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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3

RIN 0510–AA04

Civil Monetary Penalty Inflation Adjustment for 2018

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Department of Agriculture's (USDA) civil monetary penalty regulations by making inflation adjustments as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: Effective March 14, 2018.

FOR FURTHER INFORMATION CONTACT: Heather Self, Esq., OGC, USDA, Room 3311–S, 1400 Independence Avenue SW, Washington, DC 20250–1400, (202) 720–5840.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), to improve the effectiveness of CMPs and to maintain their deterrent effect. The 2015 Act requires agencies to adjust for inflation annually.

Previously, the Inflation Adjustment Act required agencies to adjust CMP levels every 4 years based on the percentage by which the Consumer Price Index (CPI) for the month of June of the prior calendar year exceeded the CPI for the month of June of the calendar year during which the last adjustment was made. The Inflation Adjustment Act also capped the increase for each adjustment at 10 percent and rounded the adjustment based on the size of the penalty (for example, multiple of $10 in the case of penalties less than or equal to $100). The rounding process meant that penalties would often not be increased at all if the inflation factor was not large enough. Furthermore, the cap on increases of 10 percent in tandem with the rounding meant that the formula over time caused penalties to lose value relative to total inflation. The 2015 Act updates these requirements by prescribing that agencies make annual adjustments for inflation based on the CPI for the month of October and round to the nearest dollar after an initial adjustment.

In order to eliminate the inconsistent changes caused by the prior method, the 2015 Act reset the inflation adjustment by excluding prior inflationary adjustments under the Inflation Adjustment Act, which contributed to a decline in the real value of penalty levels. To do this, the 2015 Act provided that the initial adjustment would be the percentage by which the CPI for the month of October 2015 exceeded that of the month of October of the calendar year during which the amount of the CMP was originally established or otherwise adjusted under a provision of law other than the Inflation Adjustment Act. While the 2015 Act does not provide a cap on adjustments going forward, the initial adjustment under the 2015 Act did limit large CMP increases by providing that no initial adjustments could exceed 150 percent of the amount of the CMP as of the date the 2015 Act was enacted, November 2, 2015.

USDA's initial adjustment under the 2015 Act was published in the **Federal Register** on December 5, 2017 at 82 FR 57331. This final rule constitutes USDA's annual inflation adjustment for 2018.

In addition, this rule moves the CMPs previously administered by the former Grain Inspection, Packers and Stockyards Administration (GIPSA) to the Agricultural Marketing Service (AMS). GIPSA's CMPs previously were codified at 7 CFR 3.91(b)(6); they now will be codified with AMS's CMPs at 7 CFR 3.91(b)(1). GIPSA's section of the regulations at 7 CFR 3.91(b)(6) will become a reserved section. This move is in accordance with the reorganization announced by the Secretary of Agriculture on November 14, 2017 via Secretary's Memorandum Number 1076–18, which eliminated GIPSA as a standalone agency within USDA, revoked the delegations of authority to the Administrator of GIPSA found at 7 CFR 2.81, and delegated to the Administrator of AMS those same authorities found at 7 CFR 2.81.

Secretary's Memorandum Number 1076–18 also moved responsibility for the United States Warehouse Act and its associated CMP, see 7 U.S.C. 254, from the Farm Service Agency (FSA) to AMS. In accordance with the Secretary's Memorandum this rule moves the United States Warehouse Act CMP previously codified with FSA's CMPs in 7 CFR 3.91(b)(9) to be codified with AMS' CMPs in 7 CFR 3.91(b)(1). Additionally, as the United States Warehouse Act CMP was the only CMP codified in FSA's section. Accordingly, FSA's section of the regulations at 7 CFR 3.91(b)(9) will become a reserved section.

Lastly, this rule amends the maximum monetary penalty amounts imposed by the Animal and Plant Health Inspection Service (APHIS) for violating the Endangered Species Act of 1973 (ESA) and the Lacey Act Amendments of 1981 (Lacey Act), to be consistent with the inflationary adjustments established by the Department of the Interior, Fish and Wildlife Service (FWS). APHIS and FWS have joint jurisdiction over ESA and Lacey Act provisions that involve the importation and exportation of plants, and any violation thereof will be subject to the same maximum penalty, regardless of which agency institutes an enforcement action.

II. CMPs Affected by This Final Rule

Several USDA agencies administer laws that provide for the imposition of CMPs being adjusted by this final rule. Those agencies are:

(1) Agricultural Marketing Service;
(2) Animal and Plant Health Inspection Service;
(3) Food and Nutrition Service;
(4) Food Safety and Inspection Service;
(5) Forest Service;
(6) Federal Crop Insurance Corporation;
(7) Rural Housing Service,
(8) Commodity Credit Corporation, and
(9) Office of the Secretary.

The CMPs in this final rule are listed according to the applicable administering agency. The CMPs previously administered by GIPSA and FSA are now found in the section applicable to AMS.

III. Waiver of Proposed Rulemaking

In developing this final rule, we are waiving the usual notice of proposed rulemaking and public comment procedures contained in 5 U.S.C. 553. We have determined that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically the rulemaking comports with and is consistent with the statutory authority required by Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, as amended, with no issue of policy discretion. Accordingly, we have determined that opportunity for prior comment is unnecessary and contrary to the public interest, and we are issuing this revised regulation as a final rule that will apply to all future cases.

IV. Procedural Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this regulatory action does not meet the criteria for significant regulatory action pursuant to Executive Order 12866, Regulatory Planning and Review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

As indicated above, the provisions of this final rulemaking contain inflation adjustments in compliance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The great majority of individuals, organizations, and entities participating in the programs affected by this regulation do not engage in prohibited activities and practices that would result in civil monetary penalties being incurred. Accordingly, we believe that any aggregate economic impact of this revised regulation will be minimal, affecting only the limited number of program participants that may engage in prohibited behavior in violation of the statutes.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because USDA was not required to publish notice of proposed rulemaking under 5 U.S.C. 553 or any other law. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 7 CFR Part 3

Administrative practice and procedure, Debt management, Penalties.

For the reasons set forth in the preamble, amend 7 CFR part 3 as follows:

PART 3—DEBT MANAGEMENT

Subpart I—Adjusted Civil Monetary Penalties

■ 1. The authority citation for part 3, subpart I, continues to read as follows:

Authority: 28 U.S.C. 2461 note.

■ 2. Revise § 3.91(a)(1) and (2) and (b) to read as follows:

§ 3.91 Adjusted civil monetary penalties.

(a) * * *

(1) *Adjustments.* The Secretary will adjust the civil monetary penalties, listed in paragraph (b) of this section, to take account of inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, as amended.

(2) *Timing.* Any increase in the dollar amount of a civil monetary penalty listed in paragraph (b) of this section applies only to violations occurring after March 14, 2018.

* * * * *

(b) *Penalties*—(1) *Agricultural Marketing Service.* (i) Civil penalty for improper record keeping codified at 7 U.S.C. 136i–1(d), has: A maximum of $923 in the case of the first offense, and a minimum of $1,795 in the case of subsequent offenses, except that the penalty will be less than $1,795 if the Secretary determines that the person made a good faith effort to comply.

(ii) Civil penalty for a violation of the unfair conduct rule under the Perishable Agricultural Commodities Act, in lieu of license revocation or suspension, codified at 7 U.S.C. 499b(5), has a maximum of $5,029.

(iii) Civil penalty for violation of the licensing requirements under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499c(a), has a maximum of $1,605 for each such offense and not more than $401 for each day it continues, or a maximum of $401 for each offense if the Secretary determines the violation was not willful.

(iv) Civil penalty in lieu of license suspension under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499h(e), has a maximum penalty of $3,209 for each violative transaction or each day the violation continues.

(v) Civil penalty for a violation of the Export Apple Act, codified at 7 U.S.C. 586, has a minimum of $147 and a maximum of $14,665.

(vi) Civil penalty for a violation of the Export Grape and Plum Act, codified at 7 U.S.C. 596, has a minimum of $281 and a maximum of $28,061.

(vii) Civil penalty for a violation of an order issued by the Secretary under the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 608c(14)(B), has a maximum of $2,806. Each day the violation continues is a separate violation.

(viii) Civil penalty for failure to file certain reports under the Agricultural Adjustment Act, reenacted by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 610(c), has a maximum of $281.

(ix) Civil penalty for a violation of a seed program under the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of $96 and a maximum of $1,913.

(x) Civil penalty for failure to collect any assessment or fee for a violation of the Cotton Research and Promotion Act, codified at 7 U.S.C. 2112(b), has a maximum of $2,806.

(xi) Civil penalty for failure to pay, collect, or remit any assessment or fee for a violation of a program under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(1), has a minimum of $1,257 and a maximum of $12,570.

(xii) Civil penalty for failure to obey a cease and desist order under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(3), has a maximum of $1,257. Each day the violation continues is a separate violation.

(xiii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(1), has a minimum of $1,454 and a maximum of $14,544.

(xiv) Civil penalty for failure to obey a cease and desist order under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(3), has a maximum of $1,454. Each day the violation continues is a separate violation.

(xv) Civil penalty for failure to remit any assessment or fee or for a violation of a program under the Beef Research and Information Act, codified at 7 U.S.C. 2908(a)(2), has a maximum of $11,346.

(xvi) Civil penalty for failure to remit any assessment or for a violation of a program regarding wheat and wheat foods research, codified at 7 U.S.C. 3410(b), has a maximum of $2,806.

(xvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(1), has a minimum of $1,320 and a maximum of $13,205.

(xviii) Civil penalty for failure to obey a cease and desist order under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(3), has a maximum of $1,320. Each day the violation continues is a separate violation.

(xix) Civil penalty for violation of an order under the Dairy Promotion Program, codified at 7 U.S.C. 4510(b), has a maximum of $2,442.

(xx) Civil penalty for pay, collect, or remit any assessment or fee or for a violation of the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(1), has a minimum of $752 and a maximum of $7,520.

(xxi) Civil penalty for failure to obey a cease and desist order under the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(3), has a maximum of $752. Each day the violation continues is a separate violation.

(xxii) Civil penalty for a violation of a program under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(1)(A)(i), has a maximum of $2,269.

(xxiii) Civil penalty for failure to obey a cease and desist order under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(3)(A), has a maximum of $1,135. Each day the violation continues is a separate violation.

(xxiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(1), has a minimum of $1,135 and a maximum of $11,346.

(xxv) Civil penalty for failure to obey a cease and desist order under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(3), has a maximum of $1,135. Each day the violation continues is a separate violation.

(xxvi) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(c)(1), has a minimum of $1,848 and a maximum of $18,477.

(xxvii) Civil penalty for failure to obey a cease and desist order under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(e), has a maximum of $1,848.

(xxviii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(c)(1), has a minimum of $898 and a maximum of $8,977.

(xxix) Civil penalty for failure to obey a cease and desist order under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(e), has a maximum of $898. Each day the violation continues is a separate violation.

(xxx) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(c)(1), has a minimum of $898 and a maximum of $8,977.

(xxxi) Civil penalty for failure to obey a cease and desist order under the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(e), has a maximum of $898. Each day the violation continues is a separate violation.

(xxxii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Soybean Promotion, Research, and Consumer Information Act, codified a 7 U.S.C. 6307(c)(1)(A), has a maximum of $1,848.

(xxxiii) Civil penalty for failure to obey a cease and desist order under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(e), has a maximum of $9,239. Each day the violation continues is a separate violation.

(xxxiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(c)(1)(A), has a minimum of $898 and a maximum of $8,977, or in the case of a violation that is willful, codified at 7 U.S.C. 6411(c)(1)(B), has a minimum of $17,952 and a maximum of $179,522.

(xxxv) Civil penalty for failure to obey a cease and desist order under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(e), has a maximum of $9,239. Each day the violation continues is a separate violation.

(xxxvi) Civil penalty for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act of 1990, codified at 7 U.S.C. 6519(c), has a maximum of $17,952.

(xxxvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(c)(1)(A)(i), has a minimum of $847 and a maximum of $8,464.

(xxxviii) Civil penalty for failure to obey a cease and desist order under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(e)(1), has a maximum of $8,464. Each day the violation continues is a separate violation.

(xxxix) Civil penalty for a violation of a program under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(c)(1)(A), has a maximum of $1,650.

(xl) Civil penalty for failure to obey a cease and desist order under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(e), has a maximum of $824. Each day the violation continues is a separate violation.

(xli) Civil penalty for a violation of an order or regulation issued under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(c)(1), has a minimum of $1,558 and a maximum of $15,582 for each violation.

(xlii) Civil penalty for failure to obey a cease and desist order under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(e), has a minimum of $1,558 and a maximum of $15,582. Each day the violation continues is a separate violation.

(xliii) Civil penalty for a violation of an order or regulation issued under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(c)(1)(A)(i), has a maximum of $1,558 for each violation.

(xliv) Civil penalty for failure to obey a cease and desist order under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(e), has a maximum of $7,791. Each day the violation continues is a separate violation.

(xlv) Civil penalty for violation of an order or regulation issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(c)(1), has a minimum of $780 and a maximum of $7,791 for each violation.

(xlvi) Civil penalty for failure to obey a cease and desist order under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(e), has a maximum of $780. Each day the violation continues is a separate violation.

(xlvii) Civil penalty for a violation of an order or regulation under the Popcorn Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7487(a), has a maximum of $1,558 for each violation.

(xlviii) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of $8,977 for each violation.

(xlix) Civil penalty for violation of an order or regulation issued under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(c)(1)(A)(i), has a minimum of $1,417 and a maximum of $14,177 for each violation.

(l) Civil penalty for failure to obey a cease and desist order under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(e)(1), has a maximum of $14,177 for each offense. Each day the violation continues is a separate violation.

(li) Civil penalty for violation of certain provisions of the Livestock Mandatory Reporting Act of 1999, codified a 7 U.S.C. 1636b(a)(1), has a maximum of $14,665 for each violation.

(lii) Civil penalty for failure to obey a cease and desist order under the Livestock Mandatory Reporting Act of 1999, codified a 7 U.S.C. 1636b(g)(3), has a maximum of $14,665 for each violation. Each day the violation continues is a separate violation.

(liii) Civil penalty for failure to obey an order of the Secretary issued pursuant to the Dairy Product Mandatory Reporting program, codified at 7 U.S.C. 1637b(c)(4)(D)(iii), has a maximum of $14,177 for each offense.

(liv) Civil penalty for a willful violation of the Country of Origin Labeling program by a retailer or person engaged in the business of supplying a covered commodity to a retailer, codified at 7 U.S.C. 1638b(b)(2), has a maximum of $1,139 for each violation.

(lv) Civil penalty for violations of the Dairy Research Program, codified at 7 U.S.C. 4535 & 4510(b), has a maximum of $2,442 for each violation.

(lvi) Civil penalty for a packer or swine contractor violation, codified at 7 U.S.C. 193(b), has a maximum of $28,061.

(lvii) Civil penalty for a livestock market agency or dealer failure to register, codified at 7 U.S.C. 203, has a maximum of $1,913 and not more than $96 for each day the violation continues.

(lviii) Civil penalty for operating without filing, or in violation of, a stockyard rate schedule, or of a regulation or order of the Secretary made thereunder, codified at 7 U.S.C. 207(g), has a maximum of $1,913 and not more than $96 for each day the violation continues.

