, and therefore we believe implementing a similar presentation condition for industry research reports on covered investment funds would be straightforward.

One commenter argued that rule 139b should not include industry report presentation requirements because covered investment funds do not have the same market conditioning or "gun-jumping" concerns as those securities covered in research reports published or distributed in reliance of rule 139.¹⁵² As discussed above, market conditioning remains a concern for industry research reports.¹⁵³ The presentation requirements for industry reports are designed to help ensure that industry reports become a part of the mix of information in the marketplace, rather than circumventing the prospectus requirements of the Securities Act or the issuer-specific conditions. For the same reasons discussed above, we disagree with this commenter.¹⁵⁴ Accordingly, we are adopting this requirement as proposed.

C. Presentation of Performance Information in Research Reports About Registered Investment Companies

The proposed rule would not have required standardized performance presentation for covered investment fund research reports. However, the Commission requested comment on whether the final rule should require research reports about registered investment companies to be subject to standardized performance presentation requirements. The Commission expressed its concern that not including standardized performance measures in research reports could lead to investor confusion. The Commission also noted its longtime recognition that investors tend to consider investment performance to be a particularly significant factor in evaluating or comparing investment companies and had previously identified a number of circumstances in which performance could be disclosed in a misleading manner.¹⁵⁵

¹⁵¹ See Proposing Release, *supra* note 2, at 26801.

¹⁵² See ICI Comment Letter; see also BlackRock Comment Letter.

¹⁵³ See *supra* note 146 and accompanying paragraph.

¹⁵⁴ See *id.*

¹⁵⁵ See Proposing Release, *supra* note 2, at 26802. Additionally, the Commission noted its concern that rule 482 or rule 34b-1 could be circumvented by recasting registered investment company

¹⁴⁷ Rule 139(a)(2)(iii) [17 CFR 230.139(a)(2)(iii)].

¹⁴⁸ See Proposing Release, *supra* note 2, at 26800.

¹⁴⁹ Rule 139b(a)(2)(ii)(A).

¹⁵⁰ Rule 139b(a)(2)(iii).

In a change from the proposal, we are adopting a condition in rule 139b that if fund performance information is included in a research report, it must be presented in accordance with certain standardized presentation requirements dependent on the type of covered investment fund covered.¹⁵⁶ For research reports that include registered open-end fund performance, we are requiring that fund performance be presented according to the presentment and timeliness requirements of rule 482.¹⁵⁷ For research reports that include closed-end fund performance, one commenter argued for standardized presentation requirements for all covered investment funds and recommended that closed-end funds comply with the requirements of Form N-2 instead of rule 482, which does not offer any standardized performance requirements for closed-end funds.¹⁵⁸ We agree with the commenter, and are therefore requiring that closed-end fund performance be presented in a manner that is in accordance with the instructions to item 4.1(g) of Form N-2, although other historical measures of performance may also be included if any other measurement is set out with no greater prominence.

Specific statutory provisions and rules apply to advertising the performance of registered investment companies.¹⁵⁹ An advertisement about a covered investment fund that is a

advertisement or selling materials as research reports. *Id.*

¹⁵⁶ Rule 139b(a)(3).

¹⁵⁷ See *id.* (requiring that a research report discussing fund performance of a registered open-end management investment company must present it in accordance with the performance requirements of paragraphs (d) and (e) of rule 482 [17 CFR 230.482] and must also comply with the timeliness requirement of performance data in paragraph (g) of rule 482).

¹⁵⁸ See ICI Comment Letter; see also BlackRock Comment Letter.

¹⁵⁹ See, e.g., section 24(g) of the Investment Company Act [15 U.S.C. 80a-24(g)] (directing the Commission to adopt rules or regulations that permit registered investment companies to use prospectuses that (i) include information the substance of which is not included in the statutory prospectus, and (ii) are deemed to be permitted by section 10(b) of the Securities Act); rule 34b-1 under the Investment Company Act [17 CFR 270.34b-1] (requiring that, in order not to be misleading, investment company sales literature must include certain information, including with respect to performance information by incorporating certain related provisions of rule 482 of the Securities Act); rule 156 of the Securities Act [17 CFR 230.156] (providing guidance on what statements or omissions of material fact may be misleading in investment company sales literature); rule 482 of the Securities Act [17 CFR 230.482] (setting forth that for an investment company advertisement to be deemed a prospectus under section 10(b) of the Securities Act, it must meet certain requirements thereunder, including with respect to standardized performance information presentation).

registered investment company is deemed a section 10(b) prospectus (also known as an “advertising prospectus” or “omitting prospectus”) for purposes of section 5(b)(1) of the Securities Act so long as it complies with rule 482.¹⁶⁰ Therefore, a broker-dealer’s publication or distribution of a research report that complies with the requirements of rule 482 would not be deemed a non-conforming prospectus in violation of section 5 of the Securities Act.¹⁶¹ As discussed in the Proposing Release, given the breadth of the definition of “research report” under the FAIR Act (and the definition of “research report” under rule 139b), certain communications by broker-dealers that historically have been treated as advertisements for registered investment companies under rule 482 now could be considered covered investment fund research reports subject to the rule 139b safe harbor.¹⁶² Among other things, rule 482 requires standardized presentation of performance data included in registered open-end investment company advertisements.¹⁶³ Alternatively, if other performance measures are presented, they must be accompanied by certain standardized performance data.¹⁶⁴

Because a broker-dealer’s publication or distribution of a covered investment fund research report under rule 139b is deemed not to constitute an offer for purposes of sections 2(a)(10) and 5(c) of the Securities Act, a covered investment fund research report would no longer need to be deemed to be a section 10(b) prospectus (such as an advertising prospectus under rule 482) for purposes of section 5(b)(1) of the Securities Act. In addition, some communications that previously were considered supplemental sales literature under rule 34b-1 under the Investment Company

¹⁶⁰ See rule 482 under the Securities Act [17 CFR 230.482].

¹⁶¹ See *id.* FINRA content standards also would generally require a member’s publication or distribution of such a communication (to the extent it presents performance data as permitted by rule 482) to include certain of the standardized performance information specified under rule 482. See FINRA rule 2210(d)(5)(A).

¹⁶² See Proposing Release, *supra* note 2, at 26801.
¹⁶³ See rule 482(d)(1)-(4) under the Securities Act (for open-end investment companies other than money market funds) [17 CFR 230.482(d)(1)-(4)]; rule 482(e) under the Securities Act (for money market funds) [17 CFR 230.482(e)].

¹⁶⁴ See rule 482(d)(5) [17 CFR 230.482(d)(5)]. These other performance measures are not subject to any prescribed method of computation, but must reflect all elements of return and be accompanied by quotations of standardized measures of total return as provided for in paragraphs (d)(3) and (d)(4) of the rule. Rule 482(d)(5) also includes other requirements for the inclusion of non-standardized performance data, such as presentation and prominence requirements. See *id.*

Act that must be accompanied or preceded by a statutory prospectus now could be considered covered investment fund research reports (which need not be preceded or accompanied by a statutory prospectus).¹⁶⁵ Rule 34b-1 incorporates many of the rule 482 requirements relating to performance disclosure and makes these requirements applicable to supplemental sales literature.¹⁶⁶ As discussed in the Proposing Release, we are concerned that this shift in regulatory treatment of research reports about registered investment companies could result in investor confusion if a communication were not easily recognizable as research as opposed to an advertising prospectus or supplemental sales literature. Although there are multiple provisions in proposed rule 139b that aim to limit the risk that broker-dealers could use the proposed safe harbor to circumvent the prospectus requirements of the Securities Act,¹⁶⁷ there could be circumstances where, under rule 139b, broker-dealers publish or distribute communications that historically have been viewed as registered investment company advertisements or selling materials.

We received two comment letters addressing this issue.¹⁶⁸ One commenter suggested that the presentation of performance information in research reports about registered investment companies should not be subject to the standardized performance requirements of rule 482.¹⁶⁹ This commenter stated that because rule 482 is intended to apply to advertisements, such presentation requirements might undermine analysis or insights that a

¹⁶⁵ See section 2(a)(10)(a) of the Securities Act; rule 139b(a). See also rule 34b-1 under the Investment Company Act [17 CFR 270.34b-1]. Rule 34b-1 provides that any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Investment Company Act will have omitted to state a fact necessary in order to make the statements made therein not materially misleading unless it includes certain specified information.

¹⁶⁶ See rule 34b-1(b)(1)-(2) [17 CFR 270.34b-1(b)(1)-(2)].

¹⁶⁷ See, e.g., *supra* sections II.A.1 (affiliate exclusion) and II.B.1.c and II.B.2.b (regular-course-of-business requirements). Certain covered investment fund research reports that meet the definition of “research report” in Regulation AC would be subject to the requirements of Regulation AC. Similarly, covered investment fund research reports that meet the definition of “research report” in FINRA rule 2241 or the definition of “debt research report” in FINRA rule 2242 would be subject to the content requirements in those rules as applicable. See *infra* section II.D.1.

¹⁶⁸ See SIFMA Comment Letter I; ICI Comment Letter; see also BlackRock Comment Letter.

¹⁶⁹ SIFMA Comment Letter I.

research analyst may seek to convey about one or more covered investment funds by highlighting a particular aspect of performance information. This commenter also stated that SRO rules would address the investor confusion concern raised by the Commission. We disagree that applying standardized performance presentation requirements would undermine a research analyst's analysis or insights because rule 482 does not preclude non-standardized performance information. Rather, it requires standardized performance information to be presented if non-standardized performance information is presented. We believe SRO rules may address some investor confusion concerns, but we believe requiring presentation performance requirements would more fully address these concerns.

Another commenter stated that the Commission should require that fund-specific performance information in covered investment fund research reports be presented in accordance with the applicable standardization requirements.¹⁷⁰ This commenter stated that investors tend to consider fund performance a significant factor in evaluating or comparing funds and that standardized fund performance reporting requirements have served investors well. Furthermore, this commenter noted that discrepancies in performance between a broker-dealer's research report and what a fund may report or disclose in regulatory filings or advertisements would risk confusing investors. We agree with both of the commenter's points. This commenter also noted that if the final rule does not require standardized presentation requirements for fund performance information, the Commission should require a clear and prominent disclosure whenever fund-specific performance is not in accordance with these standards.

The final rule thus requires that a research report that includes open-end fund performance information must present this information in accordance with rule 482 presentment and timeliness requirements. A research report must present closed-end fund performance information in accordance with the instructions to item 4.1(g) set forth in Form N-2 (although other historical measures of performance may also be included if the other measurement is set out with no greater prominence than the measurement that

is in accordance with the instructions to item 4.1(g) of Form N-2).

Rule 139b(a)(3) requirements would not preclude research report analysts from presenting performance information in their preferred manner; rather, it requires that standardized performance information also be included if non-standardized performance information is presented. To satisfy this requirement, analysts may choose to present non-standardized performance information in a way they believe highlights a particular insight or analysis, so long as it is presented alongside the standardized performance information consistent with rule 482 requirements or Form N-2, if applicable.¹⁷¹

As noted in the proposal, covered investment fund research reports relying on the rule 139b safe harbor are subject to the antifraud provisions of the federal securities laws.¹⁷² The Commission has previously articulated guidance on factors to be weighed in considering whether statements involving a material fact in registered investment company advertisements and sales literature, which are also subject to the antifraud provisions of the federal securities laws, could be misleading.¹⁷³ This guidance provided factors to be weighed when determining whether fund performance in sales literature is adequately disclosed. The guidance factors in rule 156¹⁷⁴ are informative in evaluating whether any presentations of registered investment company performance in these research reports could be misleading because they reflect principles that would help guide this analysis (such as providing information to investors that is informative and that does not create unrealistic investor expectations¹⁷⁵). We believe that

¹⁷¹ See rule 139b(a)(3).

¹⁷² See section 2(c)(1) of the FAIR Act (stating that nothing in the FAIR Act shall be construed as in any way limiting the applicability of the antifraud or anti-manipulation provisions of the federal securities laws and rules adopted thereunder to a covered investment fund research report, including section 17 of the Securities Act, section 34(b) of the Investment Company Act, and sections 9 and 10 of the Exchange Act).

¹⁷³ See Amendments to Investment Company Advertising Rules, Securities Act Release No. 8294 (Sept. 29, 2003) [68 FR 57759 (Oct. 6, 2003)]; see also rule 156 under the Securities Act [17 CFR 230.156].

¹⁷⁴ Rule 156(b) under the Securities Act provides guidance factors concerning misleading statements in investment company sales literature including: (i) Statements and omissions generally (including in light of general economic or financial conditions or circumstances), (ii) representations about past or future investment performance, and (iii) statements involving a material fact about an investment company's characteristics or attributes.

¹⁷⁵ See Amendments to Investment Company Advertising Rules, Securities Act Release No. 8101 (May 17, 2002) [67 FR 36712 (May 24, 2002)].

incorporating these rule 482 and Form N-2 presentation standards in rule 139b reduces the potential for confusion between (i) registered open-end management investment company advertisements and selling materials covered by rule 482 and registered closed-end investment company selling materials covered by Form N-2 and (ii) rule 139b research reports. Moreover, we believe it would reduce the potential for investor confusion resulting from divergent standards in the presentation of performance data.

D. Role of Self-Regulatory Organizations

1. SRO Content Standards and Filing Requirements for Covered Investment Fund Research Reports

SRO Content Standards

The FAIR Act contemplates that SRO content standards applicable to research reports would apply to covered investment fund research reports.¹⁷⁶ Specifically, the FAIR Act provides that, unless covered investment fund research reports are subject to the content standards in the rules of any SRO related to research reports, these research reports may still be subject to the filing requirements of section 24(b) of the Investment Company Act for the review of investment company sales literature.¹⁷⁷ As discussed in more detail below, we are adopting rule 24b-4 to implement this provision of the FAIR Act. New rule 24b-4 provides that a covered investment fund research report about a registered investment company will not be subject to section 24(b) of the Investment Company Act (or the rules and regulations thereunder), except to the extent the

¹⁷⁶ See section 2(b)(4) of the FAIR Act (A covered investment fund research report shall not be subject to section 24(b) of the Investment Company Act or the rules and regulations thereunder, except that such report may still be subject to such section and the rules and regulations thereunder to the extent that it is otherwise not subject to the content standards in the rules of any self-regulatory organization related to research reports, including those contained in the rules governing communications with the public regarding investment companies or substantially similar standards.). This provision is relevant only to research reports on covered investment funds that are investment companies subject to section 24(b) of the Investment Company Act. For example, registered closed-end investment companies, BDCs, and commodity- or currency-based trusts or funds are covered investment funds that are not subject to section 24(b) of the Investment Company Act. A covered investment fund research report that is not subject to section 24(b) of the Investment Company Act would not be subject to filing requirements under that section even if research reports concerning the covered investment fund were not subject to the content standards in the rules of any self-regulatory organization related to research reports.

¹⁷⁷ See *id.*

¹⁷⁰ ICI Comment Letter. This commenter also suggested the disclosure of Form N-2 performance data for closed-end funds. See also BlackRock Comment Letter.

research report is otherwise not subject to the content standards in SRO rules related to research reports, including those contained in the rules governing communications with the public regarding investment companies or substantially similar standards.¹⁷⁸

Currently, the SRO content standards relevant to communications that would be considered covered investment fund research reports under rule 139b include the applicable content standards of FINRA rules 2210, 2241, and 2242.¹⁷⁹ FINRA's rule governing communications with the public (FINRA rule 2210) contains general content standards that apply broadly to member communications,¹⁸⁰ including broker-dealer research reports. These general content standards require, among other things, that all member communications "must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry or service."¹⁸¹

The FAIR Act does not explicitly refer to specific content standards in SRO rules. It refers more generally to "the content standards in the rules of any self-regulatory organization related to research reports, including those contained in the rules governing communications with the public regarding investment companies or substantially similar standards."¹⁸² In order to provide clarity and facilitate consistent and predictable application of rule 24b-4, we interpret section 2(b)(4) of the FAIR Act as excluding covered investment fund research reports from section 24(b) of the Investment Company Act so long as they continue to be subject to the general content standards in FINRA rule 2210(d)(1) (or substantially similar SRO rules). Accordingly, by operation of rule 24b-4, covered investment fund research reports under rule 139b that

otherwise would be subject to section 24(b) of the Investment Company Act would *not* be subject to that section so long as they remain subject to the general content standards of FINRA rule 2210(d)(1).¹⁸³ This interpretation is consistent with our belief that it is important for SRO content standards to continue to apply to covered investment fund research reports, especially if, as discussed below, research reports about registered investment companies would no longer be required to be filed pursuant to section 24(b) of the Investment Company Act or rule 497 under the Securities Act,¹⁸⁴ and therefore would no longer be subject to

¹⁸³ A subset of communications that would fall within the definition of "covered investment fund research report" under rule 139b also would be subject to additional content-related requirements under FINRA rules that are applicable to certain research reports, but that are more narrowly applicable than the general content standards of FINRA rule 2210(d)(1). However, under our interpretation, whether or not these additional content standards apply to any given covered investment fund research report would not determine the applicability of section 24(b) to that research report under proposed rule 24b-4. A different interpretation could lead to results that we believe could be inconsistent with section 2(b)(4) of the FAIR Act (*i.e.*, if only communications that are subject to additional FINRA content standards discussed in this footnote (*e.g.*, those applicable to retail communications) were excluded from section 24(b) filing requirements).

Additional FINRA content-related requirements include the content standards of FINRA rule 2210 that apply only to retail communications (or retail communications and correspondence, as those terms are defined in FINRA rule 2210(a)). *See, e.g.*, FINRA rules 2210(d)(2) (Comparisons), 2210(d)(3) (Disclosure of Member's Name). Accordingly, covered investment fund research reports that would meet the definition of institutional communications would not be subject to some of the content standards of FINRA rule 2210.

These additional requirements also include the content standards incorporated in FINRA rules 2241 and 2242, which apply to certain research reports defined in these FINRA rules. The scope of FINRA rules 2241 and 2242 only includes research reports or debt research reports as defined in these rules, and the definitions of "research report" and "debt research report" in these rules are different than the definitions of "research report" set forth in rule 139 and new rule 139b. Under FINRA rule 2241, "research report" is defined as any written (including electronic) communication that includes an analysis of equity securities of individual companies or industries (other than an open-end registered investment company that is not listed or traded on an exchange) and that provides information reasonably sufficient upon which to base an investment decision; similarly, under FINRA rule 2242, "debt research report" is defined as any written (including electronic) communication that includes an analysis of a debt security or an issuer of a debt security and that provides information reasonably sufficient upon which to base an investment decision, excluding communications that solely constitute an equity research report as defined in FINRA rule 2241(a)(11). *See* FINRA rules 2241(a)(11), 2242(a)(3).

¹⁸⁴ *See infra* notes 187-189 and accompanying text.

routine review.¹⁸⁵ We received no comments on SRO content standards specifically, but some commenters suggested that FINRA rules (particularly with respect to definitions and filing requirements thereunder) be modified or harmonized with rule 139b, which we discuss below.¹⁸⁶

Filing Requirements for Covered Investment Fund Research Reports

Rule 24b-4, as adopted, modifies the filing requirements that currently apply to certain broker-dealer communications regarding registered investment companies. Today, registered investment company sales literature, including rule 482 omitting prospectus advertisements, are required to be filed with the Commission under section 24(b) of the Investment Company Act¹⁸⁷ and rule 497 under the Securities Act.¹⁸⁸ Rule 24b-3 under the Investment Company Act and rule 497(i) deem these materials to have been filed with the Commission if filed with FINRA.¹⁸⁹

As discussed in the Economic Analysis below, we anticipate that certain communications that historically have been treated as investment company sales literature, including rule 482 "omitting prospectus" advertisements, would be published or distributed by a broker-dealer as covered investment fund research reports pursuant to the rule 139b safe harbor.¹⁹⁰ Such communications styled

¹⁸⁵ Broker-dealer communications that are excluded from, or otherwise not subject to FINRA's filing requirements may still be reviewed by FINRA, for example, through examinations, targeted sweeps or spot-checks. FAIR Act section 2(c)(2) provides that nothing in the Act shall be construed as in any way limiting "the authority of any self-regulatory organization to examine or supervise a member's practices in connection with such member's publication or distribution of a covered investment fund research report for compliance with applicable provisions of the Federal securities laws or self-regulatory organization rules related to research reports, including those contained in rules governing communications with the public." *See also, e.g.*, FINRA rule 2210(c)(6) ("In addition to the foregoing requirements, each member's written (including electronic) communications may be subject to a spot-check procedure. Upon written request from [FINRA's Advertising Regulation] Department, each member must submit the material requested in a spot-check procedure within the time frame specified by the Department.")

¹⁸⁶ *See, e.g.*, Fidelity Comment Letter; SIFMA Comment Letter I.

¹⁸⁷ *See supra* note 144.

¹⁸⁸ *See* rule 497 of the Securities Act [17 CFR 230.497]. Rule 497, which generally requires investment company prospectuses, including investment company advertisements deemed to be a section 10(b) prospectus pursuant to rule 482, to be filed with the Commission.

¹⁸⁹ *See supra* note 144; *see also* 17 CFR 230.497(i).

¹⁹⁰ *See infra* section III.C.3.

¹⁷⁸ *See* rule 24b-4.

¹⁷⁹ *See infra* note 183 (discussing the scope of these rules in more detail, including noting that the scope of certain provisions of FINRA rule 2210, and the scope of FINRA rules 2241(c)(1) and 2242(c)(2) generally, apply only to a certain subset of communications that would be considered covered investment fund research reports under rule 139b).

¹⁸⁰ *See* FINRA rule 2210(d)(1).

¹⁸¹ *See* FINRA rule 2210(d)(1)(A). FINRA rule 2210's general content standards also provide, among other things, that FINRA members may not "make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication" nor "publish, circulate or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading." *See* FINRA rule 2210(d)(1)(B).

¹⁸² Section 2(b)(4) of the FAIR Act.

as “research reports” that previously had been subject to the filing requirements of section 24(b) of the Investment Company Act no longer would be subject to these requirements by operation of rule 24b–4, as adopted, because they would be subject to the general content standards of FINRA rule 2210(d)(1).¹⁹¹

FINRA rule 2210 requires the filing of certain communications, including retail communications that promote or recommend a specific registered investment company or family of registered investment companies.¹⁹² However, FINRA provides a number of exclusions from the filing requirements.¹⁹³ For example, with respect to research reports (as that term is defined in FINRA rule 2241), FINRA currently excludes from filing those that concern only securities that are listed on a national securities exchange, other than research reports required to be filed with the Commission pursuant to section 24(b) of the Investment Company Act.¹⁹⁴ Because covered investment fund research reports are not required to be filed with the Commission pursuant to section 24(b), as directed by the FAIR Act, rule 24b–4 could have the effect of narrowing the types of communications that would be filed with FINRA (under current FINRA rule 2210) regarding registered investment companies.

However, the FAIR Act’s rules of construction provide that the Act shall not be construed as limiting the authority of an SRO to require the filing of communications with the public if the purpose of such communications “is not to provide research and analysis of covered investment funds.”¹⁹⁵ Therefore, even if the exclusion of covered investment fund research reports from the provisions of section 24(b) affects the applicability of the filing requirements or exclusions under

FINRA rule 2210 with respect to covered investment fund research reports, it would not affect FINRA’s authority to require the filing of a communication that is included in the FAIR Act’s definition of “covered investment fund research report” but whose purpose is not to provide research and analysis.¹⁹⁶ In addition, a covered investment fund research report would continue to be subject to FINRA recordkeeping requirements applicable to communications with the public, even if the broker-dealer would not be required to file the research report with FINRA or the Commission.¹⁹⁷

Two commenters requested that FINRA’s filing requirements be modified in light of the FAIR Act.¹⁹⁸ One commenter recommended that the Commission work with FINRA to harmonize FINRA’s research rules with rule 139b and that broker-dealers relying on rule 139b be exempted from FINRA’s filing requirements with respect to covered investment fund research reports.¹⁹⁹ Another commenter suggested that the relevant statutory language of the FAIR Act²⁰⁰ should be interpreted to be limited to covered investment fund research reports made in reliance of the 139b safe harbor that only provide “information” that a user would not be able to use for research and analysis.²⁰¹ This commenter asserted that only covered investment fund research reports that solely provide information would fall within the scope of what an SRO could require to be filed under its authority. Moreover, one commenter argued that because the definition of “research report” under the FAIR Act was broader than FINRA’s definition of research report, that this may cause confusion and conflicting interpretive views on what communications are deemed research for purposes of the safe harbor and filing exclusion.²⁰²

As we discussed above, section 2(c)(2) of the FAIR Act states that nothing in

the FAIR Act shall be construed as in any way limiting the authority of an SRO, which includes FINRA, to require the filing of communications with the public, including covered investment fund research reports, the purpose of which is not to provide research and analysis of covered investment funds. To the extent FINRA would seek to amend its rules, any such proposed rule changes would be filed with the Commission pursuant to section 19(b)(1) of the Exchange Act and rule 19b–4 thereunder.

2. SRO Limitations

The FAIR Act also directs us to provide that SROs may not maintain or enforce any rule that would (i) prohibit the ability of a member to publish or distribute a covered investment fund research report solely because the member is also participating in a registered offering or other distribution of any securities of such covered investment fund; or (ii) prohibit the ability of a member to participate in a registered offering or other distribution of securities of a covered investment fund solely because the member has published or distributed a covered investment fund research report about such covered investment fund or its securities.²⁰³ Proposed rule 139b incorporated this provision of the FAIR Act, and we received no comments on this aspect of the proposal. We note that these limitations on an SRO and any rules relating to research reports that an SRO might adopt would not affect the safe harbor provided by rule 139b. To provide additional context for the safe harbor, however, and in light of Congress’s direction that we provide these limitations in implementing the rulemaking required by the FAIR Act, we have set forth these SRO limitations in rule 139b as proposed.²⁰⁴

E. Conforming and Technical Amendments

Rule 101 of Regulation M under the Exchange Act²⁰⁵ prohibits any person who participates in a distribution from attempting to induce others to purchase securities covered by the rule during a specified period. It provides an exception for certain research activities—namely, the publication or dissemination of any information, opinion, or recommendation—if the conditions of Securities Act rule 138 or rule 139 are satisfied. We proposed, in connection with our adoption of Securities Act rule 139b, a conforming

¹⁹¹ A communication that previously had been subject to the filing requirements of rule 497 also would no longer be subject to the rule 497 filing requirements if it were published or distributed by a broker-dealer as a covered investment fund research report, because it would no longer be considered to be a section 10(b) prospectus. See *supra* paragraph accompanying notes 165–167.

¹⁹² See FINRA rule 2210(c)(3) (broker-dealers must file, within 10 business days of first use or publication, retail communications that promote or recommend a specific registered investment company or family of registered investment companies). See generally FINRA rule 2210(c)(1)–(3). In addition to these FINRA filing requirements, as discussed above, such communications would be required to be filed with the Commission (and are deemed to have been filed with the Commission if filed with FINRA). See *supra* notes 187–189 and accompanying text.

¹⁹³ See generally FINRA rule 2210(c)(7).

¹⁹⁴ See FINRA rule 2210(c)(7)(O).

¹⁹⁵ See section 2(c)(2) of the FAIR Act.

¹⁹⁶ *Id.* See also 15 U.S.C. 80a–24(b); FINRA rule 2210.

¹⁹⁷ See FINRA rule 2210(b)(4)(A) (requiring members to maintain all retail communications and institutional communications for the retention period required by Exchange Act rule 17a–4(b) and in a format and media that comply with Exchange Act rule 17a–4).

¹⁹⁸ See SIFMA Comment Letter I; Fidelity Comment Letter.

¹⁹⁹ See Fidelity Comment Letter.

²⁰⁰ The FAIR Act provides that the Act does not limit the authority of any self-regulatory organization to require the filing of communications with the public the purpose of which is not to provide research and analysis of covered investment funds. See section 2(c)(2) of the FAIR Act.

²⁰¹ SIFMA Comment Letter I.

²⁰² See Fidelity Comment Letter.

²⁰³ Section 2(b)(3) of the FAIR Act.

²⁰⁴ See rule 139b(b).

²⁰⁵ 17 CFR 242.101(a).

change to the exception contained within rule 101(b)(1) of Regulation M to permit the publication or dissemination of any information, opinion, or recommendation so long as the conditions of rule 139b are satisfied.

The conforming amendment is intended to align the treatment of research under rule 139b with the treatment of research under rules 138 and 139 for purposes of Regulation M. In the absence of the conforming amendment, rule 101 could prevent the publication or dissemination of a covered investment fund research report under the rule 139b safe harbor by a broker-dealer that is participating in a distribution that is covered by Regulation M. We believe that such a result would be contrary to the mandate of the FAIR Act. The conforming amendment is intended to harmonize treatment of research under the Securities Act and Exchange Act rules. We received no comments on this aspect of the proposal. We are adopting the conforming amendment as proposed.

In October 2016, the Commission adopted new rules and forms and amended other rules and forms under the Investment Company Act to modernize the reporting and disclosure of information by registered investment companies.²⁰⁶ The Commission, among other things, adopted Form N-CEN, a new form for registered investment companies to report census-type information to the Commission, and rescinded Form N-SAR, a form on which the Commission had previously collected census-type information on management investment companies and unit investment trusts. To implement these changes, the Commission revised references to rules and forms to remove references to Form N-SAR and replace them with references to Form N-CEN, but inadvertently did not revise Form 12b-25. We are making a technical amendment to Form 12b-25 to replace references to Form N-SAR with references to Form N-CEN and to

remove the checkbox and accompanying text related to transition reports on Form N-SAR.²⁰⁷

III. Economic Analysis

A. Introduction

We are mindful of the costs and benefits of our rules. Section 2(b) of the Securities Act, section 3(f) of the Exchange Act, and section 2(c) of the Investment Company Act state that when the Commission is engaging in rulemaking under such titles and is required to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.²⁰⁸ Additionally, Exchange Act section 23(a)(2) requires us, when making rules or regulations under the Exchange Act, to consider, among other matters, the impact that any such rule or regulation would have on competition and states that the Commission shall not adopt any such rule or regulation which would impose a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.²⁰⁹

The economic analysis proceeds as follows. We begin with a discussion of the baseline used in the analysis. We then discuss the costs and benefits of the rules we are adopting, as well as the effects of these rules on efficiency, competition, and capital formation compared to the baseline. Where possible, we attempt to quantify the economic effects we discuss, although in many cases we are unable to do so and instead rely on qualitative characterizations. In the Proposing Release, we requested comment on our analysis of these effects.²¹⁰ We did not receive comments that provided any additional quantification of these effects, nor did commenters provide data that could facilitate a more quantitative analysis. We therefore

continue to be unable to produce reasonable quantitative estimates for most of the economic effects, and—as in the Proposing Release—rely on qualitative economic assessments instead.²¹¹

B. Baseline

The Commission's economic analysis evaluates the costs and benefits of the rules being adopted relative to a baseline that represents the best assessment of relevant markets and market participants in the absence of these rules. In this section, we begin by characterizing the relevant market structure and participants.²¹² We then proceed to describe the relevant regulatory structure.

1. Market Structure and Market Participants

The rules we are adopting directly affect broker-dealers, but their indirect effects extend to covered investment funds, other producers of research on covered investment funds, and consumers of information about covered investment funds.²¹³

a. Covered Investment Funds

The “covered investment fund” definition in the FAIR Act and rule 139b has the effect of capturing five common types of investment vehicles: Mutual funds, ETFs, certain currency and commodity exchanged traded products (“ETPs”),²¹⁴ closed-end funds, and BDCs.²¹⁵ As shown in Figure 1, the universe of covered investment funds is large. At the end of 2017, there were 11,924 such entities, including 9,564 mutual funds, 1,629 ETFs and ETPs, 596 closed-end funds, and 135 BDCs.²¹⁶ The total public market value of covered investment funds exceeds \$20 trillion. Of this total, \$17 trillion is held through shares issued by open-end mutual funds, \$3 trillion through shares of ETFs and ETPs, \$317 billion through shares of closed-end funds, and \$27 billion through shares of BDCs.²¹⁷

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²⁰⁶ See Reporting Modernization Release, *supra* note 53.

²⁰⁷ Transition reports on Form N-SAR were covered by rule 30b1-3 under the Investment Company Act, which was rescinded by the Reporting Modernization Adopting Release. See Reporting Modernization Adopting Release, *supra* note 53, at 81929 n.781 and accompanying and following text.

²⁰⁸ 15 U.S.C. 77b(b); 15 U.S.C. 78c(f); 15 U.S.C. 80a-2(c); 15 U.S.C. 80b-2(c).

²⁰⁹ 15 U.S.C. 78w(a)(2).

²¹⁰ See Proposing Release, *supra* note 2.

²¹¹ See *id.*

²¹² To characterize the baseline, we rely on data from year-end 2017 where possible; however, in some cases, timing issues related to data availability require us to rely on data from prior periods.

²¹³ The rules we are adopting, through their effects on capital formation, may also affect securities issuers more broadly. See *infra* section III.C.5.

²¹⁴ Exchange-traded trusts with assets consisting primarily of commodities, currencies, or derivative instruments that reference commodities or currencies (commonly referred to as currency ETPs and commodity ETPs) and which are not registered under the Investment Company Act; see rule 139b(c)(2)(ii).

²¹⁵ See *supra* section II.A.3.

²¹⁶ Mutual fund, ETF, and ETP statistics are based on data from CRSP mutual fund database (2017Q4). Closed-end fund statistics are based on data from CRSP monthly stock file (Dec. 2017). BDC statistics are based on the Commission's listing of registered BDCs. Securities and Exchange Commission, Business Development Company Report: January 2012–July 2018 (Sept. 28, 2018), available at <https://www.sec.gov/open/datasets-bdc.html>.

²¹⁷ See *supra* note 216. Market value of BDC shares are based on information obtained from CRSP, Compustat, and Audit Analytics.

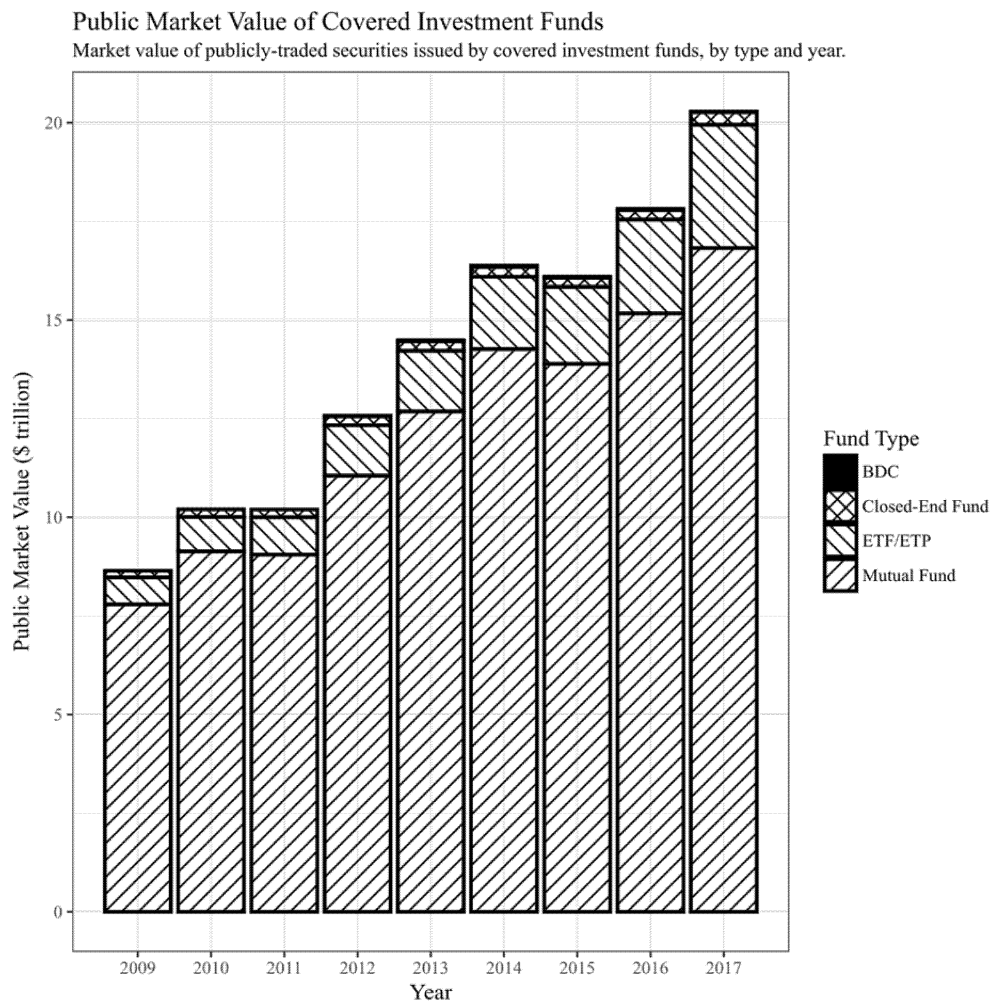


Figure 1: Numbers of publicly traded covered investment funds, by type and year. Counts based on CRSP mutual fund database, CRSP monthly stock file, and Commission’s listing of BDC registrants; see supra note 216. BDC data begins in 2013.

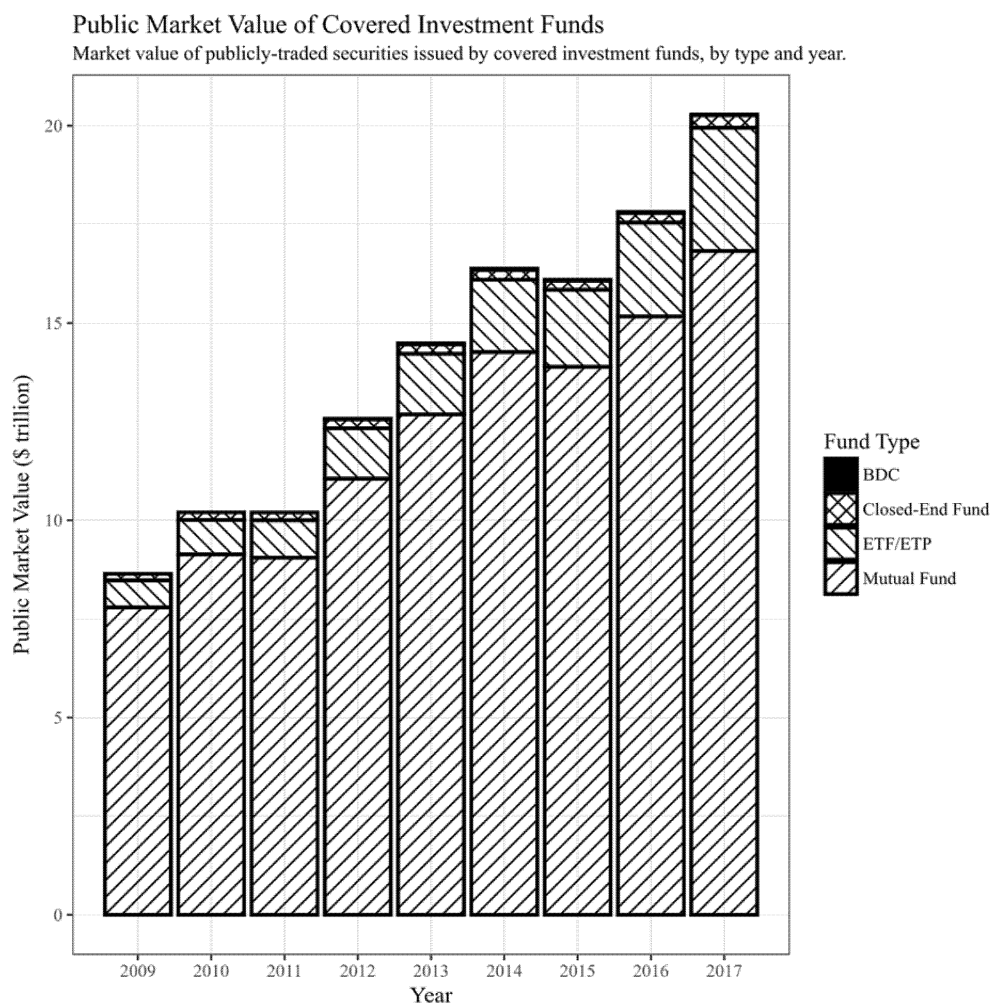


Figure 2: Market value of publicly traded securities issued by covered investment funds. Valuation estimates based on data from CRSP mutual fund database, CRSP monthly stock file, Compustat, and Audit Analytics; see *supra* note 217.

Covered investment fund shares represent a significant fraction of investment assets held by U.S. residents. Approximately one-third of U.S. corporate equity issues, one-quarter of U.S. municipal securities, one-fifth of corporate debt, one-fifth of U.S. commercial paper, and one-tenth of U.S. treasury and agency securities are held through covered investment funds.²¹⁸ Mutual funds comprise the bulk (84%) of covered investment funds.²¹⁹ Nearly half of U.S. households hold mutual fund shares²²⁰ and the vast majority (89%) of mutual fund shares are held through retail accounts (*i.e.*, accounts of

retail investors, or households).²²¹ Consequently, at least 75% of the public market value of all covered investment funds is held through retail accounts. By analyzing institutional holdings from year-end 2017 Form 13F filings we estimate that across ETF and ETPs, the mean institutional holding²²² was 45%.²²³ For BDCs, we estimate the

mean institutional holding was 30%, while for closed-end funds, we estimate the mean institutional holding was 21%. Based on these figures, we further estimate that shares representing 86% of the public market value of all covered investment funds are held through retail accounts.²²⁴

²¹⁸ See Investment Company Institute, 2017 Investment Company Fact Book (2017), available at <http://www.icifactbook.org/> (“ICI Fact Book”).

²¹⁹ See *supra* note 217.

²²⁰ See Investment Company Institute, *Ownership of Mutual Funds, Shareholder Sentiment, and Use of the Internet* (2017), available at <https://www.ici.org/pdf/per23-07.pdf>.

²²¹ Percentage by value. See ICI Fact Book, *supra* note 218, at 30. Excluding money market funds (“MMF”), mutual fund shares held in retail accounts make up an even larger fraction (95%) of mutual fund shares.

²²² We calculated “institutional holding” as the sum of shares held by institutions (as reported on Form 13F filings) divided by shares outstanding (as reported in CRSP).

²²³ Year-end 2017 Form 13F filings were used to estimate institutional ownership. Closed-end funds were matched to reported holdings based on CUSIP. We note that there are long-standing questions around the reliability of data obtained from 13F filings. See Anne M. Anderson & Paul Brockman, *Form 13F (Mis)Filings*, SSRN Scholarly Paper, Rochester, NY: Social Science Research Network (Oct. 15, 2016), available at [https://](https://papers.ssrn.com/abstract=2809128)

papers.ssrn.com/abstract=2809128. See also Securities and Exchange Commission, Office of Inspector General, Office of Audits, Review of the SEC’s Section 13(f) Reporting Requirements (Sept. 27, 2010), available at <https://www.sec.gov/files/480.pdf>.

²²⁴ Staff calculated the percentage of net asset value held by institutions reported on Form 13F for ETFs, ETPs and BDCs as public market value of shares held by institutions divided by public market value of all shares. Mutual funds shares are generally not required to be reported on Form 13F. We estimate institutional ownership of non-MMF mutual funds using ICI Fact Book estimate (95%). See *supra* note 221 and accompanying text.