(lix) Civil penalty for a stockyard owner, livestock market agency, or dealer, who engages in or uses any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock, codified at 7 U.S.C. 213(b), has a maximum of $28,061.

(lx) Civil penalty for a stockyard owner, livestock market agency, or dealer, who knowingly fails to obey any order made under the provisions of 7 U.S.C. 211, 212, or 213, codified at 7 U.S.C. 215(a), has a maximum of $1,913.

(lxi) Civil penalty for live poultry dealer violations, codified at 7 U.S.C. 228b–2(b), has a maximum of $81,633.

(lxii) Civil penalty for a violation, codified at 7 U.S.C. 86(c), has a maximum of $274,235.

(lxiii) Civil penalty for failure to comply with certain provisions of the U.S. Warehouse Act, codified at 7 U.S.C. 254, has a maximum of $35,440 per violation if an agricultural product is not involved in the violation.

(2) *Animal and Plant Health Inspection Service.* (i) Civil penalty for a violation of the imported seed provisions of the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of $96 and a maximum of $1,913.

(ii) Civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of $11,390, and knowing failure to obey a cease and desist order has a civil penalty of $1,708.

(iii) Civil penalty for any person that causes harm to, or interferes with, an animal used for the purposes of official inspection by the Department, codified at 7 U.S.C. 2279e(a), has a maximum of $14,177.

(iv) Civil penalty for a violation of the Swine Health Protection Act, codified at 7 U.S.C. 3805(a), has a maximum of $28,061.

(v) Civil penalty for any person that violates the Plant Protection Act (PPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in the PPA, codified a 7 U.S.C. 7734(b)(1), has a maximum of the greater of: $70,881 in the case of any individual (except that the civil penalty may not exceed $1,417 in the case of an initial violation of the PPA by an individual moving regulated articles not for monetary gain), $354,402 in the case of any other person for each violation, $569,468 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and $1,138,937 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized us, defacing, or destruction of a certificate, permit, or other document provided for in the PPA that results in the person deriving pecuniary gain or causing pecuniary loss to another.

(vi) Civil penalty for any person (except as provided in 7 U.S.C. 8309(d)) that violates the Animal Health Protection Act (AHPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided under the AHPA, codified at 7 U.S.C. 8313(b)(1), has a maximum of the greater of: $68,027 in the case of any individual, except that the civil penalty may not exceed $1,360 in the case of an initial violation of the AHPA by an individual moving regulated articles not for monetary gain, $340,131 in the case of any other person for each violation, $569,468 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and $1,138,937 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided under the AHPA that results in the person's deriving pecuniary gain

or causing pecuniary loss to another person.

(vii) Civil penalty for any person that violates certain regulations under the Agricultural Bioterrorism Protection Act of 2002 regarding transfers of listed agents and toxins or possession and use of listed agents and toxins, codified at 7 U.S.C. 8401(i)(1), has a maximum of $340,131 in the case of an individual and $680,262 in the case of any other person.

(viii) Civil penalty for violation of the Horse Protection Act, codified at 15 U.S.C. 1825(b)(1), has a maximum of $5,612.

(ix) Civil penalty for failure to obey Horse Protection Act disqualification, codified at 15 U.S.C. 1825(c), has a maximum of $10,969.

(x) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any provision of the Endangered Species Act of 1973, any permit or certificate issued thereunder, or any regulation issued pursuant to section 9(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d) (other than regulations relating to record keeping or filing reports), (f), or (g), as set forth at 16 U.S.C. 1540(a)(1), has a maximum of $51,302 for each violation.

(xi) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any other regulation under the Endangered Species Act of 1973, as set forth at 16 U.S.C. 1540(a)(1), has a maximum of $24,625 for each violation.

(xii) Civil penalty for violating, with respect to terrestrial plants, the Endangered Species Act of 1973, or any regulation, permit, or certificate issued thereunder, as set forth at 16 U.S.C. 1540(a)(1), has a maximum of $1,296 for each violation.

(xiii) Civil penalty for knowingly and willfully violating 49 U.S.C. 80502 with respect to the transportation of animals by any rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel, codified at 49 U.S.C. 80502(d), has a minimum of $165 and a maximum of $824.

(xiv) Civil penalty for a violation of the Commercial Transportation of Equine for Slaughter Act, 7 U.S.C. 1901 note, and its implementing regulations in 9 CFR part 88, as set forth in 9 CFR 88.6, has a maximum of $5000. Each horse transported in violation of Part 88 is a separate violation.

(xv) Civil penalty for knowingly violating section 3(d) or 3(f) of the Lacey Act Amendments of 1981, or for violating any other provision provided that, in the exercise of due care, the violator should have known that the plant was taken, possessed, transported, or sold in violation of any underlying law, treaty, or regulation, has a maximum of $25,928 for each violation, as set forth at 16 U.S.C. 3373(a)(1) (but if the plant has a market value of less than $350, and involves only the transportation, acquisition, or receipt of a plant taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty shall not exceed the maximum provided for violation of said law, treaty, or regulation, or $25,928, whichever is less).

(xvi) Civil penalty for violating section 3(f) of the Lacey Act Amendments of 1981, as set forth at 16 U.S.C. 3373(a)(2), has a maximum of $648.

(3) *Food and Nutrition Service.* (i) Civil penalty for violating a provision of the Food and Nutrition Act of 2008 (Act), or a regulation under the Act, by a retail food store or wholesale food concern, codified at 7 U.S.C. 2021(a) and (c), has a maximum of $113,894 for each violation.

(ii) Civil penalty for trafficking in food coupons, codified at 7 U.S.C. 2021(b)(3)(B), has a maximum of $41,042 for each violation, except that the maximum penalty for violations occurring during a single investigation is $73,906.

(iii) Civil penalty for the sale of firearms, ammunitions, explosives, or controlled substances for coupons, codified at 7 U.S.C. 2021(b)(3)(C), has a maximum of $36,953 for each violation, except that the maximum penalty for violations occurring during a single investigation is $73,906.

(iv) Civil penalty for any entity that submits a bid to supply infant formula to carry out the Special Supplemental Nutrition Program for Women, Infants and Children and discloses the amount of the bid, rebate, or discount practices in advance of the bid opening or for any entity that makes a statement prior to the opening of bids for the purpose of influencing a bid, codified at 42 U.S.C. 1786(h)(8)(H)(i), has a maximum of $173,951,364.

(v) Civil penalty for a vendor convicted of trafficking in food instruments, codified at 42 U.S.C. 1786(o)(1)(A) and 42 U.S.C. 1786(o)(4)(B), has a maximum of $15,041 for each violation, except that the maximum penalty for violations occurring during a single investigation is $60,161.

(vi) Civil penalty for a vendor convicted of selling firearms, ammunition, explosive, or controlled substances in exchange for food instruments, codified at 42 U.S.C. 1786(o)(1)(B) and 42 U.S.C. 1786(o)(4)(B), has a maximum of $15,041 for each violation, except that the maximum penalty for violations occurring during a single investigation is $60,161.

(4) *Food Safety and Inspection Service.* (i) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of $8,977 for each violation.

(ii) [Reserved]

(5) *Forest Service.* (i) Civil penalty for willful disregard of the prohibition against the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(1)(A), has a maximum of $923,831 per violation or three times the gross value of the unprocessed timber, whichever is greater.

(ii) Civil penalty for a violation in disregard of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(i), has a maximum of $138,575 per violation.

(iii) Civil penalty for a person that should have known that an action was a violation of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(ii), has a maximum of $92,383 per violation.

(iv) Civil penalty for a willful violation of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(iii), has a maximum of $923,831.

(v) Civil penalty for a violation involving protections of caves, codified at 16 U.S. C. 4307(a)(2), has a maximum of $20,191.

(6) [Reserved]

(7) *Federal Crop Insurance Corporation.* (i) Civil penalty for any person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation or to an approved insurance provider with respect to any insurance plan or policy that is offered under the authority of the Federal Crop

Insurance Act, or who fails to comply with a requirement of the Federal Crop Insurance Corporation, codified at 7 U.S.C. 1515(h)(3)(A), has a maximum of the greater of: the amount of the pecuniary gain obtained as a result of the false or inaccurate information or the noncompliance; or $11,984.

(ii) [Reserved]

(8) *Rural Housing Service.* (i) Civil penalty for a violation of section 536 of Title V of the Housing Act of 1949, codified at 42 U.S.C. 1490p(e)(2), has a maximum of $196,387 in the case of an individual, and a maximum of $1,963,870 in the case of an applicant other than an individual.

(ii) Civil penalty for equity skimming under section 543(a) of the Housing Act of 1949, codified at 42 U.S.C. 1490s(a)(2), has a maximum of $35,440.

(iii) Civil penalty under section 543b of the Housing Act of 1949 for a violation of regulations or agreements made in accordance with Title V of the Housing Act of 1949, by submitting false information, submitting false certifications, failing to timely submit information, failing to maintain real property in good repair and condition, failing to provide acceptable management for a project, or failing to comply with applicable civil rights statutes and regulations, codified at 42 U.S.C. 1490s(b)(3)(A), has a maximum of the greater of: twice the damages the Department, guaranteed lender, or project that is secured for a loan under Title V, suffered or would have suffered as a result of the violation; or $70,881 per violation.

(9) [Reserved]

(10) *Commodity Credit Corporation.* (i) Civil penalty for willful failure or refusal to furnish information, or willful furnishing of false information under of section 156 of the Federal Agricultural Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of $15,582 for each violation.

(ii) Civil penalty for willful failure or refusal to furnish information or willful furnishing of false data by a processor, refiner, or importer of sugar, syrup and molasses under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of $15,582 for each violation.

(iii) Civil penalty for filing a false acreage report that exceeds tolerance under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of $15,582 for each violation.

(iv) Civil penalty for knowingly violating any regulation of the Secretary of the Commodity Credit Corporation pertaining to flexible marketing allotments for sugar under section 359h(b) of the Agricultural Adjustment Act of 1938, codified at 7 U.S.C. 1359hh(b), has a maximum of $11,390 for each violation.

(v) Civil penalty for knowing violation of regulations promulgated by the Secretary pertaining to cotton insect eradication under section 104(d) of the Agricultural Act of 1949, codified at 7 U.S.C. 1444a(d), has a maximum of $14,031 for each offense.

(11) *Office of the Secretary.* (i) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent claim as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(1), has a maximum of $11,182.

(ii) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent written statement as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(2), has a maximum of $11,182.

Dated: March 6, 2018.

Stephen Censky,

Deputy Secretary, U.S. Department of Agriculture.

[FR Doc. 2018–04832 Filed 3–13–18; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. AMS–SC–17–0048; SC17–983–2 FIR]

Pistachios Grown in California, Arizona, and New Mexico; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture adopts as final, without change, an interim rule that implemented a recommendation from the Administrative Committee for Pistachios (Committee) to decrease the assessment rate established for the 2017–18 and subsequent production years and administrative revisions to the subpart headings to bring the language into conformance with the Office of Federal Register requirements.

DATES: Effective March 15, 2018.

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

Small businesses may request information on complying with this and other marketing order regulations by viewing a guide at the following website: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses;* or by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 983, both as amended (7 CFR part 983), regulating the handling of pistachios grown in California, Arizona, and New Mexico. Part 983 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of growers and handlers of pistachios operating within the area of production, and a public member.

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

Under the Order, pistachio handlers in California, Arizona, and New Mexico are subject to assessments, which provide funds to administer the Order. Assessment rates issued under the Order are intended to be applicable to all assessable pistachios for the entire production year, and continue indefinitely until amended, suspended, or terminated. The Committee's

production year begins on September 1 and ends on August 31.

In an interim rule published in the **Federal Register** on October 24, 2017, and effective on October 24, 2017, (82 FR 49087, Doc No. AMS–SC–17–0048; SC17–983–2 IR), § 983.253 was amended by decreasing the assessment rate established for pistachios grown in California, Arizona, and New Mexico for the 2017–18 and subsequent production years from $0.0010 to $0.0001 per pound of assessed weight pistachios handled. The decreased assessment rate allows the Committee to maintain their financial reserve at the limit specified under the Order while providing adequate funding to meet program expenses.

Final Regulatory Flexibility Analysis

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

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

There are 18 handlers subject to regulation under the order and approximately 1,236 producers of pistachios in the production area. Small agricultural service firms are defined by the Small Business Administration as those having annual receipts of less than $7,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on Committee data, it is estimated that about 50 percent of the handlers annually ship less than $7,500,000 worth of pistachios. Nine of the 18 (50 percent) regulated handlers received enough pistachios at an average price of $2.50 per pound to be considered large handlers, leaving the percentage of small handlers at 50 percent.

The National Agricultural Statistics Service (NASS) 2012 data on pistachio farm size indicates that there were 1,305 pistachio farms, of which 945, or 72 percent, were less than 100 acres. NASS 2016 annual production data indicates that the per-acre production of pistachios was 3,750 pounds. At an average value of $1.68 per pound, each acre of pistachios could return $6,300. In order for a producer to have $750,000 in annual receipts, the producer would have to have at least 119 acres. Thus, about half the handlers and a majority of the producers in the production area may be classified as small entities.

This rule continues in effect the interim rule that decreased the assessment rate established and collected from handlers for the 2017–18 and subsequent production years from $0.0010 to $0.0001 per pound of pistachios handled. The Committee unanimously recommended 2017–18 expenditures of $672,900, and recommended an assessment rate of $0.0001 per pound of assessed weight pistachios, by majority vote. The $0.0001 assessment rate is $0.0009 lower than the rate previously in effect. The quantity of assessable pistachios for the 2017–18 production year is estimated at 550 million pounds. Thus, the $0.0001 rate should provide $55,000 in assessment income. Income derived from handler's assessments, along with interest income, California Pistachio Research Board (CPRB) management income, and funds from the Committee's authorized reserve, will be adequate to cover expenses for the 2017–18 production year, while not adding to the financial reserve.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

Additionally, the Committee's meetings were widely publicized throughout the California, Arizona, and New Mexico pistachio industry, and all interested persons were invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the July 10, 2017, and August 1, 2017, meetings were public meetings and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0215, ''Vegetable and Specialty Crop Marketing Orders.'' No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large California, Arizona, and New Mexico pistachio handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

Comments on the interim rule were required to be received on or before December, 26, 2017. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *https://www.regulations.gov/document?D=AMS-SC-17-0048.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, 13175, 13563, and 13771; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (82 FR 49087 October 24, 2017) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

PART 983—PISTACHIOS GROWN IN CALIFORNIA, ARIZONA, AND NEW MEXICO

■ Accordingly, the interim rule amending 7 CFR part 983, which was published at 82 FR 49087 on October 24, 2017, is adopted as final, without change.

Dated: March 9, 2018.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2018–05144 Filed 3–13–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1212

[Document Number AMS–SC–16–0124]

Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order; Change in Producer Eligibility Requirements and Implementation of Charges for Past Due Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the eligibility requirements for producer representatives on the Honey Packers and Importers Board (Board) and prescribes late payment and interest charges on past due assessments under the Agricultural Marketing Service's (AMS) regulation regarding a national research and promotion program for honey and honey products. This rule reduces the minimum production requirement for producers to serve on the Board and thereby allow more producers to be eligible to serve on the Board. This rule also prescribes late payment and interest charges on past due assessments to help facilitate program administration.