As depicted in Figure 3, the covered investment fund market is dynamic. In

2017, 638 covered investment funds were created, while 853 were closed or

merged into other covered investment funds.²²⁵

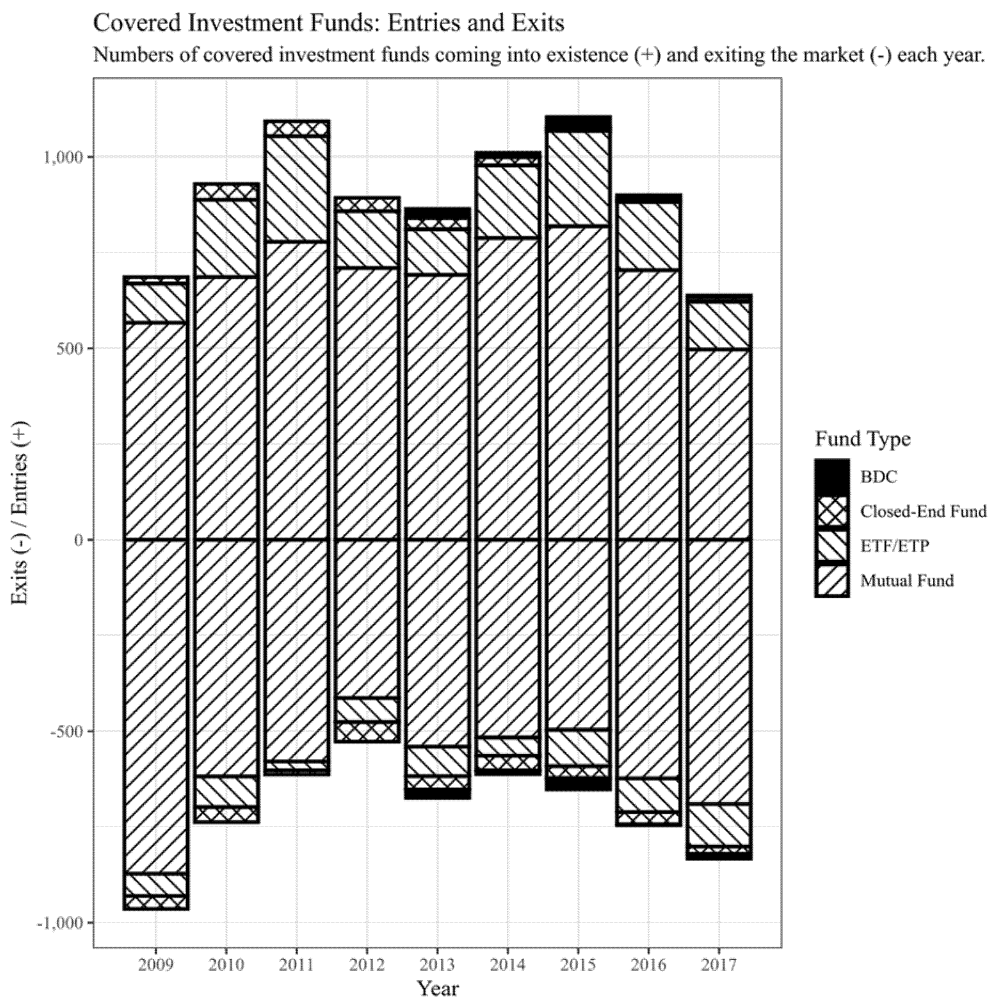


Figure 3: Entries and exits of covered investment funds. Counts based on CRSP mutual fund database, CRSP monthly stock file, and Commission’s listing of BDC registrants; see *supra* note 216. BDC data begins in 2013.

b. Broker-Dealers

The broker-dealers directly affected by the rules we are adopting are those who participate in registered offerings of covered investment funds while at the same time publishing or distributing information about those funds. The Commission does not have comprehensive data on the number or characteristics of broker-dealers currently publishing and distributing communications about covered investment funds, the extent of their communications, and their distribution arrangements with covered investment funds. Therefore we rely on inferences based on the data that are available²²⁶

and make certain assumptions when characterizing the baseline.

We believe that broker-dealers that do not derive revenues from the distribution of covered investment funds are less likely to be directly affected by the rules we are adopting.²²⁷ As discussed above, registered investment companies represent the vast majority of covered investment funds.²²⁸ Broker-dealers report revenues from the distribution of investment

company shares in regulatory filings,²²⁹ and we use this to estimate broker-dealers’ revenues from distribution of covered investment funds. We estimate that for the 3,882 broker-dealers active in 2017, revenues related to distribution of covered investment funds exceeded \$28 billion, or 9% of total broker-dealers’ revenues. Of these 3,882 broker-dealers, 1,417 reported revenues from the distribution of investment company shares. These 1,417 “affected” broker-dealers accounted for 74% of total broker-dealer revenues and 59% of total broker-dealer assets.²³⁰ As shown in

²²⁷ We believe that broker-dealers that do not participate in the distribution of covered investment funds are less likely to publish or distribute research reports about such funds and—to the extent that they do—may not derive significant benefits from the safe harbor of rule 139b.

²²⁸ See *supra* section III.B.1.a.

²²⁹ The sum of FOCUS Supplemental Statement of Income items: 13970 (“revenues from sales of investment company shares”), 11094 (“12b–1 fees”), and 11095 (“mutual fund revenue other than concessions or 12b–1 fees”).

²³⁰ We describe these dealers as “affected,” but the degree to which they are affected will vary

²²⁵ See *supra* note 216.

²²⁶ We rely here primarily on broker-dealers’ quarterly FOCUS reports.

Figure 4, among the affected broker-dealers, the importance of revenues from the distribution of covered investment funds varies widely.²³¹ However, in aggregate, these revenues

accounted for 13% of affected broker-dealers' total revenues.²³² For comparison, among the affected broker-dealers, revenues from brokerage trading commissions and account management

accounted for 9%, and 20% of total revenues, respectively, while revenues from proprietary trading and underwriting accounted for 4% and 8% of total revenues, respectively.

Revenues from Distribution of Covered Investment Funds

Histogram of the percentage of broker-dealers' revenues earned from the distribution of covered investment funds.

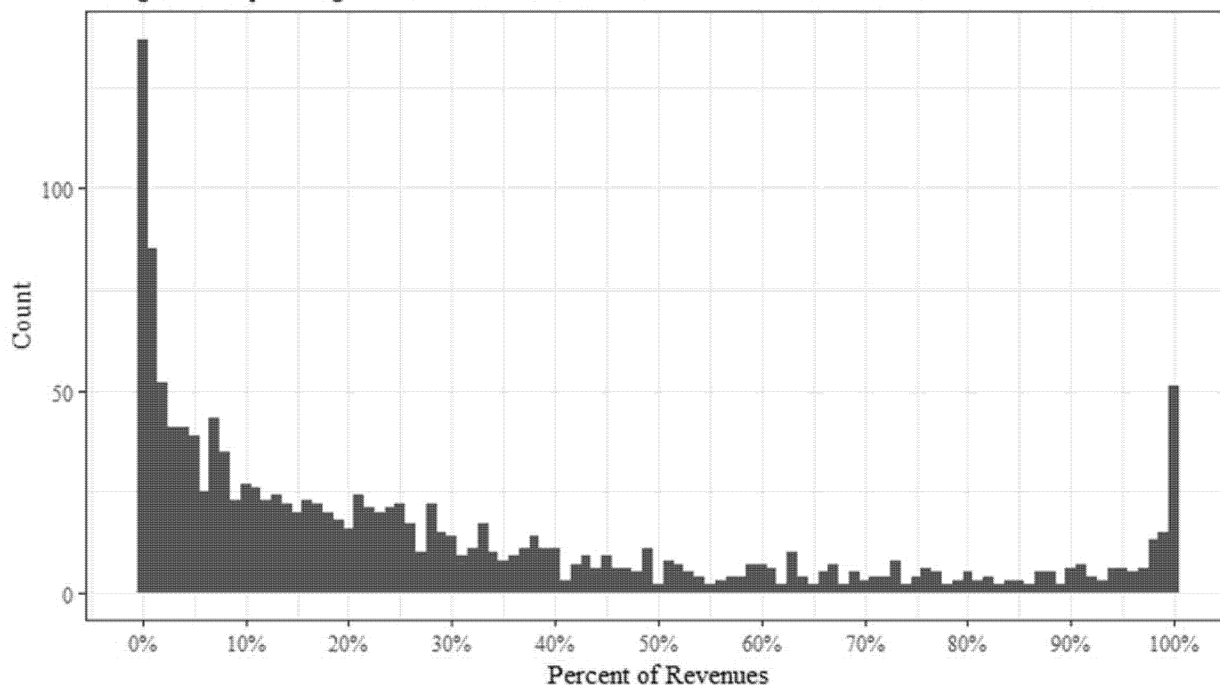


Figure 4: Affected Broker-Dealers' Revenues from Distribution of Covered Investment Funds (estimated). Histogram of the percentage of broker-dealer revenue attributable to distribution of covered investment funds (proxied by commissions on sales of investment company shares).

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c. Research on Covered Investment Funds

The Commission does not have comprehensive data on broker-dealers that publish or distribute research reports on entities that are included within the definition of "covered investment fund" under rule 139b.²³³ The Commission estimates that in 2017, there were 1,417 broker-dealers that reported revenues from the distribution of covered investment funds.²³⁴ We assume that these broker-dealers will have incentives to publish or distribute research reports about covered investment funds. However, due to the large number of covered investment funds, we do not expect that many

broker-dealers' in-house research departments (if they have such departments) are currently capable of providing research on a large percentage of covered investment funds. Most covered investment funds are not followed by dedicated research analysts akin to the analyst coverage that the Commission has previously identified as being one indicator of market interest and following for operating companies.

Existing Commission and SRO rules do not delineate a category of "research reports" pertaining to covered investment funds. Consequently, it is not possible to identify with precision broker-dealer communications under the baseline that would be considered "research reports" as defined in rule

139b. However, we understand that some broker-dealers have published and distributed communications styled as "research reports" in compliance with rule 482 under the Securities Act.²³⁵ FINRA member firms—the vast majority²³⁶ of broker-dealers—file these communications with FINRA.²³⁷ The number of communications filed with FINRA help to provide an estimate of the number of communications currently published or distributed by broker-dealers that could potentially be considered "research reports" under rule 139b. FINRA staff has reported reviewing 47,707 filings subject to rule 482 in 2017. FINRA staff reviewed an additional 8,528 communications that are subject to Investment Company Act

based on individual characteristics. Other things being equal, we expect broker-dealers that are currently more active in the marketing of covered investment funds would be more affected.

²³¹ This suggests that the degree to which the "affected" broker-dealers are affected by the rule will also vary widely.

²³² Estimates are based on staff analysis of FOCUS filings.

²³³ See *supra* section III.B.1.b.

²³⁴ See *id.*

²³⁵ See *supra* note 162 and accompanying text.

²³⁶ Based on staff analysis of FOCUS filings, we estimate that as of year-end 2017, there were 3,882 registered broker-dealers, 3,755 of which were members of FINRA.

²³⁷ See *supra* note 189 and accompanying text.

rule 34b-1, for a total of 56,235 communications.²³⁸ There are several factors that limit our ability to extrapolate from these estimates the number of communications that broker-dealers currently publish or distribute that would satisfy the definition of “covered investment fund research report” under rule 139b. First, these data do not reflect the affiliate exclusion incorporated in the rule 139b definition of “covered investment fund research report,” which has the effect of excluding from the safe harbor research reports that are published or distributed by persons covered by the affiliate exclusion.²³⁹ Second, the data do not include communications about entities that would be considered “covered investment funds,” but that do not need to comply with the requirements of rule 482 (e.g., commodity- or currency-based trusts or funds). Third, for those communications that are currently filed as rule 482 advertising prospectuses or rule 34b-1 supplemental sales literature, we are uncertain what percentage of these communications broker-dealers would continue to structure as rule 482 advertising prospectuses or rule 34b-1 supplemental sales literature, as opposed to publishing or distributing them as covered investment fund research reports under the rule 139b safe harbor.

We have also analyzed the number of “research reports” as defined under FINRA rules 2241 and 2242 that FINRA staff reviewed in 2017. However, for reasons discussed below, we also believe that these data have limited value in assessing the number of covered investment fund research reports whose publication or distribution could be eligible for the safe harbor under rule 139b. FINRA reviewed 354 filings in 2017 that were identified as “research reports” as defined in FINRA rules 2241 and 2242. However, the definitions of “research report” and “debt research report” under FINRA rules 2241 and 2242, respectively, do not correspond in every respect to the term “research report” as defined in the FAIR Act and rule 139b.

Under FINRA rule 2241, the term “research report” includes any written

communication that includes an analysis of equity securities (other than mutual fund securities) and that provides information reasonably sufficient upon which to base an investment decision.²⁴⁰ Under FINRA rule 2242, the term “debt research report” includes any written communication that includes an analysis of a debt security or an issuer of a debt security and that provides information reasonably sufficient upon which to base an investment decision.²⁴¹ As discussed above, the FAIR Act and the rule 139b definition of “research report” do not require a communication to provide information reasonably sufficient upon which to base an investment decision.²⁴² Also, unlike the definition of “research report” in FINRA rule 2241, the FAIR Act and the rule 139b definitions of “research report” include communications about mutual funds. Thus, while the number of “research reports” as defined in FINRA rules 2241 and 2242 that FINRA staff has historically reviewed provides an estimate of a subset of communications currently being styled as “research reports” whose publication or distribution could be eligible for the rule 139b safe harbor, this number would represent only a small portion of the complete universe of research reports whose publication or distribution could be eligible for this safe harbor. We also understand that the reported number of “research reports” as defined in FINRA rules 2241 and 2242 that FINRA staff has historically reviewed also could relate to research reports for securities products other than entities that would be considered “covered investment funds” (e.g., certain stocks, bonds, or master limited partnership interests).

In addition to broker-dealers, various firms that are independent of the offering process currently provide data and analysis on different subsets of the covered investment fund universe (e.g., through subscription services or through licensing agreements with broker-dealers). Data aggregators provide various forms of information and analysis about covered investment funds, ranging from automated fund rankings, to analyst research reports.²⁴³

Because data and analysis provided by these firms play an important role in investors’ information environment under the baseline, these firms will be affected by changes to the competitive environment resulting from the rules we are adopting.²⁴⁴ We understand that communications styled as “research reports” on covered investment funds distributed by broker-dealers may rely on information obtained from these independent sources. In particular, we understand that information that is commonly provided by these independent firms may include: (1) Information obtained from regulatory filings, such as narrative descriptions of fund objectives, information about key personnel, performance history, fees, and top holdings; (2) statistics and other information derived from public, proprietary, and licensed data sources, such as risk exposures (e.g., geographic, sectoral), quantitative characteristics (e.g., beta, correlations, tracking error), and peer group; and (3) fund ratings. The fund ratings that independent firms may provide are generally based on methodologies proprietary to each firm.²⁴⁵

2. Regulatory Structure

The objective of this analysis is to consider the effects of regulations being adopted pursuant to the FAIR Act’s statutory mandate. Thus, for the purposes of the baseline, we take into account the regulatory structure in place immediately prior to the enactment of the FAIR Act. We also note that on July 3, 2018, the interim effectiveness provision of the FAIR Act came into effect.²⁴⁶ This provision allows broker-dealers to rely on the rule 139 safe harbor when publishing or distributing covered investment fund research reports. In addition, under this provision, covered investment funds are deemed to be securities that are listed on a national securities exchange and are not subject to section 24(b) of the Investment Company Act. While the effectiveness of this provision is now part of the regulatory framework, in light of its recent effectiveness and the

1,562 open-end funds, no closed-end funds, and 200 ETFs had a Morningstar analyst rating. We calculated that in total, as of December 2017, there were 9,564 mutual funds, 596 closed-end funds, and 1,629 ETFs and ETPs. See *supra* note 216.

²⁴⁴ See *infra* section III.C.5.

²⁴⁵ See, e.g., Zacks Investment Research, *ETF Rank Guide* (Mar. 12, 2013), available at <https://www.zacks.com/stock/news/94561/zacks-etf-rank-guide>; Morningstar, *Morningstar’s Two Rating for Assessing a Fund* (2014), available at <http://corporate1.morningstar.com/Documents/UK/Landing/Morningstars-Two-Ratings-For-Assessing-A-Fund>.

²⁴⁶ See section 2(d) of the FAIR Act.

²³⁸ Under rule 34b-1, “sales literature” required to be filed by section 24(b) shall have omitted to state a fact necessary in order to make the statements made therein not materially misleading unless the sales literature includes certain specified information. See rule 34b-1 [17 CFR 270.34b-1]; see also *supra* note 165.

Of the 47,707 filings subject to rule 482, 229 were also subject to rule 34b-1. These 229 are not included in the 8,528 figure. Statistics provided by FINRA.

²³⁹ See *supra* notes 18–21 and accompanying text.

²⁴⁰ See FINRA rule 2241(a)(11).

²⁴¹ See FINRA rule 2242(a)(3).

²⁴² See *supra* note 40 and accompanying text.

²⁴³ While various firms provide automated fund rankings for much of the covered investment fund universe, true “analyst coverage” is considerably more limited. Morningstar provides “analyst ratings” for certain open-end funds, closed-end funds, and ETFs. Based on queries of the Morningstar database, as of October 2018, only

limited time duration until it will be replaced by rule 139b, as a practical matter, it is unclear to what extent broker-dealers will rely on the interim provision to publish or distribute research reports about covered investment funds.

a. Legal and Regulatory Framework Applicable to Statements Included in Covered Investment Fund Research Reports

A broker-dealer's publication or distribution of a covered investment fund research report could be deemed to constitute an offer that otherwise could be a non-conforming prospectus whose use in the offering may violate section 5 of the Securities Act.²⁴⁷ We understand that some broker-dealers currently publish and distribute communications styled as "research reports" regarding covered investment funds in compliance with rule 482 under the Securities Act.²⁴⁸ Unlike research reports covered under the rule 139 safe harbor, broker-dealers' publication or distribution of rule 482 advertisements could subject the broker-dealer to liability under section 12(a)(2) of the Securities Act.²⁴⁹ In addition, rule 482 advertisements regarding open-end investment companies, trust accounts, and money markets funds are subject to requirements on the standardized presentation of performance information.²⁵⁰

Additionally, certain SRO rules governing content standards may apply to advertisements styled as "research reports" under rule 482 or to communications that would be covered investment fund research reports under rule. These include FINRA rule 2210, which contains general content standards that apply broadly to member

communications.²⁵¹ In addition, covered investment fund research reports pertaining to funds other than open-end registered investment companies that are not listed or traded on an exchange (*i.e.*, ETFs, ETPs, closed-end funds, and BDCs) may be subject to FINRA rules 2241 and 2242 governing content standards of "research reports" as defined by FINRA.²⁵²

Exposure to liability under section 12(a)(2) of the Securities Act, rule 482 requirements on the standardized presentation of performance information, and the various aforementioned FINRA rules impose costs on broker-dealers. These include conduct costs resulting from additional liability (*e.g.*, foregoing publication of certain reports), and compliance costs associated with the relevant content standards. We are not able to quantify these costs.²⁵³

b. Filing Requirements

Under the baseline, a research report or other communication about a covered investment fund that is a registered investment company would have to comply with the requirements of Securities Act rule 482²⁵⁴ and registered investment company sales material, including rule 482 "omitting prospectus" advertisements as well as supplemental sales literature,²⁵⁵ are required to be filed with the Commission under section 24(b) of the Investment Company Act.²⁵⁶ Broker-dealers that are FINRA members are also subject to certain additional filing requirements under current FINRA rule 2210.²⁵⁷

²⁵¹ See FINRA rule 2210(d)(1).

²⁵² See *supra* note 183 (discussing the scope of these rules in more detail, including noting that the scope of FINRA rules 2241(c)(1) and 2242(c)(2) generally apply only to a subset of communications that would be considered covered investment fund research reports under rule 139b).

²⁵³ In the Proposing Release, we asked commenters to supply data that could aid us in quantifying these costs. No such data was provided in the comment letters received. See Proposing Release, *supra* note 2, at 26812.

²⁵⁴ See FINRA rule 2210(d)(5) (providing that non-money market fund open-end management company performance data as permitted by rule 482 in retail communications and correspondence must disclose standardized performance information and, to the extent applicable, certain sales charge and expense ratio information); see also *supra* note 161.

²⁵⁵ See *supra* note 248.

²⁵⁶ Rule 24b-3 under the Investment Company Act deems these materials to have been filed with the Commission if filed with FINRA. See *supra* notes 144, 189 and accompanying text.

²⁵⁷ FINRA rule 2210's filing requirements include a number of exclusions, including an exclusion for certain research reports, except that broker-dealers are required to file research reports with FINRA if they are also required to be filed with the Commission pursuant to section 24(b) of the Investment Company Act. See *supra* notes 176-178, and accompanying text.

C. Costs and Benefits

In this section, we first consider the overarching costs and benefits associated with the FAIR Act's statutory mandates. Second, we evaluate the costs and benefits of the specific provisions of the rules we are adopting and their relation to the overarching considerations resulting from the statutory mandate. Next, we discuss the effects on efficiency, competition, and capital formation of the new rules. We conclude with a discussion of alternatives considered.

1. FAIR Act Statutory Mandate

a. Benefits

We believe that the expansion of the rule 139 safe harbor (as mandated by the FAIR Act) will generally reduce broker-dealers' costs of publishing and distributing research reports about covered investment funds. These cost reductions are expected because under the new rules a broker-dealer could publish or distribute covered investment fund research reports without reliance on rule 482 or rule 34b-1 and without being required to file these reports under section 24(b) of the Investment Company Act and the rules and regulations thereunder.²⁵⁸ Broker-dealers publishing or distributing covered investment fund research reports in reliance on the expanded safe harbor will not be subject to the liability provisions of section 12(a)(2) of the Securities Act,²⁵⁹ rule 34b-1, or the filing requirements of section 24(b) of the Investment Company Act.²⁶⁰ Thus, they will be expected to incur lower costs associated with liability under section 12(a)(2), lower conduct costs, and lower compliance costs (including fewer content and filing requirements).²⁶¹ Because of these cost reductions, we expect publication and distribution of such reports to increase. First, we expect that certain broker-dealers that had previously published and distributed communications under rule 482 that could be styled as "research reports" will aim to meet the conditions of the expanded safe harbor and increase their supply of covered investment fund research as a result. Second, we expect some broker-dealers that have previously not published or distributed such reports (due to the

²⁵⁸ See *supra* section II.D.1.

²⁵⁹ See *supra* note 249.

²⁶⁰ See *supra* section II.D.1.

²⁶¹ However, we would not expect any lower costs of compliance for any research reports that currently are structured as rule 34b-1 supplemental sales literature (and are not rule 482 advertising prospectuses), because supplemental sales literature is not an "offer" to which prospectus liability under section 12(a)(2) of the Securities Act would attach.

²⁴⁷ See *supra* note 5 and accompanying text.

²⁴⁸ Research reports regarding covered investment funds could also be distributed today as "supplemental sales literature" under rule 34b-1 under the Investment Company Act. However, research reports distributed under rule 34b-1 would need to be preceded or accompanied by a statutory prospectus. See *supra* note 167 and accompanying text.

²⁴⁹ Section 12(a)(2) provides express remedies to the person purchasing the security (*i.e.*, a private right of action) for material misstatements and omissions made by any seller of the security. It also provides a different standard for claims for damages than under Exchange Act rule 10b-5, which requires proof of scienter in the representations made. See 15 U.S.C. 771(a)(2); see also rule 10b-5 [17 CFR 240.10b-5].