DATES: Effective Date: April 13, 2018.

FOR FURTHER INFORMATION CONTACT: Sue Coleman, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244; telephone: (202)378–2569; facsimile: (202) 205–2800; or electronic mail: *Sue.Coleman@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule affecting 7 CFR part 1212 is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This rule revises the eligibility requirements for producer representatives on the Board and prescribes late payment and interest charges on past due assessments under the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order. The part is administered by the Board with oversight by USDA. Under the part, assessments are collected from first handlers and importers and used for research and promotion projects designed to maintain and expand the market for honey and honey products in the United States and abroad. This rule reduces the minimum production requirement for producers to serve on the Board from 150,000 to 50,000 pounds annually and thereby allow more producers to be eligible to serve on the Board. This rule also prescribes late payment and interest charges on past due assessments to help facilitate program administration. Both of these actions were unanimously recommended by the Board.

Producer Eligibility Requirements

Section 1212.46 of the part provides authority for the Board to recommend amendments to the part. Section 1212.40 of the part provides that the Board have ten members—three first handlers, two importers, one importer-handler, three producers, and one marketing cooperative representative. Currently, eligible producers must produce a minimum of 150,000 pounds of honey in the United States annually based on the best three-year average of the most recent five calendar years.

The Board has had difficulty over the past few years in identifying honey producers who meet the current eligibility requirement for production volume. U.S. honey production has decreased and fewer producers can meet the part's eligibility requirement. USDA's National Agricultural Statistics Service estimates U.S. honey production from producers with 5 or more colonies at 164 million pounds in 2008 [1] and at 156 million pounds in 2015.[2] The Board has been having difficulties identifying producer nominees who produce over the 150,000 pound threshold.

Thus, the Board formed a subcommittee in October 2015 to review this issue. Over the following six months, the Board conducted outreach with beekeeping associations to gather input about the need and the level to reduce the annual production volume requirement for producers to serve on the Board. The recommendation from

[1] USDA, National Agricultural Statistics Service, Honey Final Estimates 2008–2012, September 2014, p. 4; *http://usda.mannlib.cornell.edu/usda/nass/SB1039/sb1039.pdf.*

[2] USDA, National Agricultural Statistics Service, Honey, March 22, 2017, p. 2, *http://usda.mannlib.cornell.edu/usda/current/Hone/Hone-03-22-2017.pdf.*

the associations to the subcommittee was that the minimum production requirement for producers be set at 50,000 pounds to increase the pool of eligible producers.

The Board met in April 2016 and unanimously recommended that the part's minimum production requirement for producers be reduced from 150,000 to 50,000 pounds. This should allow more producers to be eligible to serve on the Board. Section 1212.40 of the part is revised accordingly.

Charges on Past Due Assessments

Section 1212.52 of the part specifies that the Board will cover its expenses by levying an assessment on first handlers and importers. First handlers must pay their assessments to the Board on a monthly basis no later than the fifteenth day of the month following the month in which the honey or honey products were marketed. Importers must pay assessments to the Board on honey and honey products imported into the United States through the U.S. Customs and Border Protection (Customs). If Customs does not collect an assessment from an importer, the importer must pay the assessment directly to the Board.

The honey program also provides for two exemptions. Pursuant to § 1212.53, first handlers and importers who handle or import less than 250,000 pounds of honey or honey products annually, and first handlers and importers of organic honey and honey products are exempt from the payment of assessments.

Section 1212.52(g) of the part specifies that the Board shall impose a late payment charge on any first handler or importer who fails to pay their assessments to the Board on time. First handlers or importers subject to a late payment charge must also pay interest on the unpaid assessments for which they are liable. The late payment and interest charges must be prescribed in regulations issued by USDA.

Assessment funds are used by the Board for activities designed to benefit all industry members. Thus, it is important that all assessed entities pay their assessments in a timely manner. Entities who fail to pay their assessments on time would be able to reap the benefits of Board programs at the expense of others. In addition, they would be able to utilize funds for their own use that should otherwise be paid to the Board to finance Board programs.

Thus, the Board recommended that rates of late payment and interest charges for past due assessments be prescribed in the part's regulations. A late payment charge will be imposed upon first handlers and importers who fail to pay their assessments to the Board within 30 calendar days of the date when assessments are due. This one-time late payment charge will be 10 percent of the assessments due before interest charges have accrued.

Additionally, interest at a rate of ⅔ of 1 percent per month on the outstanding balance (which computes to an annual rate of 8 percent), including any late payment and accrued interest, will be added to any accounts for which payment has not been received within 30 calendar days of the date when assessments are due. Interest will continue to accrue monthly until the outstanding balance is paid to the Board.

This action is expected to help facilitate program administration by providing an incentive for entities to remit their assessments in a timely manner, with the intent of creating a fair and equitable process among all assessed entities. Accordingly, a new subpart C is added to the part's regulations regarding past due assessments, and a new § 1212.520 is added to subpart C.

Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of this rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000, and small agricultural service firms (first handlers and importers) as those having annual receipts of no more than $7.5 million.

The Board reported that there are about 752 importers and 41 first handlers of honey and honey products covered under the program during the 2016 fiscal period. Seventeen out of the 41 first handlers (41 percent) and 25 out of the 752 importers (3 percent) accounted for 90 percent of the assessments in their respective categories. Total assessments for 2016 were $6.74 million, of which $1.75 million (26 percent) came from first handlers and $4.99 million (74 percent) was paid by importers. This data can be used to compute an estimate of average annual revenue from honey sales from each of these categories, which in turn helps to estimate the number of large and small first handlers and importers. As mentioned above, 17 first handlers account for 90 percent of the domestic assessments. Multiplying first handler assessments in 2016 of $1,750,155 by 0.9 and then dividing by 17 yields an average annual assessment of $92,655 for the first handlers in this category. Dividing this figure ($92,655) by the assessment rate of 1.5 cents per pound ($0.015) yields an average quantity per first handler of 6.177 million pounds. Multiplying 6.177 million pounds by the average 2016 U.S. domestic price of $2.08 per pound [3] yields an average, annual honey revenue per handler of $12.85 million, which is well above the SBA threshold of $7.5 million. It should be noted that this revenue estimate is based on the average price at the producer level, and the $12.85 million is an estimate of the total value at which the average size handler acquired the honey from producers. Therefore, most of the 17 first handlers that pay 90 percent of the domestic assessments are likely to be large firms according to the SBA definition.

An equivalent computation can be made for the 25 importers who paid 90 percent of the $4,991,926 in assessments in 2016. Of the 25 importers, the average assessment per importer was $179,709. Dividing the average assessment per importer by the assessment rate of $0.015 per pound yields an average quantity per importer estimate of 11.981 million pounds.

For honey imports, the equivalent of the season average price for domestic honey is referred to as a ''unit value.'' The unit value of $1.24 per pound is computed by dividing annual imported honey value of $417.31 million by average quantity of 335.69 million pounds (import data from the Foreign Agricultural Service). Multiplying the $1.24 unit value by the average quantity of 11.981 million pounds yields average annual honey revenue per importer figure of $14.856 million, almost two times the SBA threshold figure of $7.5 million for a large firm. Therefore, the majority of the 25 importers that pay 90 percent of the assessments are large firms, according to the SBA definition.

Comparable computations can be made to determine the average 2016 honey revenue for the 24 first handlers and 727 importers that paid 10 percent of the assessments in the first handler and importer categories. The first handler and importer average annual honey revenue figures are approximately $1,011,000 and $57,000,

[3] USDA, NASS, Honey, March 22, 2017, p. 3, *http://usda.mannlib.cornell.edu/usda/current/Hone/Hone-03-22-2017.pdf.*

respectively, indicating that the vast majority are small businesses (in terms of honey sales), under the SBA large business threshold of $7.5 million in annual sales.

Based on the foregoing, the majority of first handlers and importers may be classified as small entities.

This rule relaxes the part's eligibility requirements for producer representatives on the Board as specified in section 1212.40 of the part. The program currently requires that producer representatives produce a minimum of 150,000 pounds of honey (based on the best three year average of the most recent five calendar years) in the United States annually. U.S. honey production has been decreasing and fewer producers can meet this eligibility requirement. Thus, the Board unanimously recommended reducing the minimum production requirement from 150,000 to 50,000 pounds annually. This will allow for a greater pool of producer nominees to be eligible to serve on the Board. Authority for this action is provided in § 1212.46(d) of the part.

This rule also prescribes charges for past due assessments under the part. A new § 1212.520 is added to the part specifying a one-time late payment charge of 10 percent of the assessments due and interest at a rate of ⅔ of 1 percent per month (or 8 percent on an annual basis) on the outstanding balance, including any late payment and accrued interest. This section is included in a new subpart C—Past Due Assessments. Authority for this action is provided in § 1212.52(g) of the part and section 517(e) of the 1996 Act.

Regarding the economic impact of this rule on affected entities, relaxing the eligibility requirements for producer representatives on the Board is administrative in nature and will have no economic impact on entities covered under the program. This change will help increase the number of producers who will be eligible to serve on the Board. Eligible producers, first handlers and importers interested in serving on the Board will have to complete a background questionnaire. Those requirements are addressed later in this rule in the section titled *Reporting and Recordkeeping Requirements.*

Prescribing charges for past due assessments will impose no additional costs on first handlers and importers who pay their assessments on time. It merely provides an incentive for entities to remit their assessments in a timely manner. For all entities who are delinquent in paying assessments, both large and small, the charges will be applied uniformly. As for the impact on the industry as a whole, this action will help facilitate program administration by providing an incentive for entities to remit their assessments in a timely manner, with the intent of creating a fair and equitable process for all assessed entities.

Additionally, as previously mentioned, the part also provides for two exemptions. First handlers and importers who handle or import less than 250,000 pounds of honey or honey products annually, and first handlers and importers of organic honey and honey products are exempt from the payment of assessments.

Regarding alternatives, one option to the action regarding producer eligibility would be to maintain the status quo and not reduce the production threshold for producers to be eligible to serve on the Board. However, the Board has been having difficulty identifying producer nominees who produce over 150,000 pounds of honey annually. After outreach to beekeeping associations, the Board concluded that reducing the minimum production requirement for producers from 150,000 to 50,000 pounds annually is appropriate to increase the pool of eligible producers.

Likewise, an alternative to the action to prescribe late payment and interest charges for past due assessments would be to maintain the status quo and not prescribe these charges. However, the Board determined that implementing such charges will help facilitate program administration by encouraging entities to pay their assessments in a timely manner. The Board reviewed rates of late payment and interest charges prescribed in other research and promotion programs and concluded that the late payment charge and the interest charge contained in this rule is appropriate.

Reporting and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are imposed by the part have been previously approved by OMB under OMB control number 0581–0093. Additionally, Board nominees (including producers) must submit a Background Information form (AD–755) to ensure they are qualified to serve on the Board. The time to complete that form is estimated at 30 minutes per response. The background form is approved under OMB control no. 0505–0001. This rule will not result in a change to the information collection and recordkeeping requirements previously approved and will impose no additional reporting requirements and recordkeeping burden on honey producers, first handlers or importers.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Regarding outreach efforts, as previously mentioned, this action was discussed at a subcommittee in October 2015. The Board conducted outreach over the following six months to beekeeping associations to gather input about the need to reduce the annual production volume requirement for eligible producers on the Board. The Board met in April 2016 and unanimously recommended reducing the production volume requirement from 150,000 to 50,000 pounds annually. The Board also recommended prescribing late payment charges and interest on past due assessments in the part's regulations. All of the Board's meetings are open to the public and interested persons are invited to participate and express their views.

A proposed rule concerning this action was published in the **Federal Register** on December 22, 2017 (82 FR 60687). The Board sent the proposed rule directly to beekeeping associations, the Board, and assessment payers. Additionally, the Board included notification about the proposal and internet links in its industry newsletter. Finally, the proposal was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 22, 2018, was provided to allow interested persons to submit comments.

Analysis of Comment

One comment was received in response to the proposed rule. The comment requested two public seats on the Board because of taxpayer dollars and environmental concerns. Currently, the plan does not authorize a Board public member. The national research and promotion program for honey and honey products is funded through assessments paid by honey first handlers and importers. This comment is considered outside the scope. These types of concerns can be presented to the Board for their consideration. In addition, all Board meetings are open to the public to attend. No changes have been made to the rule based on this comment.

After consideration of all relevant matters presented, including the information and recommendation

submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, is consistent with and will effectuate the purposes of the 1996 Act.

List of Subjects in 7 CFR Part 1212

Administrative practice and procedure, Advertising, Consumer information, Honey Packer and Importer promotion, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1212 is amended as follows:

PART 1212—HONEY PACKERS AND IMPORTERS RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1212 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. Section 1212.40 is revised to read as follows:

§ 1212.40 Establishment and membership.

The Honey Packers and Importers Board is established to administer the terms and provisions of this part. The Board shall have ten members, composed of three first handler representatives, two importer representatives, one importer-handler representative, three producer representatives, and one marketing cooperative representative. The importer-handler representative must import at least 75 percent of the honey or honey products they market in the United States and handle at least 250,000 pounds annually. In addition, the producer representatives must produce a minimum of 50,000 pounds of honey in the United States annually based on the best three-year average of the most recent five calendar years, as certified by producers. The Secretary will appoint members to the Board from nominees submitted in accordance with § 1212.42. The Secretary shall also appoint an alternate for each member.

■ 3. Subpart C is added to read as follows:

Subpart C—Past Due Assessments

§ 1212.520 Late payment and interest charges for past due assessments.

(a) A late payment charge will be imposed on any first handler or importer who fails to make timely remittance to the Board of the total assessments for which they are liable. The late payment will be imposed on any assessments not received within 30 calendar days of the date when assessments are due. This one-time late payment charge will be 10 percent of the assessments due before interest charges have accrued.

(b) In addition to the late payment charge, ⅔ of 1 percent per month (or an annual rate of 8 percent) interest on the outstanding balance, including any late payment and accrued interest, will be added to any accounts for which payment has not been received within 30 calendar days of the date when assessments are due. Interest will continue to accrue monthly until the outstanding balance is paid to the Board.

Dated: March 8, 2018.

Bruce Summers,

Acting Administrator.

[FR Doc. 2018–05063 Filed 3–13–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 101 and 114

[Docket No. APHIS–2009–0028]

RIN 0579–AD06

Viruses, Serums, Toxins, and Analogous Products; Expiration Date Required for Serial and Subserials and Determination of Expiration Date of Product

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to clarify that the expiration date of a serial or subserial of a veterinary biologic should be computed from the date of the initiation of the first potency test. We are also requiring the expiration dating period (stability) of a product to be confirmed by conducting a real-time stability study with a stability-indicating assay, stability monitoring of products after licensing, and specifying a single standard for determining the expiration date for veterinary biologics

DATES: Effective April 13, 2018.

FOR FURTHER INFORMATION CONTACT: Dr. Donna L. Malloy, Section Leader, Operational Support, Center for Veterinary Biologics Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road, Unit 148, Riverdale, MD 20737–1231; (301) 851–3426.

SUPPLEMENTARY INFORMATION:

Background

The Virus-Serum-Toxin Act regulations in 9 CFR part 114 (referred to below as the regulations), contain requirements for computing expiration dates and determining expiration dating periods (stability) for veterinary biologics. Currently, § 114.12 of the regulations requires each serial or subserial of veterinary biological products prepared in a licensed establishment to be given an expiration date, and § 114.13 provides that the expiration date for each product shall be computed from the date of the initiation of the potency test.