²⁵⁰ Research reports that are published or distributed as rule 34b-1 supplemental sales literature also would be subject to requirements relating to the standardized presentation of performance information, because rule 34b-1 incorporates many of the rule 482 requirements relating to performance disclosure. See *supra* notes 166, 248.

activity being deemed too costly or subject to too many restrictions), to begin doing so. We believe that the aforementioned effects will generally benefit broker-dealers and advisers to covered investment funds if, as we expect, they increase broker-dealers' sales of covered investment funds.

Because there is limited historical experience dealing specifically with broker-dealers' research reports on covered investment funds, there is little in the way of direct empirical evidence on the value of such reports to investors. Prior research on the informativeness of broker-dealers' research on operating companies suggests that broker-dealers can produce research that positively contributes to the information content of market prices,²⁶² and—perhaps more importantly—that broker-dealers may enjoy a comparative advantage in its production.²⁶³ However, other studies have questioned the investment value of such research to investors²⁶⁴ or its continued relevance.²⁶⁵

²⁶² See, e.g., Brad M. Barber, Reuven Lehavy, & Brett Trueman, *Ratings changes, ratings levels, and the predictive value of analysts' recommendations*, 39 *Financial Management* 2, 533–553 (2010) (broker-dealers' research analysts' upgrades (downgrades) elicit positive (negative) price reactions, respectively). See also Scott E. Stickel, *The Anatomy of the Performance of Buy and Sell Recommendations*, 51 *Financial Analysts Journal* 5, 25–39 (Sept. 1, 1995) (broker-dealers' research provides new information, particularly for smaller firms, where information is less generally available). See also Kent L. Womack, *Do Brokerage Analysts' Recommendations Have Investment Value?*, 51 *The Journal of Finance* 1, 137–167 (1996) (price reactions are permanent and exhibit post-announcement drift).

²⁶³ See, Boris Groysberg, Paul Healy & Craig Chapman, *Buy-Side vs. Sell-Side Analysts' Earnings Forecasts*, 64 *Financial Analysts Journal* 4, 25–39 (July 1, 2008) (informativeness of broker-dealers' sell-side research is superior to that of buy-side firms).

²⁶⁴ See Brad Barber, Reuven Lehavy, Maureen McNichols & Brett Trueman, *Can Investors Profit from the Prophets? Security Analyst Recommendations and Stock Returns*, 56 *The Journal of Finance* 2, 531–563 (Apr. 1, 2001) (investors hoping to exploit research analysts' recommendations must trade frequently and these transaction costs often exceed the gains from trading); see also Xi Li, *The persistence of relative performance in stock recommendations of sell-side financial analysts*, 40.1 *Journal of Accounting and Economics* 3, 129–152 (2005). See also Narasimhan Jegadeesh, Joonghyuk Kim, Susan D. Kriche & Charles M. C. Lee, *Analyzing the Analysts: When Do Recommendations Add Value?*, 59 *The Journal of Finance* 3, 1083–1124 (2004) (significant portion of investment value may be attributable to previously documented trading signals, with little incremental value attributable to the broker-dealer research). See also Yongtae Kim & Minsup Song, *Management Earnings Forecasts and Value of Analyst Forecast Revisions*, 61 *Management Science* 7, 1663–1683 (2015) (past estimates of the informativeness of analyst recommendations may be confounded by the impact of forecasts issued by management).

²⁶⁵ See Oya Altınkılıç, Robert S. Hansen & Liyu Ye, *Can analysts pick stocks for the long-run?*, 119

We are cautious in drawing implications from these findings to broker-dealers' research on covered investment funds. While analysts researching operating companies generally endeavor to identify mispricing—to forecast the idiosyncratic component of firms' future returns—covered investment funds represent portfolios of securities, and many covered investment funds are priced at net asset value (“NAV”).²⁶⁶ Although individual securities within a covered investment fund's portfolio may be viewed as “mispriced” by a research analyst, diversification effects will tend to drown out such effects at the fund level and minimize idiosyncratic variation in investors' return on their investment in the fund. Therefore, any “investment value”²⁶⁷ of research on covered investment funds would likely be rooted in analysts' ability to predict broader market movements. Such ability is generally believed to be rather rare.²⁶⁸ We therefore believe that the value to investors of information in broker-dealers' research reports will largely be limited to the synthesis or discovery of factual information about fund characteristics, fees, or other transactions costs. For example, investors may find analysts' views of a fund's management, objectives, risk exposures, tracking error, volatility, tax efficiency, fees, or other fund characteristics to be valuable. Such analysis could be a valuable source of information for investors evaluating relative fund performance.²⁶⁹

We believe that the quantity of information available to potential investors of covered investment funds will increase as a result of broker-dealers' increased publication and distribution of covered investment fund research reports. The rules we are adopting will also allow for greater flexibility in the type of information that

Journal of Financial Economics 2, 371–398 (Feb. 2016) (reductions in transactions costs and increases in computational speed reduced the amount of new information available for analysts to discover).

²⁶⁶ Closed-end funds, for example, are not priced on a NAV basis and their (mis-) pricing has long served as a puzzle in the finance literature. See, e.g., Charles M.C. Lee, Andrei Schleifer, & Richard H. Thaler, *Investor Sentiment and the Closed-End Fund Puzzle*, 46 *The Journal of Finance* 1 (Mar. 1991). Similar pricing issues may arise in BDCs.

²⁶⁷ We mean this in the sense of providing a signal about future investment performance.

²⁶⁸ See, e.g., Kent Daniel, Mark Grinblatt, Sheridan Titman, & Russ Wermers, *Measuring Mutual Fund Performance with Characteristic-Based Benchmarks*, 52 *The Journal of Finance* 3, 1035–1058 (July 1997).

²⁶⁹ See, e.g., W. J. Armstrong, Egemen Genc & Marno Verbeek, *Going for Gold: An Analysis of Morningstar Analyst Ratings*, *Management Science* (Aug. 2017).

broker-dealers may communicate to customers.²⁷⁰ To the extent that this new information is valuable, it will benefit investors by providing them with additional information to help shape investment decisions. Finally, we believe that important negative information about a covered investment fund, such as high fees, high risk exposure, or an inefficient portfolio strategy will be more likely to be publicized as a result of increased competition among information providers, with attendant benefits to investors.²⁷¹

b. Costs

Prior experience and academic research suggests that, unchecked, broker-dealers' conflicts of interest can lead to bias in research reports,²⁷² and that such bias has the potential to adversely affect investor welfare.²⁷³

²⁷⁰ Currently such communications would be subject to rule 482 requirements, including standards on the presentation of performance information. See *supra* section II.C.

²⁷¹ See Matthew Gentzkow & Jesse M. Shapiro, *Media Bias and Reputation*, 114 *Journal of Political Economy* 2, 280–316 (Apr. 1, 2006).

²⁷² See Amitabh Dugar & Siva Nathan, *The Effect of Investment Banking Relationships on Financial Analysts' Earnings Forecasts and Investment Recommendations**, 12 *Contemporary Accounting Research* 1, 131–160 (Sept. 1, 1995) (“Dugar and Nathan Article”) (affiliated analysts issue more optimistic earnings forecasts and investment recommendations about companies with which their firms had an investment banking relationship). See also Hsiou-wei Lin & Maureen F. McNichols, *Underwriting Relationships, Analysts' Earnings Forecasts and Investment Recommendations*, 25 *Journal of Accounting and Economics* 1, 101–127 (Feb. 26, 1998) (“Lin and McNichols Article”) (affiliated analysts are more optimistic in their long-term growth forecasts and investment recommendations).

²⁷³ See Roni Michaely & Kent L. Womack, *Conflict of Interest and the Credibility of Underwriter Analyst Recommendations*, 12 *The Review of Financial Studies* 4, 653–686 (July 2, 1999) (“Michaely and Womack Article”) (stock recommendations of affiliated analysts perform worse prior to, at the time of, and subsequent to the recommendation); see also Patricia M. Dechow, Amy P. Hutton & Richard G. Sloan, *The Relation between Analysts' Forecasts of Long-Term Earnings Growth and Stock Price Performance Following Equity Offerings**, 17 *Contemporary Accounting Research* 1, 1–32 (Mar. 1, 2000). See also Global Research Analyst Settlement, Litigation Release No. 18438 (Oct. 31, 2003) (The court issued an Order approving a \$1.4 billion global settlement of the SEC enforcement actions against several investment firms and certain individuals alleging undue influence of investment banking interests on securities research); see also Deutsche Bank Securities Inc. and Thomas Weisel Partners LLC Settle Enforcement Actions Involving Conflicts of Interest Between Research and Investment Banking, SEC Press Release 2004–120 (Aug. 26, 2004). The settlement was an action in response to conflicts of interest that certain broker-dealers were found to have failed to manage in an adequate or appropriate manner and was modified in 2010 to remove certain requirements where FINRA and NYSE rules addressed the same concerns. See 2010 Modifications to Global Research Analyst

Broker-dealers' financial incentives to sell covered investment funds could undermine the objectivity of the information they produce about such funds, and the existence of the rule 139b safe harbor could increase opportunities for broker-dealers to promote funds from which they derive the most financial benefits.²⁷⁴ If such conflicts are unrecognized by or unknown to investors, they could negatively affect investor welfare. Although market mechanisms²⁷⁵ as well as existing regulation²⁷⁶ may limit the extent of such actions, there is the potential that they could nonetheless impose costs on investors—particularly retail investors.²⁷⁷

The potential for conflicts of interest to lead to actions that impose costs on investors depends in large part on the strength of the underlying incentives. In the context of broker-dealers' research on covered investment funds, the greatest conflicts of interest are faced by broker-dealers serving as investment advisers to covered investment funds, who—due to asset-based management fees—have strong incentives to increase demand for the funds that they advise. Because the FAIR Act by its terms,²⁷⁸ and also rule 139b,²⁷⁹ will not extend the safe harbor to a broker-dealer that is publishing or distributing a research report about a covered investment fund for which the broker-dealer serves as an investment adviser (or where the broker-dealer is an affiliated person of the investment adviser), we believe that there will be limited potential for the greatest conflicts of interest to impose costs on investors.

Other conflicts of interest may nevertheless arise from incentives in fund distribution arrangements.²⁸⁰ Distributing broker-dealers may receive compensation from sales loads, 12b–1 fees,²⁸¹ shelf space fees, or other revenue sharing agreements, all of which create financial incentives for broker-dealers to promote and sell funds and potentially to promote and sell

particular funds or share classes.²⁸² Associated persons of broker-dealers (*i.e.*, analysts) may face similar conflicts of interests arising from incentives in their compensation agreements.²⁸³ Finally, broker-dealers may have fewer direct or non-pecuniary incentives.²⁸⁴ However, in all of these cases, the risk that such conflicts of interest could result in actions that negatively impact information communicated to investors is mitigated by the fact that a broker-dealer will bear the costs of such actions, but generally may be unable to fully appropriate the benefits.²⁸⁵

It is difficult for us to quantify the aforementioned costs in the context of this rulemaking. We are not aware of any studies directly examining the role that conflicts of interest play in broker-

²⁸² See *infra* note 298 (noting that the Commission has historically found broker-dealers to have violated sections 17(a)(2) and (3) of the Securities Act by making recommendations of more expensive mutual fund share classes while omitting material facts).

²⁸³ Such conflicts of interest arising from incentives in compensation agreements involving research analysts issuing research reports covered by FINRA Rule 2241 are mitigated by FINRA rules 2241(b)(2)(C), (E), (F), and (K). Additionally, section 501(a)(2) of Regulation AC (17 CFR 242.501(a)(2)) requires specific disclosure regarding research analyst compensation in order to mitigate the conflicts of interest that can arise based on analyst compensation arrangements.

²⁸⁴ For example, although it is prohibited conduct, a broker-dealer may have a financial incentive to provide coverage for, or to promote, a fund based on an understanding that the fund will participate in offerings underwritten by the broker-dealer. See, e.g., FINRA rule 2241(b)(2) (requiring that a member's written policies and procedures must be reasonably designed to, among other things, "prevent the use of research reports or research analysts to manipulate or condition the market or favor the interests of the member"); see also NASD Fines U.S. Bancorp Piper Jaffray and Managing Director \$300,000, FINRA News Release (June 25, 2002) available at <http://www.finra.org/newsroom/2002/nasd-fines-us-bancorp-piper-jaffray-and-managing-director-300000> (announcing settlement with U.S. Bancorp Piper Jaffray and one of its managing directors in which the NASD found that the firm violated a NASD (now FINRA) rule requiring all firms and associated persons to adhere to high standards of commercial honor and just and equitable principles of trade when it threatened to discontinue research coverage of a company if the company did not select it as lead underwriter for an upcoming offering). But see also note 183.

Rule 12b–1(h)(1) prohibits funds from compensating a broker-dealer for promoting or selling funds shares by directing brokerage transactions to that broker. See rule 12b–1(h)(1) under the Investment Company Act [17 CFR 270.12b–1(h)(1)]; see also Prohibition on the Use of Brokerage Commissions to Finance Distribution, Investment Company Act Release No. 26591 (Sept. 2, 2004) [69 FR 54727 (Sept. 9, 2004)].

²⁸⁵ For example, if a broker-dealer firm publishes biased research about a fund, some of the gains (*i.e.*, compensation from sales of that fund) may accrue to other broker-dealer firms (*i.e.*, other broker-dealer firms that distribute the same fund) while the costs of the action (*i.e.*, reputation costs, litigation risk, and risk of regulatory action) will be borne entirely by the broker-dealer firm that published the biased research.

dealers' research reports on covered investment funds in U.S. markets, or of any data that would support a quantitative analysis of an expanded safe harbor in this context.²⁸⁶ Although one commenter registered similar concerns,²⁸⁷ no commenters provided any data that would facilitate such a quantitative analysis.²⁸⁸ As with the potential benefits discussed above, we are limited to characterizing the potential costs qualitatively. While we believe that expanding the rule 139 safe harbor to broker-dealers' publication or distribution of covered investment fund research reports has the potential to impose costs on retail investors, existing regulations, specific provisions of the rules that we are adopting,²⁸⁹ and certain market mechanisms will reduce these costs.

(1) Existing Regulation

Rules and regulations have been implemented to address potential conflicts of interest that may arise with broker-dealers specifically in the context of research reports.²⁹⁰ As discussed in detail above,²⁹¹ the definition of "research report" for purposes of Regulation AC and FINRA rules 2241 and 2242 is narrower than the definition of "research report" for purposes of the FAIR Act and rule 139b. However, to the extent a research report meets both the definition of a research report under rule 139b and the definition of research report as defined in Regulation AC, Regulation AC will be applicable to that research report (and, if it meets the definition of "research report" in FINRA rule 2241, FINRA rule 2241 also will apply if the research report otherwise were within the scope of rule 2241²⁹²). These rules may help promote objective and reliable research.²⁹³

²⁸⁶ Authors have examined the impact of conflicts of interest on mutual fund research in China, providing evidence consistent with bias arising from conflicts of interest in that market, though differences between Chinese and U.S. markets and corresponding regulatory frameworks make it difficult to apply inferences drawn from experience in Chinese markets to U.S. markets. See Y. Zeng, Q. Yuan & J. Zhang, *Blurred stars: Mutual fund ratings in the shadow of conflicts of interest*, 60 *Journal of Banking & Finance* 1, 284–295 (2015).

²⁸⁷ See Morningstar Comment Letter.

²⁸⁸ In the Proposing Release, we requested comment on our characterization of these costs. See Proposing Release, *supra* note 2, at 26816.

²⁸⁹ See *infra* section III.C.2.

²⁹⁰ See *supra* note 35; see also Proposing Release, *supra* note 2, at 26791 n.37.

²⁹¹ See *supra* note 183.

²⁹² See *id.*

²⁹³ See section 501 of the Sarbanes-Oxley Act; Regulation Analyst Certification, Securities Act Release No. 8193 (Feb. 20, 2003) [68 FR 9481 (Feb. 27, 2003)]. Several studies have analyzed bias in

Settlement, Litigation Release No. 21457 (Mar. 19, 2010).

²⁷⁴ Such concerns were also noted by one commenter. See Morningstar Comment Letter.

²⁷⁵ See *infra* section III.C.1.b(2).

²⁷⁶ See *infra* section III.C.1.b(1).

²⁷⁷ See *infra* section III.C.1.b(2).

²⁷⁸ See section 2(f)(3) of the FAIR Act.

²⁷⁹ See rule 139b(a).

²⁸⁰ See Susan E. K. Christoffersen, Richard Evans & David K. Musto, *What Do Consumers' Fund Flows Maximize? Evidence from Their Brokers' Incentives*, 68 *The Journal of Finance* 1, 201–235 (Feb. 1, 2013) (where brokers' compensation arrangements with funds are found to drive their customers' fund flows).

²⁸¹ See rule 12b–1 under the Investment Company Act [17 CFR 270.12b–1].

Additionally, as described above, FINRA rule 2210 contains general content standards that apply broadly to member communications, including broker-dealer research reports. These general content standards require, among other things, that all member communications “must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry or service.”²⁹⁴

If a broker-dealer recommends²⁹⁵ a covered investment fund to its customers, additional obligations under the federal securities laws and FINRA rules will apply. As a general matter, broker-dealers must deal with their customers fairly²⁹⁶—and, as part of that obligation, have a reasonable basis for any recommendation.²⁹⁷ Furthermore, when making recommendations, broker-dealers may be generally liable under the antifraud provisions if they do not give “honest and complete information” or disclose any material adverse facts or

broker-dealers’ research following the Global Settlement and subsequent regulatory changes, in particular at sanctioned banks. See O. Kadan, L. Madureira, R. Wang, & T. Zach, *Conflicts of interest and stock recommendations: The effects of the global settlement and related regulations* 22 *The Review of Financial Studies* 10, 4189–4217 (2009). See also, S. A. Corwin, S. A. Larocque & M. A. Stegemoller, *Investment banking relationships and analyst affiliation bias: The impact of the global settlement on sanctioned and non-sanctioned banks*, 124 *Journal of Financial Economics* 3, 614–631 (2017).

²⁹⁴ See *supra* section II.D.1.

²⁹⁵ See, e.g., Additional Guidance on FINRA’s New Suitability Rule, FINRA Regulatory Notice 12–25 (May 2012), at Q.2, (regarding the scope of “recommendation”), n.25.

²⁹⁶ See, e.g., Duker & Duker, Exchange Act Release No. 2350 (Dec. 19, 1939), at 2 (Commission opinion) (“Inherent in the relationship between a dealer and his customer is the vital representation that the customer be dealt with fairly, and in accordance with the standards of the profession.”).

²⁹⁷ See *Mac Robbins & Co.*, Exchange Act Release No. 6846 (July 11, 1962), at 3 (“[T]he making of representations to prospective purchasers without a reasonable basis, couched in terms of either opinion or fact and designed to induce purchases, is contrary to the basic obligation of fair dealing borne by those who engage in the sale of securities to the public.”), *aff’d sub nom.*, *Berko v. SEC*, 316 F.2d 137 (2d Cir. 1963). A broker-dealer’s recommendation must also be suitable for the customer. See, e.g., J. Stephen Stout, Exchange Act Release No. 43410 (Oct. 4, 2000), at 11 (Commission opinion) (“As part of a broker’s basic obligation to deal fairly with customers, a broker’s recommendation must be suitable for the client in light of the client’s investment objectives, as determined by the client’s financial situation and needs.”); see also FINRA Rule 2111.05(b) (“The customer-specific obligation requires that a member or associated person have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer’s investment profile, as delineated in Rule 2111(a).”).

conflicts of interest, including any economic self-interest.²⁹⁸

(2) Market Mechanisms

We believe that by facilitating production of information on covered investment funds, the FAIR Act’s mandates will contribute to competition among information providers,²⁹⁹ which we believe can mitigate the effects of conflicts of interest on research reports.³⁰⁰ With respect to broker-dealers’ research on operating companies, analysts’ career concerns³⁰¹ have also been found to have similar effects, and, in principle, broker-dealers’ reputations could as well.³⁰² However,

²⁹⁸ See, e.g., *De Kwiatkowski v. Bear, Stearns & Co.*, 306 F.3d 1293, 1302 (2d Cir. 2002); *Chasins v. Smith, Barney & Co.*, 438 F.2d 1167, 1172 (2d Cir. 1970). Generally, under the antifraud provisions, whether a broker-dealer has a duty to disclose material information to its customer is based upon the scope of the relationship with the customer, which is fact intensive. See, e.g., *Conway v. Icahn & Co., Inc.*, 16 F.3d 504, 510 (2d Cir. 1994) (“A broker, as agent, has a duty to use reasonable efforts to give its principal information relevant to the affairs that have been entrusted to it.”). For example, where a broker-dealer processes its customers’ orders, but does not recommend securities or solicit customers, then the material information that the broker-dealer is required to disclose is generally narrow, encompassing only the information related to the consummation of the transaction. See, e.g., *Press v. Chemical Inv. Servs. Corp.*, 166 F.3d 529, 536 (2d Cir. 1999). The Commission has historically charged broker-dealers with violating sections 17(a)(2) and (3) of the Securities Act for making recommendations of more expensive mutual fund share classes while omitting material facts. See, e.g., *In re IFG Network Sec., Inc.*, Exchange Act Release No. 54127 (July 11, 2006), at 15 (Commission opinion) (registered representative violated 17(a)(2) and (3) by omitting to disclose to his customers material information concerning his compensation and its effect upon returns that made his recommendation that they purchase Class B shares misleading; “The rate of return of an investment is important to a reasonable investor. In the context of multiple-share-class mutual funds, in which the only bases for the differences in rate of return between classes are the cost structures of investments in the two classes, information about this cost structure would accordingly be important to a reasonable investor.”).

²⁹⁹ See *infra* section III.C.5.

³⁰⁰ See Harrison Hong & Marcin Kacperczyk, *Competition and Bias*, 125 *The Quarterly Journal of Economics* 4, 1683–1725 (Nov. 1, 2010) (reduction in (analyst) competition resulting from mergers reduces analyst coverage and increases bias in the remaining coverage).

³⁰¹ See Harrison Hong & Jeffrey D. Kubik, *Analyzing the Analysts: Career Concerns and Biased Earnings Forecasts*, 58 *The Journal of Finance* 1, 313–351 (2003) (analysts’ reputation plays a role in the analyst’s career outcome); see also Andrew R. Jackson, *Trade Generation, Reputation, and Sell-Side Analysts*, 60 *The Journal of Finance* 2, 673–717 (Apr. 1, 2005) see also Lily Fang & Ayako Yasuda, *The Effectiveness of Reputation as a Disciplinary Mechanism in Sell-Side Research*, 22 *The Review of Financial Studies* 9, 3735–3777 (Sept. 1, 2009) (“Fang and Yasuda Article”).

³⁰² For a discussion of the role of reputation in financial intermediation, see Thomas J. Chemmanur & Paolo Fulghieri, *Investment Bank Reputation, Information Production, and Financial*

we believe it is unlikely that analyst career concerns or broker-dealer reputation will play as significant a role in the context of covered investment fund research reports which we expect to be aimed primarily at retail investors. Research reports about operating companies have traditionally been provided to institutional customers as part of a bundle of services provided by full-service brokerages.³⁰³ In this setting, broker-dealers benefit from institutional investors’ willingness to pay for broker-dealers’ additional bundled services (e.g., research).³⁰⁴ Such institutional customers are generally capable of producing similar reports, and so can evaluate the quality of broker-dealers’ research.³⁰⁵ Thus, they can provide market discipline: Broker-dealers’ provision of low-quality or misleading information could plausibly be discovered and lead to the loss of valuable customer relationships. We do not believe that similar mechanisms would be as effective in the covered investment fund context. We expect broker-dealers to publish and distribute covered investment fund research reports on funds that they distribute to their customers.³⁰⁶ With retail investors, information asymmetries are greater: Retail investors do not generally possess the capabilities to replicate an analyst report or evaluate its quality.³⁰⁷ Moreover, the problem of evaluating the performance of analysts is harder in the context of covered

Intermediation, 49 *The Journal of Finance* 1, 57–79 (1994) (“Chemmanur and Fulghieri Article”). See also Fang and Yasuda Article, *supra* note 301 (analyst reputation mitigates bias, but institutional reputation does not).

³⁰³ See Mehran, Hamid, and René M. Stulz, *The Economics of Conflicts of Interest in Financial Institutions*, 85 *Journal of Financial Economics* 2, 267–296 (Aug. 1, 2007) (“Mehran and Stulz Article”). We note however, that this model has been disrupted by the European MiFID II regulations that took effect in 2018. See e.g. CFA Institute, *MiFID II: A New Paradigm for Investment Research*, available at https://www.cfainstitute.org/-/media/documents/support/advocacy/mifid_ii_new-paradigm-for-research-report.ashx

³⁰⁴ Institutional customers are valuable in that they are willing to pay for brokers-dealers’ additional services (e.g., research). Payments for such services need not be direct and may be reflected in (relatively) higher brokerage commissions. See Michael A. Goldstein, Paul Irvine, Eugene Kandel & Zvi Wiener, *Brokerage Commissions and Institutional Trading Patterns*, 22 *The Review of Financial Studies* 12, 5175–5212 (Dec. 1, 2009).

³⁰⁵ See *id.* See also Ulrike Malmendier & Devin Shanthikumar, *Are Small Investors Naive about Incentives?*, 85 *Journal of Financial Economics* 2, 457–489 (Aug. 1, 2007) (“Malmendier and Shanthikumar Article”) (institutions account for bias in analysts’ recommendations while retail investors do not).

³⁰⁶ See *supra* section III.B.1.c.

³⁰⁷ See Mehran and Stulz Article, *supra* note 303.

investment funds.³⁰⁸ Because institutional investors are not major investors in covered investment funds,³⁰⁹ we believe they are unlikely to provide market discipline in this context.³¹⁰

We also acknowledge that biases resulting from conflicts of interest need not adversely impact investors if investors disregard,³¹¹ discount,³¹² or de-bias³¹³ the recommendations of conflicted analysts.³¹⁴ We believe however, that retail investors who are primary clientele for covered investment funds are less likely to be aware of potential bias in analysts' recommendations,³¹⁵ may fail to de-bias or otherwise condition their trades based on the credibility of the recommendation,³¹⁶ and could thus be led to invest in underperforming securities.³¹⁷

³⁰⁸ Traditional analyst research reports on operating companies largely focus on firm-specific factors, and thus are more akin to "stock picking" than "market timing": They attempt to forecast the idiosyncratic component of firms' future returns. Covered investment funds represent portfolios of securities and diversification effects reduce the amount of idiosyncratic variation in their returns. Thus, abstracting from fees, "fund picking" is more akin to "market timing" than "stock picking." Market timing is a skill that is relatively rare and econometrically difficult to detect. See, e.g., Kent Daniel, Mark Grinblatt, Sheridan Titman & Russ Wermers, *Measuring Mutual Fund Performance with Characteristic-Based Benchmarks*, 52 *The Journal of Finance* 3, 1035–1058 (July 1997).

³⁰⁹ See *supra* section III.B.1.a.

³¹⁰ See Alexander Ljungqvist, Felicia Marston, et al., *Conflicts of Interest in Sell-Side Research and the Moderating Role of Institutional Investors*, 85 *Journal of Financial Economics* 2, 420–456 (Aug. 1, 2007) (securities of interest to institutional investor receive coverage that is less biased).

³¹¹ See Dugar and Nathan Article, *supra* note 272.

³¹² See Michaely and Womack Article, *supra* note 273.

³¹³ See Lin and McNichols Article, *supra* note 272.

³¹⁴ Institutional market participants generally attribute bias in sell-side analysts' research reports to conflicts of interest. See Michaely and Womack Article, *supra* note 273.

³¹⁵ See Michael B. Mikhail, Beverly R. Walther & Richard H. Willis, *When Security Analysts Talk, Who Listens?*, 82 *The Accounting Review* 5, 1227–1253 (2007) ("Mikhail Walther and Willis Article"). See also Diane Del Guercio & Paula A. Tkac, *Star Power: The Effect of Morningstar Ratings on Mutual Fund Flow*, 43 *Journal of Financial and Quantitative Analysis* 4, 907–936 (Dec. 2008) (retail investors in mutual funds are very sensitive to fund rankings). See Christopher R. Blake & Matthew R. Morey, *Morningstar Ratings and Mutual Fund Performance*, 35 *The Journal of Financial and Quantitative Analysis* 3, 451–483 (2000) (mutual fund ranking have little predictive power for future performance).

³¹⁶ See *id.*; Malmendier and Shanthikumar Article, *supra* note 305.

³¹⁷ See Mikhail Walther and Willis Article, *supra* note 315. See also Malmendier and Shanthikumar Article, *supra* note 305. See also Amanda Cowen, Boris Groysberg & Paul Healy, *Which Types of Analyst Firms Are More Optimistic?*, 41 *Journal of Accounting and Economics* 1, 119–146 (Apr. 1, 2006) (finding that analysts at retail brokerage firms

2. Rule 139b

As discussed above, rule 139b conditions eligibility for the safe harbor on satisfaction of several conditions.³¹⁸ These conditions are generally modeled on and resemble similar provisions in rule 139 (with differences from rule 139 that the FAIR Act specifically directs, or that tailor the provisions of rule 139 more directly or specifically to the context of covered investment fund research reports).³¹⁹ We believe that modeling rule 139b on rule 139 will benefit market participants through regulatory consistency. We address these conditions in turn in the sections that follow.

a. Affiliate Exclusion

Under the affiliate exclusion of rule 139b,³²⁰ a broker-dealer who is an affiliate of a covered investment fund (or is an investment adviser or an affiliated person of the investment adviser to a covered investment fund), would not be eligible for the safe harbor of rule 139b when publishing or distributing a research report about that covered investment fund. The economic benefit of the affiliate exclusion is that it reduces the potential for retail investors to receive research reports containing information that was published, distributed, authorized, or approved by persons whose financial incentives create the greatest conflicts of interest.³²¹ The primary cost of the affiliate exclusion will be borne by broker-dealers that both distribute covered investment funds and act as investment advisers to such funds (or do so through affiliated persons). These broker-dealers will be unable to provide

are more optimistic than those serving only institutional investors). See Xuanjuan Chen, Tong Yao & Tong Yu, *Prudent Man or Agency Problem? On the Performance of Insurance Mutual Funds*, 16 *Journal of Financial Intermediation* 2, 175–203 (Apr. 1, 2007) (underperformance of mutual funds sponsored by insurance companies is attributed to inadequate monitoring by less sophisticated retail customers who are subject to cross-selling efforts by their insurer). See also Daniel Bergstresser, John M. R. Chalmers, and Peter Tufano, *Assessing the Costs and Benefits of Brokers in the Mutual Fund Industry*, 22 *Review of Financial Studies* 10, 4129–4156 (Oct. 2009) (broker-sold mutual funds deliver lower risk-adjusted returns (even before subtracting distribution fees) than direct-sold funds). See also Diane Del Guercio & Jonathan Reuter, *Mutual Fund Performance and the Incentive to Generate Alpha*, 69 *The Journal of Finance* 4, 1673–1704 (Aug. 1, 2014) (underperformance of actively managed mutual funds is attributed to the underperformance of funds sold by brokers; the authors find little evidence for underperformance in the subset of funds that are sold directly to investors).

³¹⁸ See *supra* section II.B.

³¹⁹ See *supra* paragraph accompanying notes 12–15.

³²⁰ See section 2(f)(3) of the FAIR Act. See *supra* section II.A.1.

³²¹ See *supra* section III.C.1.b.

research reports to their customers on funds that they (or their affiliated persons) advise.³²² In addition, we believe that smaller broker-dealers, and broker-dealers without significant research departments and who would want to rely on pre-publication materials distributed by a covered investment fund, its adviser, or affiliated persons, would also be significantly affected by the new rules.

We expect covered investment funds and their investment advisers to engage in a broad range of marketing activities to support the distribution of fund shares (particularly in the case of redeemable securities such as those issued by mutual funds), and that funds and their advisers prepare and distribute materials to distributing broker-dealers intended to increase sales. The affiliate exclusion and associated guidance³²³ will reduce the potential for retail investors to receive research reports containing materials from persons whose financial incentives create the greatest conflicts of interest.³²⁴

The affiliate exclusion is also likely to limit the benefits of the rule for certain broker-dealers. Many broker-dealers distributing covered investment fund securities do not have sizeable research departments, and we understand that very few broker-dealers operate at a scale that would allow for comprehensive coverage of the covered investment funds that they distribute. We believe that under the affiliate exclusion, it would be inappropriate for such broker-dealers to publish or distribute research report provided by a covered investment fund or the fund's affiliates.³²⁵ Thus, the affiliate exclusion could have the effect of limiting broker-dealers' ability and willingness to publish and distribute research reports about the funds they distribute: In order to rely on the rule to publish or distribute a covered investment fund research report, these broker-dealers would need to conduct their own research in-house or to rely on independent third-party service providers for their information.

³²² See *supra* notes 18–21 and accompanying text.

³²³ See *supra* section II.A.1.

³²⁴ Persons covered by the affiliate exclusion may have strong financial interests to increase sales of associated covered investment funds. See *supra* paragraph accompanying note 278.

³²⁵ Among other things, we believe it would be inappropriate for any person covered by the affiliate exclusion, or for any person acting on its behalf, to publish or distribute a research report indirectly that the person could not publish or distribute directly under the rule. See *supra* paragraph accompanying note 30.

b. Regular-Course-of-Business Requirement

Under rule 139b, research reports (both issuer-specific research reports and industry research reports) need to be published or distributed by the broker-dealer in the “regular course of its business” in order to rely on the safe harbor.³²⁶ For issuers that do not have a class of securities in “substantially continuous distribution,” issuer-specific research reports that represent the initiation of publication of research reports about the issuer or its securities or reinitiation following discontinuation of publication of such research reports would be deemed to not satisfy the regular-course-of-business requirement.³²⁷ The regular-course-of-business requirement of rule 139b is similar to that of rule 139, except that, as directed by the FAIR Act, rule 139b specifies that the “initiation or reinitiation requirement” only applies to research reports regarding a covered investment fund that does not have a class of securities in substantially continuous distribution.³²⁸

Given the breadth of the definition of “research report” under the FAIR Act (and the definition of “research report” that we are adopting under rule 139b), certain communications that are currently treated as covered investment fund advertisements under Securities Act rule 482 could fall under the rule 139b definition of “research report.”³²⁹ Investors, particularly retail investors, may be unaware of the differences in regulatory status and purpose among the various types of communications regarding registered investment companies and BDCs. This may result in investors not being able to readily discern what constitutes a research report and what constitutes an advertisement about these issuers. We continue to believe that broker-dealers that publish or distribute research reports in the regular course of business are more likely to publish analysis that investors recognize as research.³³⁰ Therefore, in principle we expect this requirement to benefit investors by reducing opportunities for communications published or distributed under the safe harbor to cause confusion about their intended purpose. However we also believe that establishing whether a research report is published in the “regular course of

business” could, in practice, prove uniquely challenging in the covered investment funds context.³³¹

First, in the context of covered investment funds, the distinction between communications intended as sales materials and those intended as research could be difficult to discern. Research reports about debt and equity securities have traditionally been provided to institutional customers as part of the broker-dealer’s collection of services.³³² Institutional customers are generally capable of producing similar reports, and so can more readily evaluate the quality of broker-dealers’ research.³³³ In these circumstances, broker-dealers have a compelling business rationale for producing high-quality research as distinct from sales materials.

In contrast, we expect covered investment fund research reports to be produced by broker-dealers that distribute covered investment funds to retail investors.³³⁴ Thus, we believe that cultivating a reputation for high-quality research is less likely to serve as the primary business rationale for broker-dealers’ publication and distribution of research reports on covered investment funds. Rather, we expect that facilitating the marketing of covered investment funds to customers (so as to increase revenues derived from distribution arrangements) will motivate these activities. In this setting, the distinction between different types of communications will not be as clear.

Second, the information environment surrounding covered investment funds further complicates establishing whether publishing research reports about covered investment funds is undertaken in the regular course of business. In the context of research reports about operating companies, a research analyst “following” an operating company continually monitors that company so as to provide timely forecasts and recommendations. Because of differences in the nature of covered investment funds and operating companies, we believe that the same is less likely to hold for a research analyst “following” a covered investment

fund.³³⁵ We believe that the opportunities for acquiring idiosyncratic information relevant to future returns of covered investment funds are generally more limited: Covered investment funds represent portfolios of securities and diversification effects reduce the value of idiosyncratic (*i.e.*, firm-specific) information.³³⁶ Consequently, we expect research analysts “following” covered investment funds to focus instead on information related to fund characteristics (*e.g.*, fees, portfolio composition, or index tracking strategy) and on developments at the sector- or macro-level. Because we do not expect the arrival of such information to be as frequent, we expect that the inclusion of new analysis in research reports about covered investment funds could be more rare than in the context of operating company research reports. Consequently, the publication or distribution of covered investment fund research reports could occur relatively infrequently, or could be driven largely by market-wide factors. This could make it more difficult to establish whether a covered investment fund research report is published in the regular course of business.

We noted in the Proposing Release that due to the aforementioned distinctions in the information environment and business rationale, we believed that the regular-course-of-business requirement in the context of rule 139b may be more challenging to apply in practice than the regular-course-of-business requirement in the context of rule 139 and that the potential benefits of this requirement in rule 139b may be more limited. We also noted that the effects of the regular-course-of-business requirement would be clearer in cases where, in the case of issuer-specific research reports, the bright-line “initiation or reinitiation” requirement applies (*i.e.*, where the covered investment fund does not have a class of securities in substantially continuous distribution). For such cases, the regular-course-of-business requirement would condition the availability of the safe harbor on the research report not representing the initiation or reinitiation of coverage by the broker-dealer publishing or distributing said research report. However, because the universe of covered investment funds is dominated

³²⁶ See *supra* sections II.B.1.c and II.B.2.b.

³²⁷ See *supra* notes 112–114 and accompanying text.

³²⁸ See section 2(b)(1) of the FAIR Act; see also *supra* note 101 and accompanying text.

³²⁹ See *supra* note 162 and accompanying text.

³³⁰ See Proposing Release, *supra* note 2, at 26797.

³³¹ See Proposing Release, *supra* note 2, at 26797–98 (requesting comment on the application of the regular-course-of-business requirement in the context of broker-dealers’ publication or distribution of covered investment fund research reports and unique concerns relevant to this context (*e.g.*, whether the requirement should be modified to address broker-dealers that have not previously published or distributed covered investment fund research reports)).

³³² See Mehran and Stulz Article, *supra* note 303.

³³³ See *id.*; see also Malmendier and Shanthikumar Article, *supra* note 505.

³³⁴ See *supra* section III.B.1.c.

³³⁵ The regular-course-of-business requirement generically requires “research reports” to be published or distributed in the regular course of a broker-dealer’s business and is not limited to covered investment fund research reports. See Proposing Release, *supra* note 2, at 26797.

³³⁶ See *supra* notes 267–268 and accompanying text.

by funds with a class of securities that could be considered to be in substantially continuous distribution,³³⁷ the bright-line test of the regular-course-of-business requirement would impact only a small subset of funds.

Related concerns were voiced by several commenters who questioned the feasibility of satisfying the regular-course-of-business requirement under the proposed rules.³³⁸ As discussed above, we have included additional guidance to mitigate concerns about the interpretation of the regular-course-of-business requirement.³³⁹ While we believe that this guidance should address commenters' concerns about the feasibility of satisfying the regular-course-of-business requirement, we acknowledge that—due to the reasons discussed above—broker-dealers evaluating whether their research activities satisfy the regular-course-of-business requirement are likely to face more uncertainty when those activities relate to covered investment funds than when those activities relate to operating companies. However, we believe that broker-dealers would only issue covered investment fund research reports if the benefits are likely to outweigh the costs, including uncertainty.

c. Reporting History and Minimum Market Value Requirements for Issuers Appearing in Issuer-Specific Research Reports

Under rule 139b, a broker-dealer's publication or distribution of issuer-specific research reports does not qualify for the safe harbor unless the covered investment fund included in the report satisfies a minimum public market value threshold of \$75 million.³⁴⁰ Issuers are also required to have been subject to the reporting requirements of the Investment Company Act (for covered investment funds that are registered investment companies) or the reporting requirements under section 13 or section 15(d) of the Exchange Act (for covered investment funds that are not registered investment companies) for a period of at least 12 calendar months prior to reliance on the rule as well as

to have timely filed all required reports during the preceding 12 calendar months.³⁴¹

The covered investment funds market is dynamic.³⁴² In 2017, more than six hundred covered investment funds entered the market, while more than eight hundred exited. The entry and exit of covered investment funds creates a situation in which a younger covered investment fund may not be widely followed by market participants.³⁴³ Thus, for covered investment funds, the universe of young—and potentially less-followed—issuers is large.³⁴⁴ Moreover, securities issued by covered investment funds may not be subject to significant levels of market scrutiny. Unlike securities issued by operating companies (that generally have diverse groups of investors, including institutional investors, money managers, arbitrageurs, activist investors, and short sellers), covered investment funds are primarily held by retail investors.³⁴⁵ As covered investment fund shares are not a major component of institutional investors' portfolios, we believe that they are less likely to garner widespread attention from the types of sophisticated institutional investors most capable of subjecting them to scrutiny.³⁴⁶

We believe that in the context of covered investment funds, where we expect limited market discipline from institutional investors and where large numbers of new funds are created each year, the information available to investors could be sparse. In such an environment, a single research report about a covered investment fund could

have a disproportionate effect on retail investors' beliefs about the fund and—in the case of a biased research report—have a negative effect on investor welfare. We believe that conditioning the availability of the safe harbor on the aforementioned reporting history and market valuation requirements would help restrict the availability of the safe harbor in situations where we expect the information environment to be most limited: For new funds and for funds with limited trading or interest.³⁴⁷

As noted by several commenters, because young and small covered investment funds are relatively common, the costs associated with these conditions on the availability of a safe harbor could be significant.³⁴⁸ In particular, as shown in Table 1, the \$75 million minimum public market valuation condition will limit the availability of the safe harbor with respect to broker-dealers' publication or distribution of research reports for approximately one-third of all covered investment funds.³⁴⁹ Research reports about nearly half of extant ETFs, ETPs will not qualify for the safe harbor.³⁵⁰ Availability of the safe harbor would be least impacted for research reports about BDCs and closed-end funds.³⁵¹

Although small funds represent a very small fraction of covered investment fund assets, they are relatively large in number.³⁵² Because nearly one-third of covered investment funds will not satisfy the eligibility criteria for the safe harbor, we believe that those funds will be less likely to receive coverage by broker-dealers insofar as the inability to rely on the safe harbor reduces broker-dealers' willingness to publish and distribute research reports.

³⁴¹ Including Forms N-CSR, N-Q, N-PORT, N-MFP, and N-CEN as applicable for registered investment companies, and Forms 10-K, 10-Q, and 20-F as applicable for covered investment funds that are not registered investment companies. See rule 139b(a)(1)(i)(A).

³⁴² See *supra* section III.B.1.a.

³⁴³ In contrast, there were fewer than one hundred U.S. IPOs for operating companies in 2016. See Jay Ritter, Initial Public Offerings: Updated Statistics (Aug. 8, 2017), available at <https://site.warrington.ufl.edu/ritter/files/2017/08/IPOs2016Statistics.pdf>.

³⁴⁴ For example, Morningstar notes that funds with short track records are unlikely to be provided coverage. See Morningstar, Morningstar Manager Research Coverage Decision-Making (June 2018), available at https://morningstardirect.morningstar.com/clientcomm/Morningstar_Manager_Research_Coverage_Decision_Making.pdf.

³⁴⁵ See *supra* section III.B.1.a.

³⁴⁶ See *supra* note 310 and accompanying text.

³⁴⁷ For example, while Morningstar provides analyst ratings for 200 ETFs and 1,562 open-end funds, among ETFs and open-end funds falling below the \$75 million minimum public market value threshold, only 27 received an analyst rating. See *supra* notes 243 and 344.

³⁴⁸ See SIFMA Comment Letter I; ICI Comment Letter; Fidelity Comment Letter; see also BlackRock Comment Letter.

³⁴⁹ 30% of all covered investment funds have public market valuations less than \$75 million. See Table 1.

³⁵⁰ 41% of ETF and ETPs have public market valuations less than \$75 million. See Table 1.

³⁵¹ 12% of closed-end funds and 7% of BDCs have public market valuations less than \$75 million. See Table 1.

³⁵² See Table 1.

³³⁷ See *supra* section III.B.1.a.

³³⁸ See *supra* sections II.B.1.c, II.B.2.b.

³³⁹ See *supra* paragraph accompanying note 118.