Prior to licensure, licensees and permittees must submit preliminary information to support the dating period shown on its labeling. Products are licensed with the provision that the dating period must be confirmed by real-time stability testing at the end of the predicted shelf life. Currently, the requirement in § 114.13 of the regulations for confirming stability is contingent upon whether a product consists of viable or non-viable organisms. For products consisting of viable organisms, each serial must be tested for potency at release and at the approximate expiration date until a statistically valid stability record has been established. For products consisting of non-viable organisms, each serial presented in support of licensure (prelicensing serials) must be tested for potency at release and at or after the dating requested. Products with satisfactory potency tests at the beginning and end of dating are considered to be efficacious throughout the requested dating period. Current science, however, considers stability estimates based on potency tests conducted at the beginning and end of the dating (a two-point profile) to be inaccurate and imprecise.[1]

To address this situation, on September 17, 2010, we published in the **Federal Register** (75 FR 56916–56919, Docket No. APHIS–2009–0028) a proposal[2] to amend the regulations by clarifying that the expiration date of a serial or subserial of a veterinary biologic should be computed from the date of the initiation of the first potency test. We also proposed to require the expiration dating period (stability) of a product to be confirmed by a real-time stability study with a stability-indicating assay; require stability

[1] Capen, R., *et al.* (2012). On the shelf life of pharmaceutical products. *AAPS PharmSciTech*. DOI: 10.1208/s12249–012–9815–2.

[2] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0028*.

monitoring of products after licensing; and specify a single standard for determining the expiration date for veterinary biologics.

We solicited comments concerning our proposal for 60 days ending November 16, 2010. We received eight comments by that date. They were from licensed manufacturers, national trade associations representing manufacturers of animal health products, a professional organization, and a private citizen. The comments are discussed below by topic.

In our review of the comments, it was evident that many commenters found the organization and wording of proposed § 114.13 to be confusing. For this reason, in addition to adopting some changes requested by commenters to the provisions, we have reorganized and reworded parts of this section to more clearly describe these requirements.

Definition of and Requirement To Use a Stability-Indicating Assay

We proposed to add a definition of the term *stability-indicating assay* to the regulations in part 101. One commenter stated that we did not identify the need for the addition of this definition to the regulations. Another commenter noted that we stated that product potency can degrade in a non-linear fashion and asked for clarification of why the profile of the degradation curve of a product is important in an assessment of product stability.

In the proposed rule, we noted that current science does not consider stability estimates based on potency tests conducted at the beginning and end of dating (that is, a two-point profile) to be either accurate or precise. A two point profile will determine a fixed line, but if a stability profile is non-linear, two points are inadequate to estimate the profile. Further, to estimate the precision even of a straight line would require at least three points. For this reason we proposed to amend § 114.13 to require testing of serials or subserials using a stability-indicating assay on multiple occasions throughout the predicted dating period, and to add a definition of the term *stability-indicating assay* to clarify what types of assays would be considered acceptable.

Two commenters stated that the Animal and Plant Health Inspection Service (APHIS) incorrectly cited the International Cooperation on Harmonization of Technical Requirements for the Registration of Veterinary Medicinal Products (VICH) guidelines in support of the proposed rule. The commenters stated that of the five VICH guidelines that address stability, only one, VICH GL 17, Stability Testing of Biotechnological/Biological Veterinary Medicinal Products, addresses biological products, and it only applies to well-characterized proteins and polypeptides, and their derivatives. The commenters also noted that VICH GL 17 specifically excludes conventional vaccines.

VICH is a project conducted under the World Organization for Animal Health that brings together the regulatory authorities of the European Union, Japan, and the United States and representatives from the animal health industry in the three regions. Regulatory authorities and industry experts from Australia, Canada, and New Zealand participate as observers. The purpose of VICH is to harmonize technical requirements for veterinary medicinal products (both pharmaceuticals and biologics).

The commenters' characterization of VICH GL 17 is correct; the scope of those guidelines is limited to biotechnological/biological products and therefore they exclude conventional vaccines and numerous other products. However, the suggestion that APHIS proposed to apply the guidelines for biotechnological/biological products inappropriately to conventional vaccines is mistaken. We did not cite any VICH guidelines as a basis for the proposed rule. Rather, in the economic analysis that accompanied the proposed rule, we stated that the proposed changes were consistent with VICH recommendations, and we continue to believe that this statement is correct. We note that neither the VICH guidelines nor our regulations give specific, step-by-step directions for determining stability, nor is this rule intended to provide such directions. Instead, we state that expiration dating period (stability) of a product should be confirmed by conducting a real-time stability study with a stability-indicating assay.

Some commenters expressed concern that the proposed definition and its use in § 114.13 would require potency tests to be quantitative. The commenters noted that the potency tests for many licensed products, some of which are codified in the regulations, are not quantitative. The commenters stated that this change would force licensees to develop and validate additional assays for many products and would create conflicts with the existing regulations. One commenter stated that developing these additional assays would be expensive, would not improve the quality of the products, would divert resources from new product development, and could lead to some products being discontinued. Another commenter stated that it was unclear why non-quantitative assays are being excluded, because in many cases these assays are sufficient to determine whether or not a product has remained potent throughout the dating period.

The rule calls for a stability-indicating assay, which is one that can detect changes over time. Non-quantitative assays are not stability-indicating because they cannot detect changes over time. However, in response to these comments, we have amended § 114.13 to allow the use of codified potency tests that are not quantitative but that are included in the filed Outline of Production.

APHIS does not agree that manufacturers will need to divert resources from developing new products to develop additional assays because this final rule will not require changes to biological products that are currently licensed. In other words, the new requirement is not retroactive for prior approved products, and we believe that manufacturers will incorporate new assay development into their new product development process. We have addressed this concern in detail in the economic analysis that accompanies this final rule.

One commenter stated that in the definition of *stability-indicating assay,* the phrase ''in the pertinent properties of the product'' was too vague. The commenter suggested that the definition be revised to refer only to potency, and not to other properties of the product.

APHIS agrees with the commenter. We have amended § 114.13 to limit the requirement to potency. We have also amended the definition of *stability-indicating assay* to read ''in a pertinent property'' rather than ''the pertinent properties.'' This change clarifies that the definition is descriptive but not prescriptive, and does not impose any requirements.

Two commenters expressed concern about how the rule would apply to unlicensed products that have already completed extensive development, and stated that products in development should be treated the same as licensed products.

APHIS agrees with the commenters that products that have already completed a certain amount of development should receive some consideration. In response to this comment, we have amended § 114.13 to allow a product in development with an approved potency assay to use that assay to complete its initial confirmation of dating study.

Diagnostic Test Kits

One commenter asked about how the proposed rule would apply to diagnostic test kits. The commenter stated that most test kits are interpreted by qualitative means, such as a visual assessment of a reaction. The commenter stated further that a quantitative result is not needed because these test kits do not report a concentration or titer.

The provisions of this rule do not apply to diagnostic test kits. We have amended the regulatory text in § 114.13 to clarify this.

Expiration Date Required for a Serial

We proposed to require that the expiration date of a serial be computed from the date of the initiation of the first potency test of the serial. One commenter asked that we change this provision to allow the expiration date to be calculated from a date of or prior to the date of the initiation of the first potency test. The commenter stated that this would allow assignment of expiration dates based on manufacturing activities (such as final formulation) that precede initiation of the first potency test. The commenter further stated that in many cases, this would be a more efficient practice for a manufacturer and would also ensure that serial expiration dating does not exceed that calculated from the date of the first potency test.

APHIS agrees with the commenter. In response to this request, we have amended § 114.12 to allow the expiration date to be computed from a date no later than the date of the initiation of the first potency test.

Determination of the Expiration Dating Period of a Product

We proposed to require stability studies to begin on the day of filling or final formulation. Some commenters stated that the requirement to start on a single specific day was impractical and too restrictive.

In response to this comment, we have changed the requirement for testing sequences in § 114.13 to indicate that the first test in the sequence shall be as close as practical to the day of filling into final containers or the date of final formulation if the potency of the product is tested in bulk form.

Testing

Some commenters stated that the testing intervals for in vitro tests in § 114.13(a) and for animal tests in § 114.13(b) require too much testing.

The sequence of intervals for in vitro tests is designed to allow estimation of the potency profile. It is typical of the contemporary approach to product shelf life assessment and has been adopted under various regulatory systems throughout the world. Furthermore, in many cases the number of serials that would be tested under the amended regulations is fewer than are used under the current regulations, so the total number of tests would be approximately the same, but the resulting data would be more informative. In response to the comments, we have clarified the provisions in the final rule for those situations when animal testing would be allowed. Specifically, we have clarified that in those cases where animal testing would be necessary, the tests would be of three serials at the start and end of the proposed dating period. This will effectively reduce the number of animal tests required as compared to the original proposal.

One commenter expressed concern that the changes would require the use of more animal tests, contrary to APHIS' commitment to reduce, refine, and replace the use of animals in testing.

APHIS disagrees that the rule will require more animal testing. On the contrary, by calling for stability-indicating assays, it discourages the use of animal tests, since most stability-indicating assays are in vitro tests conducted without animals. As explained above, however, we have clarified the requirements for situations when animal testing would be allowed.

Statistical Methodology and Uniform Standards

Some commenters noted that the rule does not include the statistical criteria that the agency might use to evaluate stability studies. One of the commenters stated that the proposal did not provide guidance on statistical methodology. Another commenter expressed concern that the testing requirements could be unreasonably burdensome and that if a licensee is required to have an extremely high statistical certainty, they might have to increase the potency of the product, which could lead to safety problems.

The current regulations require that licensees and permittees conduct stability studies. We proposed to amend the regulations to provide information that is lacking in the current regulations on how to conduct stability studies. We did not recommend that the potency of a product ever be increased. In fact, a more precise understanding of a vaccine's potency could allow a manufacturer to reduce the formulated potency of a vaccine while verifying that it would maintain adequate potency throughout its shelf life.

When providing guidance on methodology for implementing a codified rule, APHIS follows its usual practice of including such information in published guidance documents. Draft guidance documents are posted on the Center for Veterinary Biologics (CVB) website for comment. The policy on posting draft documents and instructions for commenting on them are described in CVB Notice No. 05–16, available online at *http://www.aphis.usda.gov/animal_health/vet_biologics/publications/notice_05_16.pdf*. We will consider all comments when formulating further guidance related to the draft document.

A commenter stated that, as proposed, the rule does not establish a uniform standard and that a number of items, including threshold values of confidence intervals or prediction intervals, interpretation of continuous or categorical data sets, and testing intervals for post-licensure monitoring vs. licensing studies should be addressed in the regulations.

APHIS disagrees with the commenter. The rule establishes a uniform standard for the design of stability studies. It does not include detailed methodological procedures for technical statistical methods which must be tailored to the data at hand. The information the commenter cited is typically covered in guidance documents. As we discussed above, these guidance documents are made available on the APHIS website for review by stakeholders before they are finalized.

One commenter stated that the requirement that manufacturers submit a plan to monitor the stability of their products and the suitability of the dating periods for those products and that the plan includes regularly testing serials for potency with stability-indicating assays is too vague.

APHIS disagrees. The expectation that product stability should be monitored by a routine ongoing program is not unusual in the modern manufacturing environment. That expectation is clearly stated in the rule; however, the rule also allows the manufacturer the flexibility to design a program that meets the needs of the particular product.

Some commenters expressed concern that the rule would prevent manufacturers from developing new products because the new requirements would require them to test every serial of a vaccine for stability.

The rule does not require that every serial of a vaccine be tested for stability. We proposed in § 114.13(a) that at least three production serials be tested. That requirement now appears in § 114.13(e) but is otherwise unchanged.

A commenter expressed concern that the rule could be applied retroactively to any licensed product at any time.

The rule does not apply retroactively. As we explained in the proposed rule, the new requirements apply to licensed products with a completed stability study only if the manufacturer makes a change to one of the stability criteria, such as the dating period, or a major change to the product or its potency test.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the *Regulations.gov* website (see footnote 2 in this document for a link to *Regulations.gov*) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

We are amending the Virus-Serum-Toxin Act regulations concerning expiration dates for serials and subserials and the determination of the dating period (stability) of veterinary biological products. This rule will establish a uniform standard in stability testing for confirming the dating period and expiration date requirements. The changes will clarify and streamline the current regulations to ensure supplies of pure, safe, potent, and effective veterinary biological products.

This rule will affect all veterinary biologics licensees (manufacturers of veterinary biologics) and permittees (importers of veterinary biologics). Currently, there are approximately 100 veterinary biological establishments, including permittees. Among these veterinary biological establishments, 53 veterinary vaccine manufacturers and permittees hold 1,378 vaccine licenses.

The annual value of veterinary biological product shipments averaged between $4.3 billion and $4.4 billion, 2010–2013, having grown from $2.3 billion in 2006. U.S. exports of veterinary vaccines showed a substantial increase between 2006 and 2013, from $291 million in 2006 to $861 million in 2013. U.S. imports of veterinary vaccines are small; on average, $5.5 million of veterinary vaccines were imported annually from 2006 to 2013, resulting in a large trade surplus (exports minus imports) in the veterinary vaccine trade. In 2013, the United States was the largest exporter of veterinary vaccines in the world, followed by the Netherlands and Belgium.

This rule will help veterinary biologics manufacturers establish the best method for confirming stability. The rule aims to enable these manufacturers to take advantage of scientific advances and readily respond to changing international technical standards in the global market.

Over a 3-year period from 2012 through 2014, we received 76 reports from manufacturers that contained 192 vaccine stability studies. Based on the specific tests conducted in these stability studies, we estimate the costs associated with the current requirements, costs associated with the new requirements, and costs manufacturers actually incurred in conducting these 192 studies. We estimate that the annual total cost to the industry of stability studies under the current requirements is about $847,000 and the annual total cost to the industry under the new requirements will be about $858,000, that is, an annual cost increase of about $11,000 to the industry.

We note that the 3-year data show that manufacturers actually conducted more testing than is required under either the current or new requirements; we estimate that the manufacturers incurred costs totaling about $1,689,000 annually, which is $831,000 more than what the new requirements are estimated to cost. To provide context on industry effects, if establishments were to limit themselves to the new requirements, which are aligned with contemporary science and international standards, the industry may save about $831,000 annually in testing, an average of about $15,700 per establishment (based on 53 manufacturers). We anticipate that industry will follow the new requirements, although some firms may elect to perform more testing than required by APHIS in order to satisfy the regulatory requirements of other countries. In addition to the aforementioned annual costs, we expect that the industry will incur one-time costs that are necessary to understand the new requirements, train employees, and update policies and procedures accordingly.

According to the Small Business Administration size standards, most veterinary biologics manufacturers are small entities with no more than 500 employees. We expect that the estimated annual costs for the industry will not cause significant economic impacts for most veterinary biologics licensees and permittees, based on the estimated $11,000 annual cost increase to the industry (about $200 annual cost increase per manufacturer or permittee).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with States and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies where they are necessary to address local disease conditions or eradication programs. However, where safety, efficacy, purity, and potency of biological products are concerned, it is the Agency's intent to occupy the field. This includes, but is not limited to, the regulation of labeling. Under the Act, Congress clearly intended that there be national uniformity in the regulation of these products. There are no administrative proceedings which must be exhausted prior to a judicial challenge to the regulations under this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Part 114

Animal biologics, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR parts 101 and 114 as follows:

PART 101—DEFINITIONS

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 101.5 is amended by adding paragraph(s) to read as follows:

§ 101.5 Testing terminology.

* * * * *

(s) *Stability-indicating assay.* A stability-indicating assay is a validated quantitative analytical procedure that can detect changes over time in a pertinent property of the product.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

■ 3. The authority citation for part 114 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

■ 4. Section 114.12 is revised to read as follows:

§ 114.12 Expiration date required for a serial.

Unless otherwise provided for in a Standard Requirement or filed Outline of Production, each serial or subserial of a biological product prepared in a licensed establishment shall be given an expiration date according to the dating period of the product when computed from a date no later than the date of the initiation of the first potency test of the serial or subserial. A licensed biological product shall be considered worthless under the Virus-Serum-Toxin Act after the expiration date appearing on the label.

■ 5. Section 114.13 is revised to read as follows:

§ 114.13 Determination of the dating period of a product.

The following requirements do not apply to those biological products used for diagnostic purposes.

(a) *Stability criteria.* Stability criteria include the specifications for potency at release, potency throughout the dating period, and the length of the dating period.

(b) *Stability study requirement.* The dating period of each fraction of each product shall be confirmed by conducting a stability study.

(c) *Licensure prior to completion of a stability study.* Prior to licensure, the licensee shall propose a dating period for the product based on preliminary information available about the stability of each of its fractions. If the preliminary stability information is acceptable, the product may be licensed with the provision that the proposed dating period must be confirmed by conducting a real-time stability study with a stability-indicating potency assay that can detect changes over time in the potency of the product.

(d) *Use of stability-indicating assay.* Stability studies must be conducted with a stability-indicating assay, with the following exceptions:

(1) If the potency test specified in the filed Outline of Production of a licensed product is the one stated in the regulations, that potency test may be used in place of a stability-indicating assay for that fraction.

(2) If the initial confirmation of dating study of a product in development on April 13, 2018 has an approved potency assay, that assay may be used.

(e) *Number of serials.* At least three production serials of the product shall be selected for testing in the stability study.

(f) *Testing sequences*—(1) *Initial test.* The first test in the sequence shall be as close as practical to the day of filling into final containers or the date of final formulation if the potency of the product is tested in bulk form.

(2) *Subsequent testing for in vitro assays.* (i) One test every 3 months during the first year of storage;

(ii) One test every 6 months during the second year of storage; and

(iii) One test annually thereafter throughout the proposed dating period.

(3) *Subsequent testing for in vivo assays.* One test at the end of the proposed dating period.

(g) *When to conduct a stability study.* Stability studies must be conducted for the following:

(1) Newly licensed products whose dating has not been confirmed;

(2) Licensed products with confirmed dating but a major change to the product or to the potency test has occurred; and

(3) Licensed products with confirmed dating in which a change in one or more of the stability criteria is requested.

(h) *Submitting data.* At the completion of the real-time stability study to confirm or change the dating period, the data shall be submitted to Animal and Plant Health Inspection Service for approval for filing and the approved for filing date shall be specified in section VI of the filed Outline of Production at the next revision.

(i) *Monitoring stability of the product.* For products licensed subsequent to April 13, 2018, the licensee or permittee shall submit a plan to monitor the stability of the product and the suitability of its dating period that includes regularly testing selected serials for potency during and at the end of dating.

Done in Washington, DC, this 9th day of March 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–05143 Filed 3–13–18; 8:45 am]

BILLING CODE 3410–34–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

Revised Medical Criteria for Evaluating Cancer (Malignant Neoplastic Diseases)

CFR Correction

■ In Title 20 of the Code of Federal Regulations, Parts 400 to 499, revised as of April 1, 2017, on page 541, in Part 404, Subpart P, Appendix 1, under 13.02, paragraph B., the second ''OR'' is removed and under 13.03, paragraphs B.1. and B.2. are removed.

[FR Doc. 2018–05240 Filed 3–13–18; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. FDA–2018–N–0399]

Medical Devices; Hematology and Pathology Devices; Classification of Lynch Syndrome Test Systems; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order; correction.

SUMMARY: The Food and Drug Administration is correcting a final order entitled ''Medical Devices; Hematology and Pathology Devices; Classification of Lynch Syndrome Test Systems'' that appeared in the **Federal Register** of February 27, 2018. The document was published with the incorrect docket number. This document corrects that error.

DATES: Effective March 14, 2018.

FOR FURTHER INFORMATION CONTACT: Lisa Granger, Office of Policy and Planning, Food and Drug Administration, 10903 New Hampshire Ave., Bldg, 32, Rm. 3330, Silver Spring, MD 20993–0002, 301–796–9115.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 27, 2018 (83 FR 8355), in FR Doc. 2018–03924, on page 8355, the following correction is made:

1. On page 8355, in the third column, in the header of the document, the docket number is corrected to read ''FDA–2018–N–0399''.

Dated: March 8, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–05115 Filed 3–13–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. FDA–2017–P–5124]

Medical Devices; Exemption From Premarket Notification; Class II Devices; Over-the-Counter Denture Repair Kit

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or Agency) is publishing an order granting a petition requesting exemption from premarket notification requirements for over-the-counter (OTC) denture repair kits (Product Code EBO). These devices consist of material, such as a resin monomer system of powder and liquid glues, which is intended to be applied permanently to a denture to mend cracks or breaks. This order exempts OTC denture repair kits, class II devices, from premarket notification (510(k)). This exemption from 510(k) is immediately in effect for OTC denture repair kits. FDA is publishing this order in accordance with the section of the Federal Food, Drug, and Cosmetic Act (FD&C Act) permitting the exemption of a device from the requirement to submit a 510(k).

DATES: This order is effective March 14, 2018. The exemption was applicable on January 31, 2018.

FOR FURTHER INFORMATION CONTACT: Rebecca Nipper, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1540, Silver Spring, MD 20993–0002, 301–796–6527.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and its implementing regulations in part 807 (21 CFR part 807) require persons who propose to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a device intended for human use to submit a 510(k) to FDA. The device may not be marketed until FDA finds it ''substantially equivalent'' within the meaning of section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), section 206 of which added section 510(m) to the FD&C Act, as amended on December 13, 2016, by the 21st Century Cures Act (Pub. L. 114–255). Section 510(m)(1) of the FD&C Act, requires FDA to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the FD&C Act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the FD&C Act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**.

Section 510(m)(2) of the FD&C Act provides that FDA may exempt a device from premarket notification requirements on its own initiative, or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 60-day comment period. Within 120 days after the issuance of the notice, FDA shall publish an order in the **Federal Register** setting forth the final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance that the Agency issued on February 19, 1998, entitled ''Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff'' (Class II 510(k) Exemption Guidance). That guidance can be obtained through the internet at *https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM080199.pdf* or by sending an email request to *CDRH-Guidance@fda.hhs.gov* to receive a copy of the document. Please use the document number 159 to identify the guidance you are requesting.

III. Petition

On August 22, 2017, FDA received a petition requesting an exemption from premarket notification for OTC denture repair kits. (See Docket No. FDA–2017–P–5124.) These devices are currently classified under 21 CFR 872.3570, OTC denture repair kits.

In the **Federal Register** of November 20, 2017 (82 FR 55105), FDA published a notice announcing that this petition had been received and provided opportunity for interested persons to submit comments on the petition by January 19, 2018. FDA received no comments.

FDA has assessed the need for 510(k) clearance for this type of device against the criteria laid out in the Class II 510(k) Exemption Guidance. Based on this review, FDA believes that premarket notification is not necessary to provide a reasonable assurance of the safety and effectiveness of the device, as long as the device complies with existing special controls. FDA agrees that the risks posed by the device and the characteristics of the device necessary for its safe and effective performance are well established. FDA believes that changes in the device that could affect safety and effectiveness will be readily detectable by certain types of routine analysis and nonclinical testing, such as those detailed in the existing special controls. Therefore, after reviewing the petition, FDA has determined that premarket notification is not necessary to provide a reasonable assurance of safety and effectiveness of OTC denture repair kits. FDA responded to the petition by letter dated January 31, 2018, to inform the petitioner of this decision within the 180-day timeframe under section 510(m)(2) of the FD&C Act.

IV. Limitations of Exemption

This final order exempts from premarket notification an OTC denture repair kit. This device will remain subject to the class II special controls under 21 CFR 872.3570 and will be subject to the limitations of exemption found in 21 CFR 872.9.

V. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment

nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This final order refers to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 872 is amended as follows:

PART 872—DENTAL DEVICES

■ 1. The authority citation for part 872 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 2. In § 872.3570, revise paragraph (b) introductory text to read as follows:

§ 872.3570 OTC denture repair kit.

* * * * *

(b) *Classification.* Class II. The OTC denture repair kit is exempt from premarket notification procedures in subpart E of part 807 of this chapter, subject to § 872.9. The special controls for this device are FDA's:

* * * * *

Dated: March 8, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–05116 Filed 3–13–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Drawbridge Operations Regulations

CFR Correction

■ In Title 33 of the Code of Federal Regulations, Parts 1 to 124, revised as of July 1, 2017, on page 646, in § 117.739, paragraph (o) is removed and reserved.

[FR Doc. 2018–05245 Filed 3–13–18; 8:45 am]

BILLING CODE 1301–00–D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1258

[FDMS No. NARA–18–0001; NARA–2018–019]

RIN 3095–AB96

Fees

AGENCY: National Archives and Records Administration (NARA).

ACTION: Direct final rule.

SUMMARY: NARA is amending our Fees regulation to shorten the period in which people who request copies of archival records may request a refund. This shorter period is in line with other similar research and archival institutions and is designed to reduce the administrative costs of processing a large number of refund requests that fall outside the permitted bases.

DATES: This rule is effective on April 13, 2018 without further notice, unless we receive adverse written comment that warrants revision by April 3, 2018. If we receive such comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN 3095–AB95, by email at *regulation_comments@nara.gov,* or by mail to the External Policy Program Manager; Strategy Division (MP), Suite 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, by email at *regulation_comments@nara.gov,* or by telephone at 301–837–3151.

SUPPLEMENTARY INFORMATION:

Background

NARA is authorized by 44 U.S.C. 2116(c) to charge reproduction fees when it reproduces documents for non-Federal individuals or entities. This includes official reproductions with the Archives' seal, reproductions of archival holdings, and reproductions of operational records. The statute authorizes NARA to recoup its costs, equipment fees, and similar expenses, and to retain the fees as part of the National Archives Trust Fund (NATF). NARA promulgated regulations at 36 CFR part 1258 to notify users of the fee structure and processes. Among these regulations is a section addressing refunds of these fees (36 CFR 1258.16). It is this provision that we are revising with this rulemaking.

Due to various factors, it is occasionally difficult for us to make a legible reproduction, particularly of old documents. We notify customers if we anticipate the reproduction will have questionable legibility and request the customer's approval to proceed with the reproduction—and the fee charges. As a result, we do not provide refunds except in special cases; primarily if we have somehow processed an order incorrectly or it contains errors. However, the regulation's refund request period is of such a length (120 days) that the NATF has been receiving a significant number of refund requests for orders that contain no errors and were processed correctly, which is causing the NATF administrative processing burdens. As a result, we are now reducing the refund request period to 30 days, which we believe will reduce the number of these other types of refund requests. A 30-day refund period is also in line with similar deadlines at other research and archival institutions that allow refund requests, such as the Library of Congress. Many such organizations do not permit refunds at all (*e.g.,* USCIS Genealogy Program). We would like to continue permitting refunds when there has been an error, but we believe the shorter period will still provide sufficient time in which to request a refund while reducing the inappropriate refund requests and NARA's administrative costs.

Regulatory Review Information

This rule is not a significant regulatory action for the purposes of E.O. 12866 and a significance determination was requested from the Office of Management and Budget (OMB). It is also not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As a result, this rule is also not subject to deregulatory requirements contained in E.O. 13771. As required by the Regulatory Flexibility Act, we certify that this rule will not have a significant impact on a substantial number of small entities; it simply shortens the period in which people may request refunds of reproduction fees. This rule also does not have any Federalism implications.

This rule is effective upon publication for good cause as permitted by the Administrative Procedure Act (5 U.S.C. 553(d)(3)). NARA believes that a public comment period is unnecessary as this rule merely shortens the recently added refund request period to bring it in line with similar periods at other research and archival institutions, such as the Library of Congress.

List of Subjects in 36 CFR Part 1258

Archives and records.

For the reasons stated in the preamble, NARA amends 36 CFR part 1258 as follows:

PART 1258—[AMENDED]

■ 1. The authority citation for part 1258 continues to read as follows:

Authority: 44 U.S.C. 2126(c) and 44 U.S.C. 2307.

■ 2. Amend § 1258.16 by revising the sixth sentence to read as follows:

§ 1258.16 What is NARA's refund policy?

* * * If you feel we processed your order incorrectly or it contains errors, please contact us within 30 days of your delivery date to have your issue verified. * * *

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2018–05088 Filed 3–13–18; 8:45 am]

BILLING CODE 7515–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

Satellite Communications

CFR Correction

■ In Title 47 of the Code of Federal Regulations, Parts 20 to 39, revised as of October 1, 2017, on page 265, the Effective Date Note at the end of § 25.220 is removed.

[FR Doc. 2018–05247 Filed 3–13–18; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170828822–70999–02]

RIN 0648–XG063

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

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

ACTION: Temporary rule; quota transfer.

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

DATES: Effective March 9, 2018, through December 31, 2018.

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

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102, and the initial 2018 allocations were published on December 22, 2017 (82 FR 60682), and corrected January 30, 2018 (83 FR 4165).

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

North Carolina is transferring 5,450 lb (2,472 kg) of summer flounder commercial quota to Massachusetts. This transfer was requested to repay landings by a North Carolina-permitted vessel that landed in Massachusetts under a safe harbor agreement. Based on the initial quotas published in the 2018 Summer Flounder, Scup, and Black Sea Bass Specifications and subsequent adjustments, the revised summer flounder quotas for calendar year 2018 are now: North Carolina, 1,755,989 lb (796,503 kg); and Massachusetts, 410,192 lb (186,060 kg).

Classification

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

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

Dated: March 9, 2018.

Emily H. Menashes,

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

[FR Doc. 2018–05169 Filed 3–9–18; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 170817773–8213–02]

RIN 0648–BG81

Fisheries Off West Coast States; Highly Migratory Fisheries; California Drift Gillnet Fishery; Implementation of a Federal Limited Entry Drift Gillnet Permit

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

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to implement a March 2017 recommendation by the Pacific Fishery Management Council (Pacific Council) to amend the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The rule implements Amendment 5 to the HMS FMP and establishes a Federal limited entry (LE) permit system for the California/Oregon large-mesh drift gillnet (DGN) fishery using standards that are very similar to those used in the existing State of California LE permit program for the DGN fishery. Amendment 5 is intended to streamline management and future decision-making by placing all aspects of DGN fishery management under MSA authority. All current California LE DGN permit holders are eligible to apply for, and receive, a Federal LE DGN permit, and no additional LE DGN permits are created under this rule. This final rule is administrative in nature and is not anticipated to result in increased activity, effort, or capacity in the fishery.