³⁴⁰ See rule 139b(a)(1)(i)(B).

TABLE 1—COVERED INVESTMENT FUNDS WITH PUBLIC MARKET VALUE LESS THAN \$75 MILLION, AND THE FRACTION OF COVERED INVESTMENT FUND ASSETS HELD BY THESE FUNDS

[For each covered investment fund type, we report the percentage of funds of that type with a public market value below \$75 million and the percentage of covered investment fund assets held in funds with public market values below \$75 million. Mutual fund, ETF, and ETP statistics are based on data from CRSP mutual fund database (2017Q3). Close-end fund statistics are based on data from CRSP monthly stock file (Dec. 2017). BDC statistics are based on Commission’s listing of registered BDCs, and regulatory filings (2017) compiled by Compustat and Audit Analytics]

Covered investment fund type	Funds with public market value <\$75 million	
	Number of funds (%)	Fund assets (%)
Open-end	30	<1
Closed-end	12	<1
ETF/ETP	41	<1
BDC	7	<1
Total	30	<1

Several commenters raised concerns that—in addition to the aforementioned costs—compliance with the reporting history and minimum market value requirements as proposed could be operationally challenging for broker-dealers.³⁵³ In general, we do not believe that verifying covered investment funds’ reporting history and public market valuation represents a significant additional burden for broker-dealers in this position.³⁵⁴

Another commenter noted that some broker-dealers provide investors research about large numbers of funds on a largely automated basis, and that ensuring compliance with the reporting history and minimum public market value requirements would create “operational hurdles” for these broker-dealers.³⁵⁵ We believe that broker-dealers that choose to automate publication of research reports will make significant investments in technology to implement this automation, and that broker-dealers with infrastructure capable of automating publication of research reports should have little difficulty implementing the procedures required for similarly automating the verification of these requirements.³⁵⁶ However, in a change from the proposal, final rule

³⁵³ See SIFMA Comment Letter I; see also Fidelity Comment Letter.

³⁵⁴ For example, much of this information is currently accessible through the publicly available EDGAR system and/or third-party data providers.

³⁵⁵ See Fidelity Comment Letter; see also paragraphs accompanying *supra* notes 64, 73.

³⁵⁶ We note that a software system capable of automatically generating non-trivial research reports about a given covered investment funds would contain data access modules providing programmatic access to the covered investment fund’s historical filings and pricing data. Conditional on the existence of such modules, implementation of tests for the reporting history and minimum market value requirements would represent a *de minimis* cost.

139b will not require the minimum public market valuation condition to be verified at the time of reliance.³⁵⁷ Rather, the final rule requires that this condition be satisfied at the time of the broker’s or dealer’s first publication or distribution of a research report on the covered investment fund, and at least quarterly thereafter.³⁵⁸ We believe this change should simplify compliance without materially affecting the provisions’ effectiveness.³⁵⁹

Finally, one commenter raised concerns that because of shortcomings in the data currently available about affiliates’ holdings, it may not be possible for broker-dealers to establish the public market value of a covered investment fund if affiliate holdings are to be excluded from the calculation.³⁶⁰ Although we believe that that the information required to make this calculation may be available to broker-dealers, we understand that it may not currently be generally available in a structured form amenable to automation. This could present operational difficulties for broker-dealers developing processes for automated report publication. In a change from the proposal, final rule 139b eliminates the requirement that the public market valuation calculation be calculated net of affiliates’ holdings for most covered investment funds. We believe that this change is unlikely to materially affect the effectiveness of the minimum public market value

³⁵⁷ See *supra* section II.B.1.b.

³⁵⁸ See rule 139b(a)(1)(i)(B).

³⁵⁹ We believe that implementing periodic assessments would be simpler and less costly than implementing an assessment at the time of reliance. At the same time, we do not believe that there would be a material difference in the set of covered investment funds captured by the minimum public valuation threshold under these two approaches. See *supra* paragraph accompanying note 104.

³⁶⁰ See SIFMA Comment Letter II.

requirement³⁶¹ while eliminating a plausible obstacle to its automated verification in the vast majority of cases. We acknowledge, however, that retaining the requirement to adjust for affiliate holdings in the public market valuation calculation for commodity- and currency-based trusts could reduce the amount of automated coverage provided to such trusts by broker-dealers.³⁶²

d. Reporting Requirement for Issuers Appearing in Industry Reports

Under rule 139b an industry research report could only include covered investment funds that are required to file reports pursuant to section 30 of the Investment Company Act (or, for covered investment funds that are not registered investment companies under the Investment Company Act, required to file reports pursuant to section 13 or section 15(d) of the Exchange Act).³⁶³ As discussed above, these conditions generally track parallel conditions under rule 139, but have been modified so that they would be applicable with respect to covered investment fund issuers. We do not expect these conditions to have economic effects

³⁶¹ Covered investment funds are subject to unique legal provisions that generally restrict affiliate ownership and provide additional legal protections when affiliate ownership is permitted. See, e.g., Investment Company Act sections 12, 17, and 57 and rules thereunder. In addition, unlike rule 139, rule 139b does not permit affiliates of covered investment funds to rely on the safe harbor, mitigating the risk that a fund with significant affiliate holdings would be the subject of market moving research by those same affiliates.

³⁶² See *supra* note 99.

³⁶³ See rule 139b(a)(2)(i). As discussed previously, each issuer included in an issuer-specific research report also would be required to be subject to these reporting requirements, as well as the requirement to have filed in a timely manner all of the periodic reports required to be filed during the preceding 12 calendar months. See *supra* section II.B.1.a.

beyond marginally improving economic efficiency by more closely aligning regulations with their intended context.

e. Content and Presentation Requirements for Industry Research Reports

Under rule 139b, the content and presentation standards for industry research reports of rule 139 are tailored to the context of covered investment funds. Under rule 139b (and rule 139), issuers appearing in industry research reports are subject to fewer conditions than issuers that are subjects of issuer-specific research reports.³⁶⁴ We believe that in the absence of content and presentation requirements such as these, an industry research report could be used to circumvent the conditions associated with the safe harbor available for issuer-specific research reports. We therefore believe that the content and presentation standards we are adopting have benefits similar to those of the parallel content and presentation requirements in rule 139, and provide meaningful limits for industry research reports.³⁶⁵

We believe the compliance costs imposed by these requirements on the production of industry research reports would be low, particularly as broker-dealers are already familiar with similar conditions in rule 139, making implementation of presentation conditions for industry research reports on covered investment funds less burdensome.

f. Presentation of Performance Information

Given the definition of “research report” under the FAIR Act (and the definition of “research report” being adopted under rule 139b), certain communications by broker-dealers that historically have been treated as advertisements for registered investment companies under rule 482 now could be distributed as covered investment fund research reports under the rule 139b safe harbor.³⁶⁶ In the Proposing Release, we raised concerns that not including provisions similar to rule 482 in proposed rule 139b could result in investors receiving communications about covered investment funds where

the character of the communication (*i.e.*, bona fide research versus advertising) is unclear.³⁶⁷ Conflicts of interest resulting from broker-dealers’ financial incentives could affect the manner in which performance data is presented in research reports, potentially leading to misleading presentation of performance data. In addition, investors could be confused if performance is presented differently in an advertisement and in a research report, particularly if the research report doesn’t adequately disclose the methodologies used to produce the performance that could explain the differences. Retail investors, in particular, may be unable to assess the non-standardized performance figures when considering their investment decisions.

As discussed above, unlike in the Proposing Release, final rule 139b incorporates provisions on the presentation of performance information in research reports about registered investment companies that mirror those of rule 482 and—with respect to closed-end funds—Form N–2.³⁶⁸ Incorporating these presentation standards in rule 139b reduces the potential for confusion between (i) registered open-end management investment company advertisements and selling materials covered by rule 482 and registered closed-end investment company selling materials covered by Form N–2 and (ii) rule 139b research reports.³⁶⁹ Additionally, incorporating some of these provisions into rule 139b would reduce the potential for investor confusion resulting from divergent standards in the presentation of performance data.

Because fees can represent a significant drag on investment returns,³⁷⁰ because different performance measures may be more or less favorable at different times, and because retail investors are known to be sensitive to past performance data,³⁷¹ we believe that the manner in which past performance data is presented can be an important factor driving investors’ investment decisions. As discussed above, even unaffiliated broker-dealers may have incentives, stemming from funds’ distribution arrangements, to

promote a covered investment fund, or to promote certain funds over others.³⁷² When broker-dealers publish or distribute research reports on covered investment funds, their choices with respect to how fees are disclosed, which performance measures are quoted, and for what time periods could be affected by these considerations. This in turn can adversely affect investors, particularly unsophisticated investors. We believe that these additional requirements on the presentation of performance information will limit opportunities for selective performance disclosure and will curtail opportunities to circumvent the performance reporting requirements of rule 482 and Form N–2.

By limiting opportunities for selective performance disclosure, we believe that final rule 139b will also reduce the potential for investor confusion. Under the final rule, there will be fewer opportunities for the performance disclosure in registered investment company advertisements and research reports to diverge. There also could be less potential for investor confusion when comparing research reports about different covered investment funds, or reports issued by different broker-dealers. These results would benefit investors. As discussed in the Proposing Release, the extent of the benefits resulting from requirements on the presentation of performance information depends on their effectiveness in ensuring consistent disclosure and/or alerting investors to factors that could influence their understanding of the disclosure in a research report. The extent of the benefit also would depend on the audience who will be reading research reports about registered investment companies. As discussed in the Proposing Release, we believe that retail investors would generally be less likely to be able to identify sources of bias (and disregard or discount bias) in communications about covered investment funds than institutional investors and therefore could benefit from limitations on selective performance disclosure. We believe that rule 482 standards on the presentation of performance information have been effective at limiting selective disclosure in applicable registered investment company advertisements, and that they will be similarly effective for research reports falling under rule 139b. Moreover, as noted above, we believe that retail investors will be the primary consumers of such research reports, and that such investors would be most likely

³⁶⁴ See *supra* sections II.B.1, II.B.2.

³⁶⁵ See *supra* sections II.B.2.c, II.B.2.d.

³⁶⁶ See *supra* note 162 and accompanying text. Similarly, “research reports” regarding covered investment funds that broker-dealers today might publish or distribute as “supplemental sales literature” under Investment Company Act rule 34b–1 (which must be preceded or accompanied by a statutory prospectus) could be distributed as covered investment fund research reports under rule 139b. See *supra* note 165 and accompanying text.

³⁶⁷ See Proposing Release, *supra* note 2, at 26825.

³⁶⁸ Rule 482 does not set forth requirements on the presentation of performance information in research reports about registered closed-end investment companies. See *supra* section II.C.

³⁶⁹ See *supra* paragraph accompanying notes 165–167.

³⁷⁰ See, e.g., Mark M. Carhart, *On Persistence in Mutual Fund Performance*, 52 *The Journal of Finance* 1, 57–82 (Mar. 1997).

³⁷¹ See Erik R. Sirri & Peter Tufano, *Costly Search and Mutual Fund Flows*, 53 *The Journal of Finance* 5, 1589–1622 (Oct. 1, 1998).

³⁷² See *supra* section III.C.1.b.

to benefit from these additional provisions.

As discussed in the Proposing Release, we believe that the most significant costs associated with additional requirements on the manner in which performance information may be presented would result from their potential to limit the manner in which the content of broker-dealers' research reports is presented. Although we are not preventing alternative performance measures from being included in research reports, by limiting the prominence afforded to such performance measures we could adversely affect broker-dealers' ability to provide valuable analysis. For example, a broker-dealer who wishes to center its analysis on a fund's risk-adjusted returns would be limited in how such information could be presented in the report, even though certain audiences for research reports could consider this information to be particularly relevant.

We believe that broker-dealers' direct compliance costs under these additional provisions would be minimal. Because we believe that broker-dealers that will publish research reports are likely currently distributing advertisements under rule 482, these broker-dealers likely already have processes and systems to produce charts and tables of performance measures using timely data under the presentation standards required by the final rules. However, we acknowledge that the final rules' will impose costs on broker-dealers that did not previously distribute advertisements under rule 482 and they would need to develop processes and systems to implement these presentation standards. We estimate the one-time implementation costs attributable to the new presentation standards for each broker-dealer publishing research reports to be approximately 5 hours or \$1,310.³⁷³ Further, we expect the systems necessary to satisfy the requirement for timely data under rule 482(g) would generally be available to broker-dealers publishing research reports.

3. Rule 24b-4

Rule 24b-4 excludes a covered investment fund research report from the coverage of section 24(b) of the Investment Company Act and the rules and regulations thereunder, except to

³⁷³ Calculated as 5 hours × Senior Business Analyst at \$262 per hour = \$1,310. The hourly wage rate is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work year; multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead; and adjusted to account for the effects of inflation.

the extent that such report is not subject to the content provisions of SRO rules related to research reports, including those contained in the rules governing communications with the public regarding investment companies or substantially similar standards. As discussed above, this rule is meant to implement section 2(b)(4) of the FAIR Act, which we interpret to exclude covered investment fund research reports from section 24(b) of the Investment Company Act so long as they continue to be subject to the general content standards in FINRA rule 2210(d)(1).³⁷⁴ For covered investment fund research reports that are published or distributed by FINRA member firms, all such research reports would be subject to the content standards of FINRA rule 2210(d)(1), and thus we would interpret these research reports to be excluded from the Commission's filing requirements under the rule.³⁷⁵

As discussed above, where covered investment fund research reports would no longer be required to be filed with the Commission pursuant to section 24(b), rule 24b-4 could have the effect of narrowing the types of communications regarding registered investment companies that would be filed with FINRA (under current FINRA rule 2210).³⁷⁶ However, we believe that administrative processes related to handling regulatory reviews of communications subject to filing requirements impose costs on broker-dealers, which in turn can reduce their willingness to publish and distribute such communications. Consequently, although we do not believe that limiting these filing requirements as required by the FAIR Act represents a first-order economic effect of the new rules, we believe that doing so will reduce administrative costs for broker-dealers publishing or distributing covered investment fund research reports. At the same time, as discussed above, we believe that eliminating these filing requirements may have the result that some communications that are were subject to FINRA's filing requirements would no longer be subject to routine review.³⁷⁷ While these communications may still be reviewed by FINRA—for example, through examinations, targeted sweeps, or spot-checks—we believe that an effect of the FAIR Act, as implemented through rule 24b-4, may be to reduce the monitoring by FINRA and the Commission of broker-dealers' communications with

³⁷⁴ See *supra* note 183 and accompanying text.

³⁷⁵ See *id.*

³⁷⁶ See *id.*

³⁷⁷ See *supra* section II.D.1.

customers for compliance with the applicable rules and regulations.³⁷⁸

4. Amendments to Rule 101 of Regulation M and Form 12b-25

As discussed above, rule 101 of Regulation M prohibits a person who participates in a distribution from attempting to induce others to purchase securities covered by the rule during a specified period.³⁷⁹ However, rule 101 provides an exception for research activities that satisfy the conditions of Securities Act rule 138 or rule 139. The conforming amendment expands this exception to include research activities that satisfy the conditions of rule 139b. We believe that broker-dealers would generally be unable to make use of the rule 139b safe harbor absent this conforming amendment. Consequently, we do not consider its effects separately.

As discussed above, we are making a technical amendment to Form 12b-25 to replace references to Form N-SAR with references to Form N-CEN and to remove the checkbox and accompanying text related to transition reports on Form N-SAR.³⁸⁰ The amendments to Form 12b-25 that the Commission is adopting are ministerial actions that correct outdated references and therefore will have no separate economic effect, including no effect on competition.

5. Effects on Efficiency, Competition, and Capital Formation

The primary effects on economic efficiency and capital formation resulting from rules 139b and 24b-4 obtain from the statutory mandates of the FAIR Act. Because financial intermediaries such as broker-dealers are generally assumed to possess some comparative advantage in the production of information about securities, efficiency considerations would—in the absence of significant market imperfections—dictate that broker-dealers should be active in the production of such information. To the extent that the increase in broker-dealers' production of research reports about covered investment funds—that we expect to occur as a result of the FAIR Act's statutory mandates³⁸¹—is valuable to investors, we expect it to increase allocative efficiency, with

³⁷⁸ But see *supra* note 195 and accompanying text (noting that the FAIR Act's rules of construction provide that the Act shall not be construed as limiting the authority of an SRO to require the filing of communications with the public if the purpose of such communications "is not to provide research and analysis of covered investment funds"); see also section 2(c)(2) of the FAIR Act.

³⁷⁹ See *supra* section II.E.

³⁸⁰ See *id.*

³⁸¹ See *supra* section III.C.1.a.

attendant positive consequences on capital formation. As noted earlier, the existence of the safe harbor could provide increased opportunities for broker-dealers to publish and distribute research on funds from which they derive financial benefits.³⁸² To the extent that this could limit the value investors derive from research reports that broker-dealers publish and distribute, any potential gains to efficiency and improvements to capital formation could be reduced (or eliminated).

Beyond the aforementioned broader effects on efficiency and capital formation resulting from the FAIR Act's statutory mandates, we believe that the specific conditions³⁸³ on the availability of the safe harbor in rule 139b will generally further economic efficiency and facilitate capital formation by reducing the potential for retail investors to receive research reports whose publication or distribution may be motivated by financial incentives that could cause a conflict of interest. We believe that the affiliate exclusion and related guidance will have the largest impact because it addresses the greatest conflicts of interests in this context: Those arising from broker-dealers in investment advisory relationships.³⁸⁴ In addition, we believe that the Commission's various tailoring of the new rules to the covered investment fund context will yield marginal efficiency improvements from reductions in regulatory ambiguity.

With respect to competition, we believe that expansion of the rule 139 safe harbor will increase competition in

the market for research reports on covered investment funds. Under the baseline, the market for research reports on covered investment funds is dominated by a small number of independent research firms, with few broker-dealers producing original research about such funds.³⁸⁵ We believe that the availability of the safe harbor will encourage some broker-dealers to publish proprietary research on covered investment funds. However, due to the high costs associated with maintaining research departments capable of covering the large covered investment fund universe,³⁸⁶ we believe that most broker-dealers will continue to rely on content licensed from independent firms.³⁸⁷ We also believe that there are competitive implications stemming from the guidance we have given to address possible circumvention of the affiliate exclusion.³⁸⁸ This guidance may have the effect of placing smaller broker-dealers—who may not operate at a scale large enough to sustain a research department—at a competitive disadvantage. These smaller broker-dealers may find that they are unable to compete with larger broker-dealers in the provision of “original” research about covered investment funds.

6. Alternatives Considered

We considered several alternative approaches to implementing the FAIR Act mandates that could satisfy the

requirements of the FAIR Act. We summarize these here.

a. Conditions on Issuers Appearing in Issuer-Specific Research Reports

As discussed above, we believe that conditioning the availability of the safe harbor on the \$75 million minimum public market value requirement will promote investor protection by limiting research reports to issuers that have a demonstrated market following.³⁸⁹ However, we acknowledge that it will mean that research reports about significant numbers of smaller covered investment funds would not qualify for inclusion in research reports under the safe harbor.³⁹⁰ We believe that this will reduce the effect of the new rules on the availability of research reports about smaller covered investment funds.³⁹¹

Depending on the distribution of covered investment funds' public market values, a somewhat lower threshold could significantly increase the number of covered investment funds that qualify for inclusion in research reports without undermining investor protection (because it would not materially increase the number of qualifying funds without a demonstrated market following). Conversely, a significantly higher threshold could further promote investor protection without significantly decreasing the number of qualifying funds (however, as discussed below, we did not consider this alternative because the FAIR Act prevents us from conditioning the availability of the safe harbor on a minimum public market

³⁸² See *supra* section III.C.1.b.

³⁸³ See *supra* section III.C.2.

³⁸⁴ See *supra* section III.C.2.a.

³⁸⁵ See *supra* section III.B.1.c.

³⁸⁶ See *supra* section III.B.1.a.

³⁸⁷ We expect that broker-dealers that choose to publish research on covered investment funds will generally not license it to their competitors.

³⁸⁸ See *supra* section III.C.2.a.

³⁸⁹ See *supra* section II.B.1.b.

³⁹⁰ See SIFMA Comment Letter I; *see also* ICI Comment Letter; BlackRock Comment Letter.

³⁹¹ See *supra* section III.C.2.c.

value requirement that is greater than what is required under rule 139).

Alternative Minimum Public Market Value Thresholds

Percentage of covered investment funds with a public market value (2017) below a given threshold.

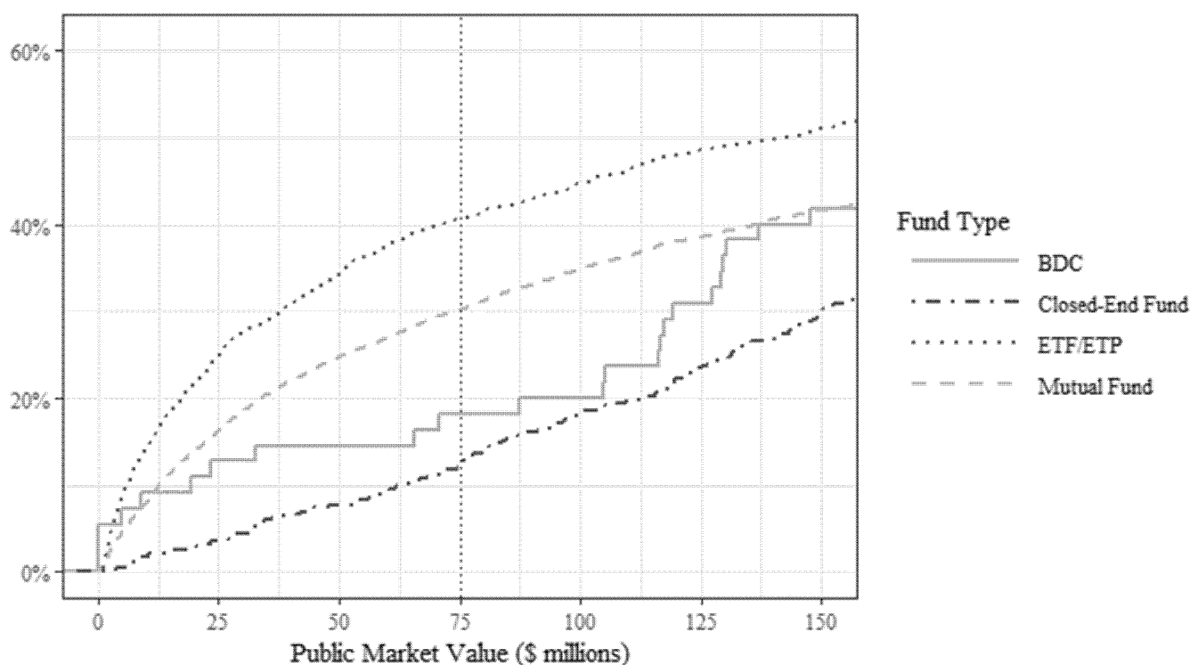


Figure 5: Percentage of covered investment funds with a public market value (2017) below a given threshold.