DATES: This final rule is effective on April 13, 2018.

ADDRESSES: Copies of supporting documents that were prepared for this final rule, including the Regulatory Impact Review and the proposed rule, are available via the Federal eRulemaking Portal: *http://www.regulations.gov,* docket NOAA–

NMFS–2017–0052. These documents are also available from Lyle Enriquez, NMFS West Coast Region, 501 W. Ocean Blvd. Suite 4200, Long Beach, CA 90802, or *Lyle.Enriquez@noaa.gov.* 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 the West Coast Regional Office and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Lyle Enriquez, NMFS, West Coast Region, 562–980–4025, or *Lyle.Enriquez@noaa.gov.*

SUPPLEMENTARY INFORMATION: The California/Oregon large-mesh DGN fishery is managed under the HMS FMP, which was prepared by the Pacific Council and implemented under the authority of the MSA by regulations at 50 CFR part 660. Although it adopted all conservation and management measures in place under various Federal statutes (*e.g.,* the Marine Mammal Protection Act and the Endangered Species Act) and state regulations, the HMS FMP did not incorporate the LE DGN permit programs of California and Oregon. California has an active LE DGN program, Oregon no longer issues DGN permits, and DGN fishing is prohibited in waters off of Washington.

Background

On March 12, 2017, the Pacific Council voted to recommend Amendment 5 to the HMS FMP, which establishes a LE DGN permit program under MSA authority and entitles all fishermen authorized to fish with large-mesh DGN gear under state law, as of the publication date of this final rule, to be eligible to receive a Federal LE DGN permit. On September 15, 2017, NMFS published a Notice of Availability (NOA) in the **Federal Register** (82 FR 43323) for Amendment 5 with a 60-day public comment period. After consideration of public comments on Amendment 5, NMFS approved it on December 14, 2017. With that approval, Amendment 5, which requires establishment of a Federal DGN program under the HMS FMP, is now official Federal policy.

On October 31, 2017, NMFS published a proposed rule in the **Federal Register** (82 FR 50366) that would add regulations at 50 CFR part 660, subpart K, to implement Amendment 5. The proposed rule contained additional background information, including information on the basis for the new regulations and the recommendations of the Pacific Council, which is not repeated in this final rule. The proposed rule was open to public comment through December 15, 2017, and the comments that NMFS received are addressed in this final rule.

New Regulations

This rule adopts many of the current State of California management measures associated with the DGN fishery. For example, NMFS adopts current California requirements regarding the assignment of a permit (*i.e.,* permits are issued to an individual and assigned to a specific vessel), the transfer of permits between permit holders (*i.e.,* a permit must be held for three years before it is eligible to be transferred), and an annual renewal cycle.

As of the publication date of this final rule, all 70 California LE DGN permit holders are eligible to receive a Federal LE DGN permit if they have renewed their state LE DGN permit by March 31, 2018. Permit holders who fail to renew their state DGN permit by March 31, 2018, are not eligible for a Federal LE DGN permit. As of January 10, 2018, 68 permit holders have renewed their state LE DGN permit. If a state LE DGN permit was transferred after publication of the proposed rule, the transferee, but not the transferor, is eligible to receive a Federal LE DGN permit.

Federal LE DGN permits will be issued annually for the fishing year starting April 1 and ending March 31 of the following year. Permits expire on March 31 of each year and, after initial issuance (expected in 2018), the permit renewal deadline is April 30 of each fishing year. A completed LE DGN permit renewal form must be received by NMFS no later than close-of-business April 30. Any renewal form received after that date will result in the permanent expiration of the Federal LE DGN permit. A permit owner who fails to submit a renewal form by the deadline may submit a renewal form to NMFS with a written statement that the failure to renew the permit by the deadline was proximately caused by the permit owner's illness or injury. When a permit owner has died, the owner's estate or other personal representative may submit a statement explaining that the permit owner's death prevented a timely renewal. The permit holder, or in the case of a deceased permit owner, the estate or other personal representative, will need to provide written proof of illness, injury, or death. NMFS will not consider any such renewal request made after July 31. A permit holder needs to hold a Federal LE DGN permit for a vesting period of at least three years before it is eligible to be transferred. This vesting period extends across both state and Federal permit programs (*i.e.,* if a permit holder held a state LE DGN permit for two years and a Federal LE DGN permit for one year, the permit may be transferred).

This rule also includes technical edits to existing regulatory text. These edits add the word ''general'' before instances of ''HMS permit'' to distinguish the existing HMS permit from the new LE DGN permit; update a web address from which permit applications may be obtained; update the reference to the NMFS ''Southwest Region'' to refer to the West Coast Region, into which it was incorporated; and update the description of the NMFS regional ''Sustainable Fisheries Division'' to describe it as part of the West Coast Region.

Public Comment and Responses

NMFS received 17 written public comments during the proposed rulemaking stage. The summarized comments and NMFS' responses are below.

Comment 1: The DGN fishery is conducted in Federal waters and belongs under Federal law and permitting.

Response: NMFS agrees that the DGN fishery belongs under Federal authority. In 2004, NMFS approved the HMS FMP, which included the DGN fishery as an authorized fishery, bringing the fishery under MSA authority for the first time. Furthermore, the DGN fishery operates only in Federal waters of the exclusive economic zone (EEZ) off of the States of California and Oregon. California, Oregon, and Washington do not allow the DGN fishery to operate in state waters.

Comment 2: Consolidating management responsibility for all aspects of the swordfish fishery under one authority, including the permit process, creates a higher level of management efficacy that currently does not exist.

Response: NMFS agrees. The 2004 HMS FMP included the DGN fishery as an authorized fishery under MSA authority and adopted state and Federal regulations in place at that time, except for the limited entry DGN permit systems of Oregon and California. Oregon no longer issues DGN permits, and California maintains a state LE DGN permit program. Currently, changes to the number of LE DGN permits or qualifications to possess a LE DGN permit are made by the California State Legislature. Creating a Federal LE DGN permit may streamline implementation of future DGN management measures recommended by the Pacific Council.

For example, the Pacific Council may recommend management measures related to participation in the fishery, and NMFS could implement a recommendation (if approved) by placing conditions on eligibility for Federal LE DGN permits, without the California State Legislature having to take action.

Comment 3: Going forward, California would continue to have influence through its seats on the Pacific Council and Pacific Offshore Cetacean Take Reduction Team (POCTRT).

Response: NMFS agrees. The State of California has voting representatives on the Pacific Council and the POCTRT, and these groups recommend DGN management measures to NMFS. The Pacific Council recommends management measures related to all fisheries under the HMS FMP, which includes the DGN fishery and other fisheries that harvest swordfish and other HMS. The POCTRT was established under section 118(f) of the Marine Mammal Protection Act, 16 U.S.C. 1387(f), specifically to make recommendations addressing marine mammal interactions in the DGN fishery. For example, in 1996 the POCTRT recommended that NMFS require the use of acoustic pingers to alert marine mammals to the presence of the net during all DGN fishing activity. NMFS implemented this measure in 1997 and it led to a significant reduction in the number of marine mammals entangled by the fishery. Further, in 2013 the POCTRT recommended that NMFS implement emergency, temporary regulations to limit the number of sperm whales taken in the fishery, require a Vessel Monitoring System (VMS) on board each DGN vessel, and establish a 100 percent observer coverage zone. NMFS implemented this recommendation in 2013, and later made the VMS requirement permanent.

Comment 4: The rule only proposed to create a Federal LE DGN permit rather than replace the current California state permit regime, as the Council originally considered when it began discussing a Federal LE DGN permit in March 2014. The California state permit regime should be placed under Federal control, as the most scientific resources are available at the Federal level to make science-based decisions for the fishery.

Response: In March 2017, the Pacific Council voted to authorize a Federal LE DGN permit. The Pacific Council recommended that, as soon as possible after Pacific Council final action, only fishermen authorized to fish with large-mesh DGN gear under state law would be entitled to a LE DGN permit issued by NMFS. Fishermen who hold valid state LE DGN permits on the date that this final rule is published would be eligible for the Federal LE DGN permit. These permits could be transferred only once every three years. The Pacific Council did not include a recommendation to repeal any state permit requirements. This final rule does not repeal any State of California requirements related to the California LE DGN permit. The California LE DGN permit will continue to be required by the state until and unless a change to California Fish and Game Code is made by the California State Legislature.

Comment 5: Several commenters noted that the California Department of Fish and Wildlife is currently in the process of convening stakeholders to discuss potential collaborative solutions, including a buyout program, to improve the sustainability of the DGN fishery. The commenters support these efforts and urge NMFS to delay implementation of this rule until the State of California has had the opportunity to explore a collaborative solution with fishermen and other stakeholders under state authority.

Response: Section 304(b) of the MSA, 16 U.S.C. 1854(b), requires NMFS to publish final implementing regulations for FMP amendments within 30 days of the close of the comment period on the proposed rule, if the amendment has been approved. Amendment 5 includes no provision to delay implementation of the Federal permit system. NMFS understands that the California Department of Fish and Wildlife has convened meetings with California LE DGN permit holders and environmental non-governmental organizations to discuss a potential buyout program to reduce the number of California LE DGN permits. The results of these discussions are speculative and do not justify a delay in implementing a Federal LE DGN permit.

Comment 6: The NOA and proposed rule note that NMFS' intent is to transition the State of California issued LE DGN permit program to Federal management under MSA authority. The NOA and proposed rule both specifically state ''[a]fter the LE DGN permit transitions from the State of California to Federal management, each participant will need to hold all of the same permits and licenses, except that the Federal LE DGN permit will take the place of the State of California LE DGN permit.'' This statement incorrectly implies that, upon implementation of the Federal LE DGN program, the state LE DGN permit will immediately cease to be required. The state LE DGN permit is required by California Fish and Game Code section 8561. The state LE DGN permit will continue to be required until the California State Legislature repeals or otherwise changes this requirement. Thus, even after implementation of a Federal LE DGN permit, each participant will continue to be required to possess all required state permits and licenses, including the state general gillnet permit and the state LE DGN permit. If NMFS elects to proceed, it should be made clear in the final rule implementing the Federal LE DGN permit that the state LE DGN permit will continue to be required until a change to Fish and Game Code, section 8561, is made by the California State Legislature.

Response: To clarify, NMFS reiterates that this final rule does not repeal any State of California requirements related to the California LE DGN permit. Following implementation of the Federal LE DGN permit, the California LE DGN permit will continue to be required by the state until and unless a change to California Fish and Game Code is made by the California State Legislature.

Comment 7: Several commenters stated that the proposed rule does not explain the clear need for a Federal LE DGN permit, because a State of California LE DGN permit will continue to be required to use DGN gear, absent legislative action. Implementation of this rule will merely create a duplicative permit requirement.

Response: Although both permits will continue to be required until and unless the California State Legislature acts, the Pacific Council recommended requiring a Federal LE DGN permit in order to streamline Federal management of the DGN fishery. The fishery occurs in the EEZ, not in state waters, and therefore this is a Federal fishery shared by residents of different states. Currently, changes to the number of DGN permits or qualifications to possess a DGN permit can be made only through the California State Legislature. As described above, under Amendment 5, the Pacific Council may recommend future management measures related to participation in the fishery, and, if approved, NMFS could directly implement them by placing conditions on Federal LE DGN permits.

Comment 8: Several commenters stated that DGN permitting authority should remain with the State of California, and that transitioning to Federal management will limit California's ability to make decisions that affect its natural resources or have input on the use of resources that are found in both Federal and state waters. They state that, while the California

Department of Fish and Wildlife will still be able to participate through the Pacific Council, its ability to make changes to the fishery will be diluted, and that the California State Legislature would potentially be cut out entirely from the management process for this fishery.

Response: The fishery occurs in the EEZ, not in state waters, and therefore this is a Federal resource shared by residents of different states. Because the HMS fisheries are a Federal resource, the Council prepared and recommended adoption of the HMS FMP under Federal authority. With the exception of the LE program, the DGN fishery has been managed under Federal authority for years. Even under Amendment 5, the California State Legislature retains the ability to manage fishery resources wholly within state waters (within roughly 3 nautical miles from the coastline) and manage state-registered vessels beyond state waters to the extent such management does not conflict with MSA regulations.

Comment 9: Several commenters stated that Federal LE DGN permits should only be issued upon implementation of the Pacific Council's proposed management measures to (1) establish protected species hard caps (limits on the serious injury and mortality of certain marine mammal and sea turtle species); and (2) require 100 percent monitoring in the fishery, or that the regulations implementing the Federal LE DGN permit program should require that permit holders operate under hard caps and 100 percent monitoring.

Response: The Pacific Council recommended that NMFS implement DGN hard caps and 100 percent monitoring in September 2015. NMFS proposed regulations to implement DGN hard caps in October 2016. In a separate action, the Pacific Council recommended Amendment 5 (Federal LE DGN permit program) in March 2017. Amendment 5 was not conditioned on implementation of hard caps or 100 percent monitoring. In June 2017, NMFS withdrew the proposed regulations to establish protected-species hard caps for the DGN fishery, after further analysis showed that the action would have minor beneficial effects to target and non-target fish species and protected species, at the cost of significant adverse economic effects to the participants in the fishery if and when closures would occur. NMFS advised the Pacific Council of revisions that would make the proposed DGN hard caps regulations consistent with the MSA and meet the purpose and need for the action. NMFS continues to analyze ways to implement the Pacific Council's recommendation for 100 percent DGN monitoring, and the Pacific Council revised its purpose and need for the action in November 2017. Because Amendment 5 is not conditioned on the establishment of hard caps or 100 percent monitoring, the status of those recommendations does not support a delay in creating the Federal LE DGN permit.

Comment 10: The commenter opposes the proposed Federal permit program, stating it disregards key objectives outlined in the Pacific Council's Swordfish Management and Monitoring Plan for achieving bycatch reduction goals and limiting DGN fishing effort.

Response: The Federal LE DGN permit is not intended to reduce bycatch. Future actions to manage the fishery may be streamlined by establishing a Federal permit program. Such potential future actions could be intended to reduce bycatch in the DGN fishery.

Comment 11: The commenter requests that NMFS not finalize the proposed rule and instead return it to the Pacific Council to amend the purpose and need for the action, reduce latent permits in the DGN fishery, make clear that no additional Federal LE DGN permits shall be issued after the initial allocation, make Federal DGN permits non-transferrable, and connect the Federal LE DGN program with the authorization of deep-set buoy gear.

Response: NMFS is not returning the proposed rule to the Pacific Council, because the Pacific Council discussed these restrictions when considering establishing a Federal LE DGN permit, and did not include them as part of its recommendation to NMFS to create the permit. As explained above, requiring DGN vessels to operate under Federal permits is a tool to augment the Federal government's ability to directly manage participation and eligibility in this fishery in the future.

Comment 12: Federalizing the drift gillnet fishery will significantly impact the environment. By preventing the opportunity for future state action to reduce environmental impacts, this action will cause significant environmental impacts, such as continued interactions with endangered species. These environmental impacts are significant, and the action requires full and appropriate analysis under the National Environmental Policy Act (NEPA). Reliance on a categorical exclusion (CE) to satisfy NEPA requirements would be inappropriate for the proposed action, as it involves several Extraordinary Circumstances, including (1) adverse effects from the action on species or habitats protected by the Endangered Species Act, the Marine Mammal Protection Act, the MSA, the National Marine Sanctuaries Act, or the Migratory Bird Treaty Act that are not negligible or discountable; (2) a potential violation of Federal, State, or local law or requirements imposed for the protection of the environment; and (3) highly controversial environmental effects.

Response: The impacts of DGN fishing are addressed adequately in the combined August 2013 HMS FMP and final environmental impact statement. Amendment 5 is not expected in itself to change fishing levels or practices. NMFS has conducted the appropriate NEPA analysis of this action and has concluded that the proposed action would not have a significant effect, individually or cumulatively, on the human environment, and does not involve any extraordinary circumstances. NMFS disagrees that a CE is inappropriate for this action. Specifically, this action fits under the description of CE Category A1 in the NAO 216–6A Companion Manual: ''an action that is a technical correction or a change to a fishery management action or regulation, which does not result in a substantial change in any of the following: fishing location, timing, effort, authorized gear types, or harvest levels.'' However, NMFS notes it is possible that Amendment 5 could facilitate changes in the future that affect fishing practices with impacts that could be subject to NEPA analyses, as appropriate.

Comment 13: NMFS must delay taking action to federalize the LE system until after a new Biological Opinion is complete, as it will contain information vital for the decision of whether and how to federalize the fishery. In the absence of a new Biological Opinion, NMFS' statement that they do not anticipate significant environmental impacts is unsupported by environmental analysis and should not be relied upon in deciding whether to move finalize federalization.

Response: NMFS disagrees. Nothing in this rule causes fishing activities to affect endangered and threatened species or critical habitat in any manner not considered in prior consultations on this fishery. This action is administrative in nature and is not expected to increase fishing activity or change current fishing practices.

Changes From the Proposed Rule

No changes have been made to regulatory text of the proposed rule.

Classification

The Administrator, West Coast Region, NMFS, determined that Amendment 5 to the HMS FMP is necessary for the conservation and management of the DGN fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule is not an Executive Order 13771 regulatory action because this final rule is not significant under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0204. The public reporting burden for the additional collection of information is estimated to average 30 minutes per 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. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

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

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 9, 2018.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.702, revise the definition of ''Sustainable Fisheries Division'' to read as follows:

* * * * *

Sustainable Fisheries Division (SFD) means the Assistant Regional Administrator for Sustainable Fisheries, West Coast Region, NMFS, or his or her designee.

* * * * *

■ 3. In § 660.707, revise paragraphs (a)(1) and (4), (b)(1), (3), and (4), and (e) and add paragraph (f) to read as follows:

§ 660.707 Permits.

(a) * * *

(1) A commercial fishing vessel of the United States must be registered for use under a general HMS permit that authorizes the use of specific gear, and a recreational charter vessel must be registered for use under a HMS permit if that vessel is used:

(i) To fish for HMS in the U.S. EEZ off the States of California, Oregon, and Washington; or

(ii) To land or transship HMS shoreward of the outer boundary of the U.S. EEZ off the States of California, Oregon, and Washington.

* * * * *

(4) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a general HMS permit.

(b) * * *

(1) Following publication of the final rule implementing the FMP, NMFS will issue general HMS permits to the owners of those vessels on a list of vessels obtained from owners previously applying for a permit under the authority of the High Seas Fishing Compliance Act, the Tuna Conventions Act of 1950, the Marine Mammal Protection Act, and the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region, or whose vessels are listed on the vessel register of the Inter-American Tropical Tuna Commission.

* * * * *

(3) An owner of a vessel subject to these requirements who has not received a permit under this section from NMFS and who wants to engage in the fisheries must apply to the SFD for the required permit in accordance with the following:

(i) A West Coast Region Federal Fisheries application form may be obtained from the SFD or downloaded from the West Coast Region home page (*http://www.westcoast.fisheries.noaa.gov/permits/commercial_fishing_research_permits.html*) to apply for a permit under this section. A completed application is one that contains all the necessary information and signatures required.

(ii) A minimum of 15 days should be allowed for processing a permit application. If an incomplete or improperly completed application is filed, the applicant will be sent a notice of deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(iii) A permit will be issued by the SFD. If an application is denied, the SFD will indicate the reasons for denial.

(iv)(A) Any applicant for an initial permit may appeal the initial issuance decision to the Regional Administrator. To be considered by the Regional Administrator, such appeal must be in writing and state the reasons for the appeal, and must be submitted within 30 days of the action by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(B) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal.

(C) Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the permit provisions set forth in this section at the time of the application, based upon information relative to the application on file at NMFS and the Council and any additional information submitted to or obtained by the Regional Administrator, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as the Regional Administrator deems appropriate. The Regional Administrator will notify all

interested persons of the decision, and the reasons for the decision, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(D) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing to the applicant. The appellant, and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(E) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's decision will constitute the final administrative action by NMFS on the matter.

(F) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Administrator for good cause, either upon his or her own motion or upon written request from the appellant stating the reason(s) therefore.

(4) General HMS permits issued under this subpart will remain valid until the first date of renewal, and permits may be subsequently renewed for 2-year terms. The first date of renewal will be the last day of the vessel owner's birth month in the second calendar year after the permit is issued (*e.g.,* if the birth month is March and the permit is issued on October 3, 2007, the permit will remain valid through March 31, 2009).

* * * * *

(e) *Fees.* An application for a permit, or renewal of an existing permit under this section will include a fee for each vessel. The fee amount required will be calculated in accordance with the NOAA Finance Handbook and specified on the application form.

(f) *Federal limited entry drift gillnet permit*—(1) *General.* This section applies to individuals fishing with large-mesh (14 inch or greater stretched mesh) drift gillnet (DGN) gear. Individuals who target, retain, transship, or land fish captured with a large-mesh DGN must possess a valid Federal limited entry DGN permit. Federal limited entry DGN permits are issued to an individual, and a vessel must be specified on the permit.

(2) *Initial qualification.* Upon publication of NMFS' final rule to establish the Federal limited entry DGN permit, all State of California limited entry DGN permit holders are eligible to obtain a Federal limited entry DGN permit. If a 2017–2018 California state DGN permit renewal application is not received by the California Department of Fish and Wildlife or postmarked by March 31, 2018, the permit holder is not eligible to receive a 2018–2019 Federal limited entry DGN permit.

(3) *Documentation and burden of proof.* An individual applying for issuance, renewal, transfer, or assignment of a Federal limited entry DGN permit must prove that they meet the qualification requirements by submitting the following documentation, as applicable: A certified copy of the assigned vessel's documentation as a fishing vessel of the United States (U.S. Coast Guard or state) is the best evidence of vessel identification; a copy of a current State of California limited entry DGN permit is the best evidence of initial qualification for a Federal limited entry DGN permit; a copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights; and other relevant, credible evidence that the applicant may wish to submit or that the SFD may request or require.

(4) *Fees.* Any processing fee will be determined by the service costs needed to process a permit request. If a fee is required, it would cover administrative expenses related to issuing limited entry permits, as well as renewing, transferring, assigning, and replacing permits. The amount of any fee will be calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. A fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

(5) *Initial decisions.* (i) The SFD will make initial decisions regarding issuing, renewing, transferring, and assigning limited entry permits.

(ii) Adverse decisions shall be in writing and shall state the reasons for the adverse decision.

(iii) The SFD may decline to act on an application for issuing, renewing, transferring, or assigning a limited entry permit and will notify the applicant, if the permit sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D, apply.

(6) *Issuance.* Federal limited entry DGN permits will be issued by the SFD. If an application is denied, the SFD will indicate the reasons for denial. A DGN permit will be issued to an individual and assigned to a specific vessel. A permit holder may assign the permit to another vessel once per permit year (April 1 to March 31).

(7) *Appeals.* Any applicant for an initial permit may appeal the initial issuance decision to the Regional Administrator. Appeals will be made and processed following procedures as described at paragraph (b)(3)(iv) of this section.

(8) *Transfers.* Federal limited entry DGN permits may be transferred to another individual only if the current permit holder has held the Federal DGN permit for a minimum of three consecutive years (counted April 1 to March 31 of the following year). At the time of the establishment of the Federal limited entry DGN permit system, the length of time an individual has held a State of California limited entry DGN permit carries over (*e.g.,* if an individual has held a California DGN permit for two years, they are eligible to transfer the Federal DGN permit after holding the Federal DGN permit for one year). Exceptions to this limitation on permit transfer may be made under the following circumstances:

(i) The permit holder suffers from a serious illness or permanent disability that prevents the permit holder from earning a livelihood from commercial fishing.

(ii) If a deceased permit holder's estate or heirs submit a transfer request within six months of the permit holder's death.

(iii) Upon dissolution of marriage if the permit is held as community property.

(9) *Renewals.* (i) The SFD will send notices to renew limited entry permits to the most recent address of the permit holder on file.

(ii) The permit owner is responsible for renewing a limited entry permit.

(iii) The deadline for receipt or postmark of a Federal DGN permit renewal application is April 30 of the permit year (*i.e.,* April 30, 2019 for 2019–2020 fishing season). Federal DGN permits must be renewed yearly.

(iv) A DGN permit that is allowed to expire will not be renewed unless the permit owner requests reissuance by July 31 (three months after the renewal application deadline) and NMFS determines that failure to renew was

proximately caused by illness, injury, or death of the permit owner. If the permit expires, it will be forfeited and NMFS will not reissue the permit to anyone.

(10) *Owner on-board requirement.* (i) Except as provided in paragraphs (f)(10)(ii) through (v) of this section, the DGN permit holder must be on-board the vessel and in possession of a valid Federal limited entry DGN permit when engaged in DGN fishing activity.

(ii) A permit holder may designate another individual to fish under their permit for up to 15 days per fishing year (April 1 to March 31 of the following year); the substitute must comply with all other Federal permitting requirements. A permit holder shall notify NMFS of a substitution at least 24 hours prior to the commencement of the trip.

(iii) If the person who owns a Federal DGN permit is prevented from being on-board a fishing vessel because the person died, is ill, or is injured, NMFS may allow an exemption to the owner on-board requirement for more than 15 days. The person requesting the exemption must send a letter to NMFS requesting an exemption from the owner on-board requirements, with appropriate evidence as described at paragraph (f)(10)(iv) or (v) of this section. All exemptions for death, injury, or illness will be evaluated by NMFS and a decision will be made in writing to the permit owner (or, in the case of the death of the permit owner, to the estate or heirs of the permit owner) within 60 calendar days of receipt of the original exemption request.

(iv) Evidence of death of the permit owner shall be provided to NMFS in the form of a copy of a death certificate. In the interim before the estate is settled, if the deceased permit owner was subject to the owner on-board requirements, the estate of the deceased permit owner may send a letter to NMFS with a copy of the death certificate, requesting an exemption from the owner-on-board requirements. An exemption due to death of the permit owner will be effective only until such time that the estate of the deceased permit owner has registered the deceased permit owner's permit to a beneficiary, transferred the permit to another owner, or three years after the date of death as proven by a death certificate, whichever is earliest. An exemption from the owner-on-board requirement will be conveyed in a letter from NMFS to the estate of the permit owner and is required to be on the vessel during DGN fishing operations.

(v) Evidence of illness or injury that prevents the permit owner from participating in the fishery shall be provided to NMFS in the form of a letter from a certified medical practitioner. This letter must detail the relevant medical conditions of the permit owner and how those conditions prevent the permit owner from being on-board a fishing vessel during DGN fishing. An exemption due to injury or illness will be effective only for the fishing year of the request for exemption. In order to extend a medical exemption for a succeeding year, the permit owner must submit a new request and provide documentation from a certified medical practitioner detailing why the permit owner is still unable to be on-board a fishing vessel. An exemption from the owner-on-board requirement will be conveyed in a letter from NMFS to the permit owner and is required to be on the vessel during DGN fishing operations.

[FR Doc. 2018–05186 Filed 3–13–18; 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–XF900

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2018 total allowable catch of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 9, 2018, through 1200 hrs, A.l.t., March 10, 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.

The A season allowance of the 2018 total allowable catch (TAC) of pollock in Statistical Area 610 of the GOA is 1,317 metric tons (mt) as established by the final 2018 and 2019 harvest specifications for groundfish in the GOA (83 FR 8768, March 1, 2018).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2018 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,167 mt and is setting aside the remaining 150 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

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 closure of directed fishing for pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 8, 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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 9, 2018.

Emily H. Menashes,

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

[FR Doc. 2018–05133 Filed 3–9–18; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170816769–8162–02]

RIN 0648–XG078

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2018 total allowable catch of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 10, 2018, through 1200 hours, A.l.t., May 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.

The B season allowance of the 2018 total allowable catch (TAC) of pollock in Statistical Area 630 of the GOA is 4,184 metric tons (mt) as established by the final 2018 and 2019 harvest specifications for groundfish in the GOA (83 FR 8768, March 1, 2018).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2018 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,684 mt and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 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 closure of directed fishing for pollock in Statistical Area 630 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 March 8, 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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 9, 2018.

Emily H. Menashes,

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

[FR Doc. 2018–05167 Filed 3–9–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 50
Wednesday, March 14, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2018–0044]

Clarification on Endorsement of Nuclear Energy Institute Guidance in Designing Digital Upgrades in Instrumentation and Control Systems

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory issue summary; request for comment and public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking public comment on the draft Regulatory Issue Summary (RIS) 2002–22, Supplement 1, ''Clarification on Endorsement of Nuclear Energy Institute Guidance in Designing Digital Upgrades in Instrumentation and Control Systems.'' This RIS Supplement clarifies the guidance in RIS 2002–22, which remains in effect. The NRC continues to endorse Nuclear Energy Institute 01–01 (NEI–01–01) as stated in RIS 2002–22, as clarified by the RIS Supplement.

DATES: Submit comments by March 29, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0044. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tekia Govan, Office of Nuclear Reactor Regulation (NRR), telephone: 301–415–6197, email: *Tekia.Govan@nrc.gov* of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0044 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0044.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft RIS is available in ADAMS under Accession No. ML18051A084.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0044 in your comment submission.

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

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

II. Background

The RIS is intended for all holders of and applicants for power reactor operating licenses or construction permits under 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' all holders of, and applicants for, a power reactor combined license, standard design approval, or manufacturing license, and all applicants for a standard design certification, under 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' and all holders of, and applicants for, a construction permit or an operating license for non-power production or utilization facilities under 10 CFR part 50, including all existing non-power reactors and proposed facilities for the production of medical radioisotopes, such as molybdenum-99, except those that have permanently ceased operations and have returned all of their fuel to the U.S. Department of Energy.

In 2002, the NRC staff issued RIS 2002–22 to notify addressees that the NRC staff had reviewed NEI–01–01 and was endorsing the report for use as guidance in designing and implementing digital upgrades to nuclear power plant instrumentation and control systems. Following the NRC staff's 2002 endorsement of NEI 01–01, holders of operating licenses have used this guidance in support of digital design modifications implemented without prior NRC approval in accordance with 10 CFR 50.59. The NRC inspections of documentation for these activities uncovered inconsistencies in the performance and documentation of engineering evaluations and associated technical bases for determinations on the 10 CFR 50.59(c)(2) evaluation criteria. This RIS Supplement clarifies

the RIS 2002–22 endorsement of the NEI 01–01 guidance by providing additional guidance for developing and documenting ''qualitative assessments'' that are used to provide an adequate basis for a licensee's determination that a digital modification will exhibit a low likelihood of failure to support a conclusion when applying 10 CFR 50.59 that a license amendment is not needed.