We have considered a range of alternative minimum public market values thresholds. Figure 5 plots the percentage of covered investment funds whose public market valuations would fall under each alternative threshold. Figure 5 shows that although the safe harbor would not be available to significant numbers of covered investment funds under the \$75 million threshold, material increasing its availability would only be achievable

through large reductions to the threshold. This is due to large numbers of funds being very small: As shown in Figure 6, over 600 covered investment funds have a public market valuation of \$5 million or less. We do not believe that a significantly lower threshold would be effective at promoting investor protection because, as discussed above in section III.C.2.c, we expect the information environment to be more limited for smaller funds than for larger

funds.³⁹² At the same time, we believe that imposing the threshold would only restrict the availability of research for covered investment funds that have small economic significance. As shown in Figure 7, covered investment funds falling below the \$75 million threshold account for less than 1% of the dollars invested in each of the four covered investment fund types.

³⁹² One commenter suggested lowering the threshold to no more than \$20 million; see SIFMA Comment Letter I. Another commenter noted that 41% of all ETFs and exchange-traded products

would be excluded by the \$75 million threshold; see Fidelity Comment Letter. Although these commenters argued that lowering the threshold could benefit investors by increasing the number of

funds for which covered investment fund research reports were available, they did not address the question of the potential cost to investors resulting from a lower threshold. See *supra* section III.C.2.c.

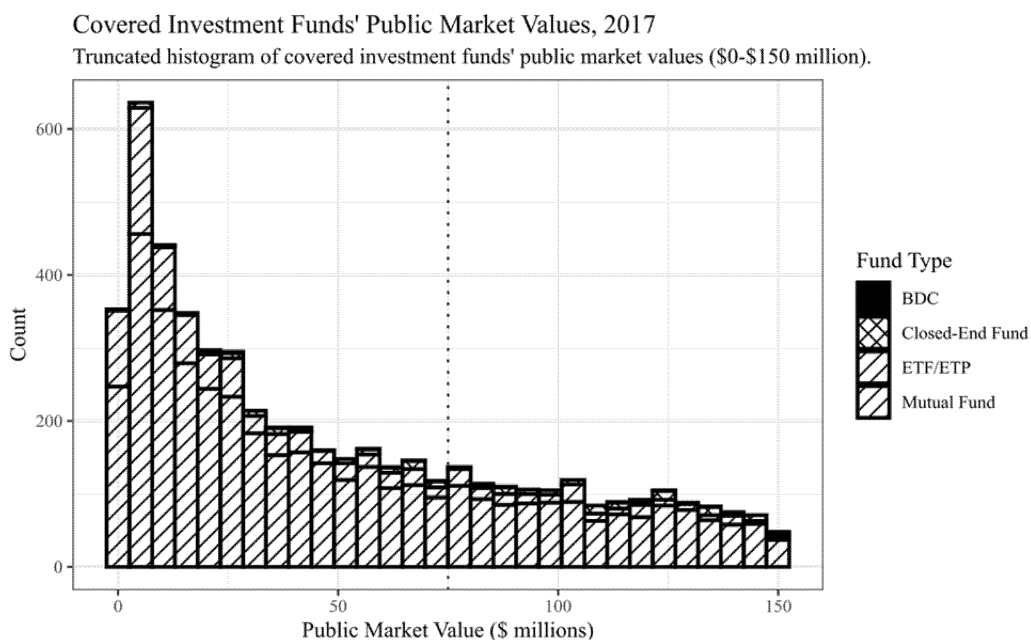


Figure 6: Truncated histogram of covered investment funds' public market values (\$0-\$150 million), 2017.

Alternative Minimum Public Market Value Thresholds

Percentage of covered investment fund dollars invested in funds with public market values (2017) below a given threshold.

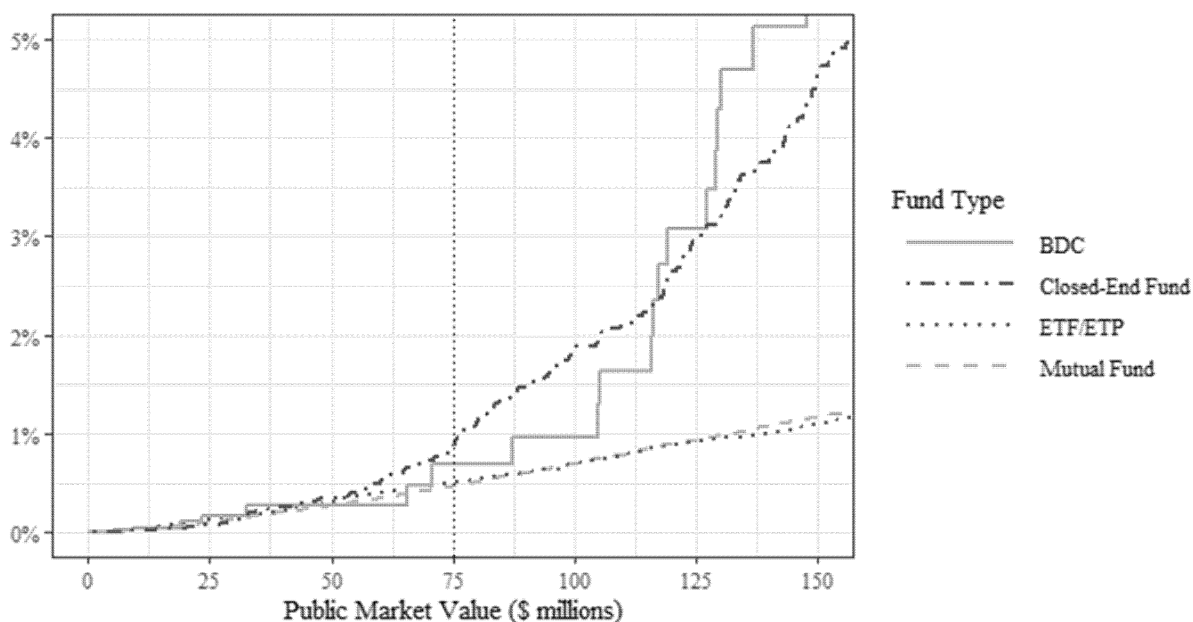


Figure 7: Percentage of covered investment fund dollars invested in funds with a public market value (2017) below a given threshold.

The FAIR Act prevents us from conditioning the availability of the safe harbor on a minimum public market value requirement that is greater than

what is required under rule 139.³⁹³ This effectively prevents us from conditioning the availability of the safe

harbor for research reports on the subject covered investment fund having a public float of more than \$75 million. Consequently, we do not consider

³⁹³ See *supra* note 83 and accompanying text.

higher minimum public market value thresholds.

b. Conditions on Issuers Appearing in Industry Research Reports

(1) Applying Uniform Conditions on Issuers Appearing in Issuer-Specific and Industry Research Reports

With respect to conditions affecting the availability of the safe harbor for industry research reports, we considered applying to industry research reports the same requirements as would apply to issuer-specific research reports. As with the restrictions on issuer-specific research reports, similarly restricting industry research reports could help ensure that funds included in research reports are well-followed, and could restrict the availability of the safe harbor in situations where we expect the information environment to be most limited: For new funds and for funds with niche markets.

In the context of research reports about covered investment funds, cost-benefit considerations for including additional conditions on industry reports differ slightly from those that apply in the context of traditional research reports about equity and debt securities. In the context of research reports about equity and debt securities, analysis of an industry, in the case of operating companies, may require the discussion of specific firms within that industry. For example, a discussion about a mature industry (*e.g.*, automobiles) may require discussion of a disruptive new entrant (*e.g.*, autonomous vehicle start-up). In the context of the rule 139 safe harbor, the new entrant may not satisfy the reporting history and minimum float requirements. This would reasonably prevent an issuer-specific research report about the new entrant from qualifying for the safe harbor. However, it would not further the goal of facilitating coverage of the industry to limit the safe harbor for industry reports to reports that do not discuss the new entrant: Analysis of the industry may require discussion of specific issuers that would not qualify for inclusion in issuer-specific research reports.

In the context of covered investment funds, a similar rationale would not apply as broadly. Rule 139b content requirements for industry research reports would reference covered investment fund issuers of the same “type or investment focus,” rather than the issuers’ “industry or sub-industry” (*i.e.*, a broad category of similar

businesses).³⁹⁴ Although it is clear that an industry research report about some covered investment fund types (*e.g.*, emerging growth bonds) may have reasons to include a discussion of issuers that may not be eligible for inclusion in issuer-specific research reports (*e.g.*, best-performing new fund), it is not clear that such reasons would rise to the level of requiring the discussion of such issuers. Unlike the effects of an operating company issuer on its “industry,” the effects of a covered investment fund issuer on its fund “type” is very limited.

(2) Allowing Affiliates To Appear in Comprehensive List of Recommended Issuers

We considered providing that a comprehensive list of recommended issuers may include issuers that are affiliates of the broker-dealer that is publishing or distributing the research report under certain circumstances, including: If affiliates were identified; if disclosure about the affiliated issuers were limited; or if any performance information included in a list that includes affiliated issuers were presented in accordance with rule 482.³⁹⁵ Generally, we believe that including such provisions would benefit broker-dealers that play a significant role both as investment advisers to, and as distributors of, covered investment funds. However, as discussed above, we believe that broker-dealers publishing or distributing research reports about affiliated funds would have the potential for the most significant conflicts of interest.³⁹⁶ Moreover, permitting affiliated funds to be included in such comprehensive lists could result in confusion: Broker-dealers would be able to offer recommendations for affiliated funds in industry research reports, but there would be no safe harbor enabling them to publish or distribute issuer-specific research reports (which could provide the basis for such recommendations) as a result of the affiliate exclusion.

c. Approach to Regular-Course-of-Business Requirement

As discussed in section III.C.2.b, in principle we expect a regular-course-of-business requirement to reduce opportunities for the safe harbor to be used in ways that lead to investor confusion. However, we also believe that in the context of covered investment funds, establishing whether a report is published in the “regular

course of business” could present more challenges than in the rule 139 context of research reports about the securities of operating companies.³⁹⁷ Thus, we requested comment on and have considered various alternative approaches to the regular-course-of-business requirements.³⁹⁸ Specifically, we have considered that this requirement be defined more specifically to address, for example, circumstances in which a broker-dealer has not previously published or distributed research reports.³⁹⁹ For example, we considered whether rule 139b should provide a “start-up” period to allow broker-dealers to establish a regular course of business of publishing research reports.⁴⁰⁰ We have also considered requiring that the regular-course-of-business requirement incorporate more specific requirements regarding the persons preparing such reports (*e.g.*, that they must be employed by a broker-dealer to prepare such research in the regular course of his or her duties).⁴⁰¹

Conditioning availability of the safe harbor on a broker-dealer’s having published research reports for a given period of time, or on the broker-dealer’s having operated for some amount of time, could lead to the publication of reports that are more likely to be recognized as research.⁴⁰² Moreover, we believe that broker-dealers with a longer operating history and those who have published research reports—relying on the existing rule 139 safe harbor or otherwise without relying on the safe harbor—will have made greater investments in their reputations. Such investments increase the reputational costs associated with the publication of research reflecting conflicts of interest, which as discussed above could mitigate the effects of conflicts of interest on research reports.⁴⁰³

In rule 139b, we have chosen not to incorporate these more specific alternative approaches to the regular-

³⁹⁷ See *supra* section II.B.2.b.

³⁹⁸ See Proposing Release, *supra* note 2, at 26797–98. We did not receive comments specifically addressing the economic effects of alternative approaches to the regular-course-of-business requirement.

³⁹⁹ See *id.*

⁴⁰⁰ See *id.*

⁴⁰¹ See *id.*

⁴⁰² See *id.*

⁴⁰³ See Chemmanur and Fulghieri Article, *supra* note 302; see also *supra* section III.C.1.b. However, we note that the efficacy of an institutional reputation mechanism has not found empirical support in related settings. See Fang and Yasuda Article, *supra* note 301 (where sell-side research analysts’ reputation mitigates manifestation of conflicts of interest from underwriting relationships, while institutional reputation does not).

³⁹⁴ See *supra* section II.B.2.c.

³⁹⁵ See *id.*

³⁹⁶ See *supra* section III.C.1.b.

course-of-business requirement. While we note the potential benefits of such approaches in enhancing the value that covered investment fund research reports may provide investors, we also understand that these more specific alternatives may restrict the flow of relevant information to investors.

d. Presentation of Performance Information

As discussed above, we have chosen to incorporate rule 482 and Form N-2 requirements on the presentation of performance information in final rule 139b.⁴⁰⁴ We also considered the alternatives of including rule 156 guidance factors (or a subset thereof), requirements relating to disclosure of nonrecurring fees, and requirements on the timeliness of performance data.⁴⁰⁵ We also considered a requirement in rule 139b to incorporate general narrative disclosure into a research report about a registered investment company, aimed at reducing potential investor confusion.⁴⁰⁶ For example, we could have required such research reports to incorporate a legend stating that the document is a research report and is not subject to the Commission's regulations applicable to sales and advertising. We also could have required such a research report to incorporate similar disclosure without requiring that it be structured as a legend (which would require the disclosure of similar concepts but would not require any particular wording).⁴⁰⁷

In general, imposing additional requirements on the presentation of performance information would further reduce opportunities for research reports to present fund performance information in a manner inconsistent with similar information presented in advertisements and supplemental sales literature. We believe that these additional requirements would therefore reduce investor confusion and opportunities for the safe harbor to be used to present misleading information to investors.⁴⁰⁸ However, imposing these additional requirements would increase compliance costs for broker-dealers. In particular, imposing rule 156 (or similar) guidance factors would make determinations of compliance with the provisions of rule 139b less certain. This could make broker-dealers reluctant to rely on the rule 139b safe

harbor and impede the publication and distribution of broker-dealer research on covered investment funds.

The alternatives of including various forms of disclosures to the effect that a "research report" is not subject to the Commission's regulations applicable to sales and advertising would impose the lowest costs on broker-dealers. However, we believe that requiring disclosure to this effect is unlikely to have significant beneficial effects in the retail context.

IV. Paperwork Reduction Act

New rule 139b contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").⁴⁰⁹ Specifically, rule 139b(a)(3) requires that broker-dealers that provide performance information in their covered investment fund research reports about (i) open-end funds must be in accordance with specified rule 482 presentation requirements or (ii) closed-end funds must be in accordance with a specified instruction set forth in Form N-2. The title for this collection of information is: "Rule 139b Disclosure of Standardized Performance," a new collection of information. We are requesting comment on this collection of information requirement in this Release, and intend to submit these requirements to the Office of Management and Budget ("OMB") for review under the PRA.⁴¹⁰ If approved, responses to the new collection of information requirement would not be mandatory for broker-dealers seeking to rely upon rule 139b but would be necessary for those broker-dealers that would like to provide performance information in their covered investment fund research reports. Responses to the information

⁴⁰⁹ 44 U.S.C. 3501-3521.

⁴¹⁰ In the Proposing Release, we did not submit a PRA analysis because—although there was a set of requests for comment on the subject—the proposal did not include a standardized performance disclosure requirement, and we believed our proposal did not contain a "collection of information" requirement within the meaning of the PRA. See Proposing Release, *supra* note 2, at 26826.

As discussed in the Proposing Release, *supra* note 2, at 26826, and above, certain communications that previously would have been treated as rule 482 advertising prospectuses or rule 34b-1 supplemental sales literature could be considered covered investment fund research reports subject to the rule 139b safe harbor. This could result in a reduction in the information collection burdens for rules 482 and 34b-1 if fewer materials are filed. In connection with the extension of a currently approved collection for rules 482 and 34b-1, the Commission will adjust the burdens associated with these collections of information to reflect these changes, as appropriate. At this time, we do not have any comments regarding overall burden estimates for the final rule. This Release is requesting such comments.

collections will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In the Proposing Release, we solicited comment on whether rule 139b should include a standardized performance disclosure requirement.⁴¹¹ In response to comments received, we have decided to adopt such a requirement.⁴¹² We believe that standardized performance presentation is an appropriate requirement because investors tend to consider fund performance a significant factor in evaluating or comparing investment companies, and the requirement addresses potential investor confusion if a communication were not easily recognizable as research as opposed to an advertising prospectus or supplemental sales literature. Rule 139b requires that research reports about open-end funds that include performance information must present it in accordance with paragraphs (d), (e), and (g) of rule 482. Rule 139b also requires that research reports about closed-end funds that include performance information must present it in accordance with instructions to item 4.1(g) of Form N-2.

It is difficult to provide estimates of the burdens and costs for those broker-dealers that will include performance information in a rule 139b research report. As discussed above, this is difficult to estimate because current data collected does not reflect the affiliate exclusion, does not include the entire universe of covered investment funds, and it is uncertain what percentage of communications currently filed as rule 482 advertising prospectuses (or rule 34b-1 supplemental sales materials) will instead be published in reliance on rule 139b, as covered investment fund research reports.⁴¹³ For purposes of the PRA, we estimate that 10% of the rule 482 and rule 34b-1 communications currently filed by broker-dealers with FINRA (approximately 65,000) could be considered as rule 139b covered investment fund research reports. We estimate that broker-dealers will publish annually 6,500 (10% of 65,000) covered investment fund research reports. Moreover, we assume for purposes of the PRA that all estimated rule 139b research reports will include fund performance information. We further

⁴¹¹ See Proposing Release, *supra* note 2, at 26803-04.

⁴¹² See *supra* section II.C.

⁴¹³ See *supra* note 239 and accompanying paragraph.

⁴⁰⁴ See *supra* sections II.C and III.C.2.f.

⁴⁰⁵ See Proposing Release, *supra* note 2, at 26825-26.

⁴⁰⁶ See *id.*

⁴⁰⁷ See *id.*

⁴⁰⁸ See *id.*

estimate that 1,417 broker-dealers would likely be respondents to the collection of information with a frequency of 4.6 responses per year.⁴¹⁴ We further estimate that 50% of these broker-dealers will have experience in complying with standardized performance requirements under rule 482. For the 50% of this subset of broker-dealers that do not have experience with complying with rule 482, we estimate that there will be a one-time implementation cost for each broker-dealer of 5 internal burden hours. Additionally, we estimate that each research report will require 3 hours of ongoing internal burden hours by a broker-dealers' personnel to comply with the rule 139b collection of information requirements, which for each broker-dealer is estimated to be 13.8 internal burden hours.⁴¹⁵ Accordingly, we estimate that the standardized performance presentation requirements will result in an average annual hour burden of about 16.3 hours per broker-dealer⁴¹⁶ in the first year of compliance and about 13.8 hours per broker-dealer for each of the next two years. Amortized over three years, the average annual hour burden will be about 14.63 hours per broker-dealer.⁴¹⁷

In sum, we estimate that rule 139b's requirements will impose a total annual internal hour burden of 20,731 hours on broker-dealers.⁴¹⁸ We do not think there is an external cost burden associated with this collection of information.

Request for Comment

We request comment on our approach and the accuracy of the current estimates. Pursuant to 44 U.S.C. 3506(c)(2)(A), the Commission solicits comments to: (1) 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; (2) evaluate the accuracy of the Commission's estimate of the burden of the collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to

⁴¹⁴ See *supra* note 230 and accompanying text. 6,500 covered investment fund research reports/1,417 broker-dealers = 4.6 annual responses per broker-dealer.

⁴¹⁵ 4.6 annual responses per broker-dealer × 3 internal burden hours = 13.8 annual internal burden hours per broker-dealer.

⁴¹⁶ (50% of * 13.8 hours ongoing compliance) + (50% * (13.8 hours ongoing compliance + 5 hours of initial compliance hours)).

⁴¹⁷ ((16.3 internal burden hours in year 1) + (13.8 internal burden hours in year 2) + (13.8 internal burden hours in year 3))/3.

⁴¹⁸ 14.63 annualized burden hours * 1,417 broker-dealers.

be collected; and (4) evaluate whether there are ways to minimize the burden of the collections of information on those who are required to respond, including through the use of automated collection techniques or other forms of information technology.

The agency has submitted the proposed collections of information to OMB for approval. Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, with reference to File No. S7-11-18. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of the proposal, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-11-18, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549.

V. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Act Analysis has been prepared in accordance with section 4(a) of the Regulatory Flexibility Act ("RFA").⁴¹⁹ It relates to new rule 139b, new rule 24b-4, and revisions to the rules under the Securities Act and the Exchange Act to implement the FAIR Act. An Initial Regulatory Flexibility Analysis ("IRFA") was prepared in accordance with the RFA and included in the Proposing Release.⁴²⁰ The Proposing Release included, and solicited comment on, the IRFA.

A. Need for, and Objectives of, the Rules and Rule Amendments

Rule 139b provides that, if certain conditions are satisfied, a broker-dealer's publication or distribution of a covered investment fund research report is deemed for purposes of sections 2(a)(10) and 5(c) of the Securities Act not to constitute an offer for sale or offer to sell a security that is the subject of

⁴¹⁹ See 5 U.S.C. 604(a).

⁴²⁰ See Proposing Release, *supra* note 2, at 26826-29.

an offering of the covered investment fund, even if the broker-dealer is participating or may participate in a registered offering of the covered investment fund's securities. Rule 24b-4 provides that a covered investment fund research report about a registered investment company will not be subject to section 24(b) of the Investment Company Act (or the rules and regulations thereunder), except to the extent the research report is otherwise not subject to the content standards in SRO rules related to research reports, including those contained in the rules governing communications with the public regarding investment companies or substantially similar standards. The revision to paragraph (a) of rule 139 would clarify that rule 139 does not affect the availability of any other exemption or exclusion from sections 2(a)(10) or 5(c) of the Securities Act that may be available to a broker-dealer (as provided, for example, by the provisions of rule 139a or new rule 139b). The revision to rule 101 under Regulation M is a conforming amendment intended to harmonize treatment of research under the Securities Act and Exchange Act rules by permitting distribution participants under Regulation M, such as brokers-dealers, to publish or disseminate any information, opinion, or recommendation relating to a covered security if the conditions of rule 138, rule 139, or rule 139b under the Securities Act are met. The new rules and rule revisions implement the directives under the FAIR Act to extend the current safe harbor available under rule 139 to broker-dealers' publication or distribution of covered investment fund research reports. The reasons for, and objectives of, the new rules and rule revisions are discussed in more detail in section II above.

B. Significant Issues Raised by Public Comments

In the Proposing Release, we requested comment on each aspect of the IRFA, including the number of small entities that would be affected by the proposed rules and amendments, the existence or nature of the potential impact of the proposals on small entities discussed in the analysis and how to quantify the impact of the proposed rules. We did not receive comments specifically addressing the impact of the rules and amendments on small entities subject to the rule.

C. Small Entities Subject to the Rules

The new rules affect broker-dealers that publish or distribute covered investment fund research reports. As such, broker-dealers that are small

entities are affected by the adopted rules. A broker-dealer is a small entity if it has total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a-5(d),⁴²¹ and it is not affiliated with any person (other than a natural person) that is not a small business or small organization.⁴²² As of December 31, 2017, the Commission estimates that there were approximately 1,043 broker-dealers that would be considered small entities as defined above.⁴²³ To the extent a small broker-dealer publishes or distributes covered investment fund research reports and seeks to rely on the rule 139b safe harbor—and is without a significant research department or wants to rely on pre-publication materials distributed by a covered investment fund, its adviser, or affiliated persons—it may be significantly affected by the final rules. Generally, we believe larger broker-dealers engage in these activities, and we did not receive comments on whether and how the rules we are adopting today affect small broker-dealers. We also did not receive comment on the number of small entities that would be affected by our adoption, including any available empirical data.

D. Reporting, Recordkeeping, and Other Compliance Requirements

We believe that there are no reporting, recordkeeping, and other compliance requirements with respect to rule 139b and the revision to Regulation M. As such, we believe that there are no attendant costs and administrative burdens for small entities associated with these activities, as they relate to rule 139b and the revision to Regulation M.

Rule 139b extends the safe harbor under rule 139 to broker-dealers' publication or distribution of covered investment fund research reports. As a result of the FAIR Act communications that historically have been treated as

covered investment fund advertisements under rule 482 now could fall under the new rule 139b definition of "research report."

As discussed above, section 24(b) of the Investment Company Act requires registered open-end investment companies to file sales literature addressed to or intended for distribution to prospective investors with the Commission.⁴²⁴ Section 2(b)(4) of the FAIR Act directs the Commission to provide that a covered investment fund research report shall not be subject to section 24(b) of the Investment Company Act or the rules and regulations thereunder, except that such report may still be subject to 24(b) and the rules and regulations thereunder if it is otherwise not subject to the content standards in the rules of any SRO related to research reports, including those contained in the rules governing communications with the public regarding investment companies or substantially similar standards.⁴²⁵ Registered investment company sales literature, including rule 482 advertisements, are required to be filed with the Commission under section 24(b) of the Investment Company Act.⁴²⁶ These filings are typically done by broker-dealers' compliance staff. The Commission implemented section 2(b)(4) of the FAIR Act via new rule 24b-4, which provides that a covered investment fund research report about a registered investment company shall not be subject to section 24(b) of the Investment Company Act (or the rules and regulations thereunder), unless the research report is not otherwise subject to the content standards in SRO rules related to research reports, including those contained in the rules governing communications with the public regarding investment companies or substantially similar standards.⁴²⁷ We interpret section 2(b)(4) of the FAIR Act as excluding covered investment fund research reports from section 24(b) of the Investment Company Act so long as they continue to be subject to the general content standards in FINRA rule 2210(d)(1), described above (or substantially similar SRO rules).⁴²⁸ Thus, covered investment fund research reports, by operation of rule 24b-4,

would no longer be subject to filing requirements under section 24(b) because they would be subject to the general content standards of FINRA rule 2210(d)(1).⁴²⁹ Rule 24b-4 would affect broker-dealers that, in lieu of a safe harbor such as that provided by rule 139b, would have published or distributed communications styled as "research reports" in compliance with rule 482, which communications would be required to be filed with the Commission subject to section 24(b) of the Investment Company Act. The Commission estimates that there were approximately 1,043 broker-dealers, as of December 31, 2017, that would be considered small entities as defined above.⁴³⁰ As such, we believe that the administrative costs of broker-dealers that previously filed these communications pursuant to section 24(b) of the Investment Company Act will be reduced. However, large and small broker-dealers will not be affected differently by rule 24b-4.

The amendments are discussed in detail in Section II above. We discuss the economic impact, including the estimated compliance costs and burdens, of the amendments in Section III above.

E. Agency Action To Minimize Effect on Small Entities

The RFA directs us to consider significant alternatives that would accomplish the Commission's stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposals, we considered the following alternatives: (i) Establishing different compliance or reporting requirements that take into account the resources available to small entities; (ii) exempting broker-dealers that are small entities from certain proposed conditions that must be satisfied in order for the rule 139b safe harbor to be available (e.g., the extent to which the proposed regular-course-of-business requirements would apply to small broker-dealers); (iii) clarifying, consolidating, or simplifying the conditions that must be satisfied for the rule 139b safe harbor to be available for broker-dealers that are small entities; and (iv) using performance rather than design standards.

We do not believe that establishing different compliance and reporting requirements or timetables for broker-dealers that are small entities, or exempting broker-dealers that are small entities from certain conditions, would

⁴²¹ See rule 0-10(c)(1) under the Exchange Act [17 CFR 240.0-10(c)(1)]. Alternatively, if a broker-dealer is "not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter)." See *id.*

⁴²² See rule 0-10(c)(2) under the Exchange Act [17 CFR 240.0-10(c)(2)].

⁴²³ This estimate is derived from an analysis of data for the period ending Dec. 31, 2017 obtained from FOCUS Reports ("Financial and Operational Combined Uniform Single" Reports) that broker-dealers generally are required to file with the Commission and/or SROs pursuant to rule 17a-5 under the Exchange Act [17 CFR 240.17a-5].

⁴²⁴ See 15 U.S.C. 80a-24(b); 17 CFR 270.24b-3; *supra* section II.D.1.

⁴²⁵ See *supra* section II.D.1.

⁴²⁶ See *supra* notes 187-189 and accompanying text. Rule 24b-3 under the Investment Company Act deems these materials to have been filed with the Commission if filed with FINRA. See *id.*

⁴²⁷ See rule 24b-4; see also discussion accompanying *supra* notes 179-183.

⁴²⁸ See *supra* paragraph accompanying notes 183-185.

⁴²⁹ See *supra* section II.D.1.

⁴³⁰ See *supra* note 423.

permit us to achieve our stated objectives. We have considered a variety of approaches to achieve our regulatory objectives and the directives of the FAIR Act. We do not believe that the new rules impose any significant new compliance obligations, because the new rules generally reduce the restrictions regarding communications that would be considered covered investment fund research reports.

As discussed above, the FAIR Act directs us to extend the current safe harbor available under rule 139 to broker-dealers' publication or distribution of covered investment fund research reports, and thus rule 139b's framework, including its scope and conditions, is modeled after and generally tracks rule 139.⁴³¹ Rule 139 does not incorporate conditions that affect the availability of the rule's safe harbor differently for broker-dealers that are small (versus large) entities. We likewise do not believe it is necessary or appropriate that rule 139b incorporate conditions that would affect the availability of the new rule's safe harbor differently based on whether a broker-dealer is a small entity. We have considered whether a different regular-course-of-business requirement would help mitigate investor confusion in the case of covered investment fund research reports about registered investment companies, as discussed in more detail above.⁴³² This could have had the effect of limiting the availability of the rule 139b safe harbor to certain broker-dealers, which in turn could have direct or indirect effects on the availability of the safe harbor to smaller broker-dealers. However, for the reasons discussed above,⁴³³ we are not adopting a regular-course-of-business requirement, in either the new rule 139b provisions on issuer-specific research reports or the provisions on industry reports, other than a requirement that tracks the provisions of rule 139 (modified as directed by the FAIR Act).

Nor do we believe that clarifying, consolidating, or simplifying the amendments for small entities would satisfy those objectives. Because rule 139b's framework (including its scope and conditions) is modeled after and generally tracks rule 139, rule 139b, like rule 139, does not treat small broker-dealers differently than large broker-dealers, including by clarifying, consolidating, or simplifying any conditions.

Further, with respect to using performance rather than design standards, the rule generally uses performance standards for all broker-dealers relying on the rule, regardless of size. We believe that providing broker-dealers with the flexibility with respect to the design of covered investment fund research reports that they may publish or distribute in reliance on the safe harbor is appropriate in light of the diversity of entities included in the universe of covered investment funds. We also believe that this approach is appropriate in light of the diverse methodologies that might be taken with respect to research about these entities (particularly because the term "research report" in the FAIR Act and the rule is defined broadly, as discussed above⁴³⁴). However, we note that the rule also uses design standards with respect to certain of its conditions (e.g., the conditions relating to reporting history and minimum public market value that apply to issuers that could appear in an issuer-specific research report). These are substantially similar to design standards used in rule 139, and they would apply with respect to the research reports published or distributed by all broker-dealers relying on the new rule, regardless of their size.⁴³⁵ For the reasons discussed above, we believe that this use of design standards is appropriate for the furtherance of investor protection, and to help ensure that the rule is not used to circumvent the prospectus requirements of the Securities Act.⁴³⁶

VI. Statutory Authority

We are adopting the rules contained in this document under the authority set forth in the Securities Act, particularly sections 6, 7, 8, 10, 17(a), 19(a), and 28 thereof [15 U.S.C. 77a *et seq.*]; the Exchange Act, particularly, sections 2, 3, 9(a), 10, 11A(c), 12, 13, 14, 15, 17(a), 23(a), 30, and 36 thereof [15 U.S.C. 78a *et seq.*]; the Investment Company Act, particularly, sections 6, 23, 24, 30, and 38 thereof [15 U.S.C. 80a *et seq.*]; and the FAIR Act, particularly, section 2 thereof.

List of Subjects

17 CFR Part 230

Advertising, Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 242

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 270

Confidential business information, Fraud, Investment companies, Life insurance, Reporting and recordkeeping requirements, Securities.

Text of Rules and Amendments

For the reasons set out in the preamble, title 17, chapter II of the Code of the Federal Regulations is amended as follows.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, and Pub. L. 112-106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 2. Amend § 230.139 by revising the introductory text of paragraph (a) to read as follows:

§ 230.139 Publications or distributions of research reports by brokers or dealers distributing securities.

(a) *Registered offerings.* Under the conditions of paragraph (a)(1) or (2) of this section, a broker's or dealer's publication or distribution of a research report about an issuer or any of its securities shall be deemed for purposes of sections 2(a)(10) and 5(c) of the Act not to constitute an offer for sale or offer to sell a security that is the subject of an offering pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective, even if the broker or dealer is participating or will participate in the registered offering of the issuer's securities. For purposes of the Fair Access to Investment Research Act of 2017 [Pub. L. 115-66, 131 Stat. 1196 (2017)], a safe harbor has been established for covered investment fund research reports, and the specific terms of that safe harbor are set forth in § 230.139b.

* * * * *

■ 3. Add § 230.139b to read as follows:

⁴³¹ See *supra* paragraph accompanying notes 12-15.

⁴³² See *supra* section III.C.6.c.

⁴³³ See *id.*

⁴³⁴ See *supra* section II.A.2.

⁴³⁵ See, e.g., *supra* sections II.B.1.a (Reporting History and Timeliness Requirements) and II.B.1.b (Market Following Requirement).

⁴³⁶ See *supra* notes 49-50 and accompanying text.

§ 230.139b Publications or distributions of covered investment fund research reports by brokers or dealers distributing securities.

(a) *Registered offerings.* Under the conditions of paragraph (a)(1) or (2) of this section, the publication or distribution of a covered investment fund research report by a broker or dealer that is not an investment adviser to the covered investment fund and is not an affiliated person of the investment adviser to the covered investment fund shall be deemed for purposes of sections 2(a)(10) and 5(c) of the Act not to constitute an offer for sale or offer to sell a security that is the subject of an offering pursuant to a registration statement of the covered investment fund that is effective, even if the broker or dealer is participating or may participate in the registered offering of the covered investment fund's securities. This section does not affect the availability of any other exemption or exclusion from sections 2(a)(10) or 5(c) of the Act available to the broker or dealer.

(1) *Issuer-specific research reports.* (i) At the date of reliance on this section:

(A) The covered investment fund:

(1) Has been subject to the reporting requirements of section 30 of the Investment Company Act of 1940 (the "Investment Company Act") (15 U.S.C. 80a-29) for a period of at least 12 calendar months and has filed in a timely manner all of the reports required, as applicable, to be filed for the immediately preceding 12 calendar months on Forms N-CSR (§§ 249.331 and 274.128 of this chapter), N-Q (§§ 249.332 and 274.130 of this chapter), N-PORT (§ 274.150 of this chapter), N-MFP (§ 274.201 of this chapter), and N-CEN (§§ 249.330 and 274.101 of this chapter) pursuant to section 30 of the Investment Company Act; or

(2) If the covered investment fund is not a registered investment company under the Investment Company Act, has been subject to the reporting requirements of section 13 or section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78m or 78o(d)) for a period of at least 12 calendar months and has filed in a timely manner all of the reports required to be filed for the immediately preceding 12 calendar months on Forms 10-K (§ 249.310 of this chapter) and 10-Q (§ 249.308a of this chapter), or 20-F (§ 249.220f of this chapter) pursuant to section 13 or section 15(d) of the Exchange Act; and

(B) At the time of the broker's or dealer's initial publication or distribution of a research report on the covered investment fund (or reinitiation

thereof), and at least quarterly thereafter;

(1) If the covered investment fund is of the type defined in paragraph (c)(2)(i) of this section, the aggregate market value of voting and non-voting common equity held by affiliates and non-affiliates equals or exceeds the aggregate market value specified in General Instruction I.B.1 of Form S-3 (§ 239.13 of this chapter);

(2) If the covered investment fund is of the type defined in paragraph (c)(2)(ii) of this section, the aggregate market value of voting and non-voting common equity held by non-affiliates equals or exceeds the aggregate market value specified in General Instruction I.B.1 of Form S-3 (§ 239.13 of this chapter); or

(3) If the covered investment fund is a registered open-end investment company (other than an exchange-traded fund) its net asset value (inclusive of shares held by affiliates and non-affiliates) equals or exceeds the aggregate market value specified in General Instruction I.B.1 of Form S-3 (§ 239.13 of this chapter); and

(ii) The broker or dealer publishes or distributes research reports in the regular course of its business and, in the case of a research report regarding a covered investment fund that does not have a class of securities in substantially continuous distribution, such publication or distribution does not represent the initiation of publication of research reports about such covered investment fund or its securities or reinitiation of such publication following discontinuation of publication of such research reports.

(2) *Industry reports.* (i) The covered investment fund is subject to the reporting requirements of section 30 of the Investment Company Act or, if the covered investment fund is not a registered investment company under the Investment Company Act, is subject to the reporting requirements of section 13 or section 15(d) of the Exchange Act;

(ii) The covered investment fund research report:

(A) Includes similar information with respect to a substantial number of covered investment fund issuers of the issuer's type (e.g., money market fund, bond fund, balanced fund, etc.), or investment focus (e.g., primarily invested in the same industry or sub-industry, or the same country or geographic region); or

(B) Contains a comprehensive list of covered investment fund securities currently recommended by the broker or dealer (other than securities of a covered investment fund that is an affiliate of the broker or dealer, or for which the

broker or dealer serves as investment adviser (or for which the broker or dealer is an affiliated person of the investment adviser));

(iii) The analysis regarding the covered investment fund issuer or its securities is given no materially greater space or prominence in the publication than that given to other covered investment fund issuers or securities; and

(iv) The broker or dealer publishes or distributes research reports in the regular course of its business and, at the time of the publication or distribution of the research report (in the case of a research report regarding a covered investment fund that does not have a class of securities in substantially continuous distribution), is including similar information about the issuer or its securities in similar reports.

(3) *Disclosure of standardized performance.* In the case of a research report about a covered investment fund that is a registered open-end management investment company or a trust account (or series or class thereof), any quotation of the issuer's performance must be presented in accordance with the conditions of paragraphs (d), (e), and (g) of § 230.482. In the case of a research report about a covered investment fund that is a registered closed-end investment company, any quotation of the issuer's performance must be presented in a manner that is in accordance with instructions to item 4.1(g) of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), provided, however, that other historical measures of performance may also be included if any other measurement is set out with no greater prominence than the measurement that is in accordance with the instructions to item 4.1(g) of Form N-2.

(b) *Self-regulatory organization rules.* A self-regulatory organization shall not maintain or enforce any rule that would prohibit the ability of a member to publish or distribute a covered investment fund research report solely because the member is also participating in a registered offering or other distribution of any securities of such covered investment fund; or to participate in a registered offering or other distribution of securities of a covered investment fund solely because the member has published or distributed a covered investment fund research report about such covered investment fund or its securities. For purposes of section 19(b) of the Exchange Act (15 U.S.C. 78s(b)), this paragraph (b) shall be deemed a rule under that Act.

(c) *Definitions.* For purposes of this section:

(1) *Affiliated person* has the meaning given the term in section 2(a) of the Investment Company Act.

(2) *Covered investment fund* means:

(i) An investment company (or a series or class thereof) registered under, or that has filed an election to be treated as a business development company under, the Investment Company Act and that has filed a registration statement under the Act for the public offering of a class of its securities, which registration statement has been declared effective by the Commission; or

(ii) A trust or other person:

(A) Issuing securities in an offering registered under the Act and which class of securities is listed for trading on a national securities exchange;

(B) The assets of which consist primarily of commodities, currencies, or derivative instruments that reference commodities or currencies, or interests in the foregoing; and

(C) That provides in its registration statement under the Act that a class of its securities are purchased or redeemed, subject to conditions or limitations, for a ratable share of its assets.

(3) *Covered investment fund research report* means a research report published or distributed by a broker or dealer about a covered investment fund or any securities issued by the covered investment fund, but does not include a research report to the extent that the research report is published or distributed by the covered investment fund or any affiliate of the covered investment fund, or any research report published or distributed by any broker or dealer that is an investment adviser (or any affiliated person of an investment adviser) for the covered investment fund.

(4) *Exchange-traded fund* has the meaning given the term in General Instruction A to Form N-1A (§§ 239.15A and 274.11A of this chapter).

(5) *Investment adviser* has the meaning given the term in section 2(a) of the Investment Company Act.

(6) *Research report* means a written communication, as defined in § 230.405 that includes information, opinions, or

recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

■ 4. Effective May 1, 2020, amend § 230.139b by removing “N-Q (§§ 249.332 and 274.130 of this chapter),” in paragraph (a)(1)(i)(A)(1).

PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 5. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k-1(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd-1, 78mm, 80a-23, 80a-29, and 80a-37.

■ 6. Section 242.101 is amended by revising paragraph (b)(1) to read as follows:

§ 242.101 Activities by distribution participants.

* * * * *

(b) * * *

(1) *Research.* The publication or dissemination of any information, opinion, or recommendation, if the conditions of § 230.138, § 230.139, or § 230.139b of this chapter are met; or
* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 7. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; and 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112-106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112-106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114-94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

■ 8. Amend Form 12b-25 (referenced in § 249.322) as follows:

■ a. On the cover page accompanying the checkboxes, removing the phrase “Form N-SAR” and adding in its place “Form N-CEN”;

■ b. On the cover page below the checkboxes, removing the checkbox and accompanying phrase “Transition Report on Form N-SAR”;

■ c. In Part II, removing the phrase “Form N-SAR” and adding in its place “Form N-CEN”; and

■ d. In Part III, removing the phrase “Form N-SAR” and adding in its place “Form N-CEN”.

Note: the text of Form 12b-25 does not, and this amendment will not, appear in the Code of Federal Regulations.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 9. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, 80a-39, and Pub. L. 111-203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 10. Add § 270.24b-4 to read as follows:

§ 270.24b-4 Filing copies of covered investment fund research reports.

A covered investment fund research report, as defined in paragraph (c)(3) of § 230.139b of this chapter under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), of a covered investment fund registered as an investment company under the Act, shall not be subject to section 24(b) of the Act or the rules and regulations thereunder, except that such report shall be subject to such section and the rules and regulations thereunder to the extent that it is otherwise not subject to the content standards in the rules of any self-regulatory organization related to research reports, including those contained in the rules governing communications with the public regarding investment companies or substantially similar standards.

By the Commission.

Dated: November 30, 2018.

Brent J. Fields,
Secretary.

[FR Doc. 2018-26613 Filed 12-12-18; 8:45 am]

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H.R. 390/P.L. 115-300

Iraq and Syria Genocide Relief and Accountability Act of 2018 (Dec. 11, 2018; 132 Stat. 4390)

H.R. 1074/P.L. 115-301

To repeal the Act entitled "An Act to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation". (Dec. 11, 2018; 132 Stat. 4395)

H.R. 2422/P.L. 115-302

Action for Dental Health Act of 2018 (Dec. 11, 2018; 132 Stat. 4396)

H.R. 4254/P.L. 115-303

Women in Aerospace Education Act (Dec. 11, 2018; 132 Stat. 4399)

H.R. 5317/P.L. 115-304

To repeal section 2141 of the Revised Statutes to remove the prohibition on certain alcohol manufacturing on

Indian lands. (Dec. 11, 2018; 132 Stat. 4401)

H.R. 6651/P.L. 115-305

PEPFAR Extension Act of 2018 (Dec. 11, 2018; 132 Stat. 4402)

S. 440/P.L. 115-306

To establish a procedure for the conveyance of certain Federal property around the Dickinson Reservoir in the State of North Dakota. (Dec. 11, 2018; 132 Stat. 4404)

S. 1768/P.L. 115-307

National Earthquake Hazards Reduction Program Reauthorization Act of 2018 (Dec. 11, 2018; 132 Stat. 4408)

S. 2074/P.L. 115-308

To establish a procedure for the conveyance of certain Federal property around the Jamestown Reservoir in the State of North Dakota, and for other purposes. (Dec. 11, 2018; 132 Stat. 4419)

S. 3389/P.L. 115-309

To redesignate a facility of the National Aeronautics and Space Administration. (Dec. 11, 2018; 132 Stat. 4423)

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