The NRC published a notice of opportunity for public comment on this RIS in the **Federal Register** on July 3, 2017 (82 FR 30913). Following that notice, the NRC staff engaged in multiple communications with the public and stakeholders and continued internal discussions about the RIS. As a result of these efforts, the NRC has substantially rewritten the RIS. Due to the extensive nature of these revisions, and in light of this additional opportunity for comment, the NRC is not directly responding to each comment received in the previous comment period. All comments and other communications associated with the previous version of this RIS can be found in ADAMS under Accession No. ML18039A804.

Proposed Action

The NRC is requesting public comments on the draft RIS. To the extent that the NRC's revisions have not resolved a comment that was submitted in the previous comment period, the NRC asks that such comments be resubmitted for further consideration. Because of the extensive communication about this RIS, the NRC believes that stakeholders will be able to submit comments quickly. In addition, the NRC seeks to issue this RIS as expeditiously as possible to minimize misunderstandings about the NRC's requirements for digital I&C modifications under 10 CFR 50.59. Therefore, the NRC is publishing the draft RIS with a 15 day comment period. Requests for extension of the comment period may be submitted as described above in the **ADDRESSEES** section.

The NRC is also requesting specific comments on Figure 1 in the attachment of the draft RIS:

- Does Figure 1 clearly explain the engineering evaluation process (as described in Section 4 of the RIS attachment) to determine sufficient dependability, which may be used in performing and documenting a qualitative assessment (as described in Section 3 of the RIS attachment)?
- How could the figure and/or explanatory text in the draft RIS be modified to clarify the relationship between the engineering evaluation and qualitative assessment approaches described in the draft RIS?

The NRC plans to hold a public meeting to discuss this RIS and the issues associated with clarification of the applicability of the endorsed NEI 01–01 guidance. All comments that are to receive consideration in the final RIS must still be submitted electronically or in writing as indicated in the **ADDRESSES** section of this document. Additional details regarding the meeting will be posted at least 10 days prior to the public meeting on the NRC's Public Meeting Schedule website at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.* The NRC staff will make a final determination regarding issuance of the RIS after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this day of March 7, 2018.

For the Nuclear Regulatory Commission.

Tekia Govan,

Project Manager, ROP Support and Generic Communication Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–04958 Filed 3–13–18; 8:45 am]

BILLING CODE 7590–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0290; FRL–9975–14–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Regulatory Amendments Addressing Reasonably Available Control Technology Requirements Under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing rulemaking action on a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania (Pennsylvania or the Commonwealth). This revision consists of regulatory amendments intended to meet certain reasonably available control technology (RACT) requirements under the 1997 and 2008 8-hour ozone national ambient air quality standards (NAAQS). EPA is proposing to approve most parts of the Pennsylvania SIP revision as meeting RACT requirements under the Clean Air Act (CAA). EPA is also proposing to conditionally approve certain provisions of this SIP revision, based upon Pennsylvania's commitment to submit additional enforceable measures that meet RACT. This action is being taken under the CAA.

DATES: Written comments must be received on or before April 13, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2017–0290 at *http://www.regulations.gov,* or via email to *Spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov.*

SUPPLEMENTARY INFORMATION: On May 16, 2016, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to the Pennsylvania SIP consisting of amendments to regulations in 25 Pa. Code Chapters 121 and 129, to meet certain RACT requirements of the CAA for both the 1997 and 2008 8-hour ozone NAAQS.

I. Background

The Pennsylvania May 16, 2016 SIP revision submitted by PADEP includes the Pennsylvania regulations in 25 Pa. Code sections 129.96–129.100 titled ''Additional RACT Requirements for Major Sources of NO_X and VOCs'' (the RACT II Rule) and amendments to 25 Pa. Code section 121.1, including

related definitions, to be incorporated into the Pennsylvania SIP. These regulatory amendments were adopted by PADEP on April 23, 2016 and effective on the same date upon publication in the Pennsylvania Bulletin. The May 16, 2016 SIP revision was submitted to satisfy certain CAA RACT requirements under both the 1997 and 2008 8-hour ozone NAAQS for specific source categories.

On July 18, 1997 (62 FR 38856), EPA promulgated a standard for ground level ozone based on 8-hour average concentrations (1997 8-hour ozone NAAQS). The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. On April 30, 2004 (69 FR 23858), EPA designated nonattainment areas under the 1997 8-hour ozone NAAQS. Designations included 16 nonattainment areas in Pennsylvania, with only 2 moderate nonattainment areas, namely Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE (the Philadelphia Area) and Pittsburgh-Beaver Valley (the Pittsburgh Area). The remaining 14 areas in Pennsylvania were designated marginal nonattainment areas. *See* 40 CFR 81.339.

On March 12, 2008 (73 FR 16436), EPA strengthened the 8-hour ozone standards, by revising its level to 0.075 ppm averaged over an 8-hour period (2008 8-hour ozone NAAQS). On May 21, 2012, EPA designated most areas in the country for the 2008 8-hour ozone NAAQS, including 5 marginal nonattainment areas in Pennsylvania: Allentown-Bethlehem-Easton, Lancaster, Reading, the Philadelphia Area, and the Pittsburgh Area. *See* 77 FR 30088 and 40 CFR 81.339.

On March 6, 2015 (80 FR 12264), EPA announced its revocation of the 1997 8-hour ozone NAAQS for all purposes and for all areas in the country, effective on April 6, 2015. EPA also determined that certain nonattainment planning requirements continue to be in effect under the revoked standard for nonattainment areas under the 1997 8-hour ozone NAAQS, including RACT. *See* 80 FR 12296 (March 6, 2015).

A. RACT Requirements for Ozone

The CAA regulates emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC) to prevent photochemical reactions that result in ozone formation. RACT is an important strategy for reducing NO_X and VOC emissions from major stationary sources within areas not meeting the ozone NAAQS.

Areas designated nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172. Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM) for demonstrating attainment of all NAAQS, including emissions reductions from existing sources through adoption of RACT. Further, section 182(b)(2) of the CAA sets forth additional RACT requirements for ozone nonattainment areas classified as moderate or higher nonattainment.

Section 182(b)(2) of the CAA sets forth three distinct requirements regarding RACT for the ozone NAAQS: First, section 182(b)(2)(A) requires states with ozone areas designated moderate or higher to submit a rule (or negative declaration) for each category of VOC sources in the nonattainment area covered by a Control Technique Guideline (CTG) document issued by EPA between November 15, 1990 and the date of attainment for an ozone NAAQS. These rules shall be submitted as SIP revisions within the period set forth by EPA in issuing the relevant CTG document. Second, section 182(b)(2)(B) requires a rule (or negative declaration) for all VOC sources in the nonattainment area covered by any CTG issued before November 15, 1990. And third, section 182(b)(2)(C) requires a rule or rules for implementing RACT for any other major stationary sources of VOCs located in the nonattainment area.

In addition, section 182(f) subjects major stationary sources of NO_X to the same RACT requirements that are applicable to major stationary sources of VOC. EPA has not issued any CTGs for categories of NO_X sources, so the requirement in section 182(f) in essence refers to section 182(b)(2)(C). The ozone RACT requirements under section 182(b)(2) are usually referred to as VOC CTG RACT, non-CTG major VOC RACT, and major NO_X RACT.

Pursuant to section 183(c) of the CAA, EPA must revise and update CTGs and Alternative Control Techniques guidelines (ACTs) as the Administrator determines necessary. EPA's CTGs establish presumptive RACT level control requirements for various source categories. The CTGs usually identify a particular control level which EPA recommends as being RACT. In some cases, EPA has issued ACTs for source categories, which in contrast to the CTGs, only present a range for possible control options but do not identify any particular option as the presumptive norm for what is RACT. States are required to address RACT for the source categories covered by CTGs through adoption of rules as part of the SIP.

Section 184(b)(1)(B) of the CAA applies the RACT requirements in section 182(b)(2) for moderate nonattainment areas to nonattainment areas classified as marginal and to attainment areas located within ozone transport regions established pursuant to section 184 of the CAA. Section 184(a) of the CAA established by law the current Ozone Transport Region (the OTR) comprised of 12 eastern states, including Pennsylvania. The requirement in section 184(b)(1)(B) is referred to as OTR RACT. A ''major source'' is defined based on the source's potential to emit (PTE) of NO_X, VOC, or both pollutants, and the applicable thresholds differ based on the classification of the nonattainment area in which the source is located. *See* sections 182(c)–(f) and 302 of the CAA.

Since the 1970's, EPA has consistently defined RACT as the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility. *See* December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas,'' and also 44 FR 53762 (September 17, 1979).

EPA has provided more substantive RACT requirements through final implementation rules for each ozone NAAQS as well as through guidance. In 2004 and 2005, EPA promulgated an implementation rule for the 1997 8-hour ozone NAAQS in two phases (''Phase 1 of the 1997 Ozone Implementation Rule'' and ''Phase 2 of the 1997 Ozone Implementation Rule''). *See* 69 FR 23951 (April 30, 2004) and 70 FR 71612 (November 29, 2005), respectively. Particularly, the Phase 2 Ozone Implementation Rule addressed RACT statutory requirements under the 1997 8-hour ozone NAAQS. *See* 70 FR 71652.

On March 6, 2015, EPA issued its final rule for implementing the 2008 8-hour ozone NAAQS (''the 2008 Ozone SIP Requirements Rule''). *See* 80 FR 12264. At the same time, EPA revoked the 1997 8-hour ozone NAAQS, effective on April 6, 2015.[1] The 2008

[1] On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir. Court) issued an opinion on the 2008 Ozone SIP Requirements Rule. *South Coast Air Quality Mgmt. Dist.* v. *EPA,* No. 15–1115 (D.C. Cir. Feb. 16, 2018). The D.C. Cir. Court found certain parts reasonable and denied the petition for appeal on those. In particular, the D.C. Cir. Court upheld the

Ozone SIP Requirements Rule provided comprehensive requirements to transition from the revoked 1997 8-hour ozone NAAQS to the 2008 8-hour ozone NAAQS, as codified in 40 CFR part 51, subpart AA, following revocation. Consistent with previous policy, EPA determined that areas designated nonattainment for both the 1997 and 2008 8-hour ozone NAAQS at the time of revocation, must retain implementation of certain nonattainment area requirements (*i.e.* anti-backsliding requirements) for the 1997 8-hour ozone NAAQS as specified under section 182 of the CAA, including RACT. *See* 40 CFR 51.1100(o). An area remains subject to the anti-backsliding requirements for a revoked NAAQS until EPA approves a redesignation to attainment for the area for the 2008 8-hour ozone NAAQS. There are no effects on applicable requirements for areas within the OTR, as a result of the revocation of the 1997 8-hour ozone NAAQS. Thus, Pennsylvania, as a state within the OTR, remains subject to RACT requirements for both the 1997 ozone NAAQS and the 2008 ozone NAAQS.

In addressing RACT, the 2008 Ozone SIP Requirements Rule is consistent with existing policy and Phase 2 of the 1997 Ozone Implementation Rule. In the 2008 Ozone SIP Requirements Rule, EPA requires RACT measures to be implemented by January 1, 2017 for areas classified as moderate nonattainment or above and all areas of the OTR. EPA also provided in the 2008 Ozone SIP Requirements Rule that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations stating that there are no sources in the nonattainment area covered by a specific CTG source category. In the preamble to the 2008 Ozone SIP Requirements Rule, EPA clarified that states must provide notice and opportunity for public comment on their RACT SIP submissions, even when submitting a certification that the existing provisions remain RACT or a negative declaration. States must submit appropriate supporting information for their RACT submissions, in accordance with the Phase 2 of the 1997 Ozone Implementation Rule. Adequate documentation must support that states have considered control technology that is economically and technologically feasible in determining RACT, based on information that is current as of the time of development of the RACT SIP.

In addition, in the 2008 Ozone SIP Requirements Rule, EPA clarified that states can use weighted average NO_X emissions rates from sources in the nonattainment area for meeting the major NO_X RACT requirement under the CAA, as consistent with existing policy.[2] EPA also recognized that states may conclude in some cases that sources already addressed by RACT determinations for the 1-hour and/or 1997 8-hour ozone NAAQS may not need to implement additional controls to meet the 2008 ozone NAAQS RACT requirement. *See* 80 FR 12278–12279.

B. Applicability of RACT Requirements in Pennsylvania

As indicated earlier, RACT requirements apply to any ozone nonattainment areas classified as moderate or higher (serious, severe or extreme) under CAA sections 182(b)(2) and 182(f). Pennsylvania has outstanding ozone RACT requirements for both the 1997 and 2008 8-hour ozone NAAQS. The entire Commonwealth of Pennsylvania is part of the OTR established under section 184 of the CAA and thus is subject statewide to the RACT requirements of CAA sections 182(b)(2) and 182(f), pursuant to section 184(b).

At the time of revocation of the 1997 8-hour ozone NAAQS (effective April 6, 2015), only two moderate nonattainment areas remained in the Commonwealth of Pennsylvania for this standard, the Philadelphia and the Pittsburgh Areas. As required under EPA's anti-backsliding provisions, these two moderate nonattainment areas continue to be subject to RACT under the 1997 8-hour ozone NAAQS. Given its location in the OTR, the remainder of the Commonwealth is also treated as moderate nonattainment area under the 1997 8-hour ozone NAAQS for any planning requirements under the revoked standard, including RACT. The OTR RACT requirement is also in effect under the 2008 8-hour ozone NAAQS throughout the Commonwealth, since EPA did not designate any nonattainment areas above marginal for this standard in Pennsylvania. Thus, in practice, the same RACT requirements continue to be applicable in Pennsylvania for both the 1997 and 2008 8-hour ozone NAAQS. RACT must be evaluated and satisfied as separate requirements under each applicable standard.

RACT applies to major sources of NO_X and VOC under each ozone NAAQS or any VOC sources subject to CTG RACT. Which NO_X and VOC sources in Pennsylvania are considered ''major'' and must be therefore subject to RACT, is dependent on the location of each source within the Commonwealth. Sources located in nonattainment areas would be subject to the ''major source'' definitions established under the CAA. In the case of Pennsylvania, sources located in any areas outside of moderate or above nonattainment areas, as part of the OTR, shall be treated as if these areas were moderate.

States were required to make RACT SIP submissions for the 1997 8-hour ozone NAAQS by September 15, 2006. PADEP submitted a SIP revision on September 25, 2006, certifying that a number of previously approved VOC CTG and non-CTG RACT rules continued to satisfy RACT under the 1997 8-hour ozone NAAQS for the remainder of Pennsylvania.[3] PADEP has met its obligations under the 1997 8-hour ozone NAAQS for its CTG and non-CTG VOC sources. *See* 82 FR 31464 (July 7, 2017). RACT control measures addressing all applicable CAA requirements under the 1997 8-hour ozone NAAQS have been implemented and fully approved in the jurisdictions of Allegheny County and Philadelphia County in Pennsylvania. *See* 78 FR 34584 (June 10, 2013) and 81 FR 69687 (October 7, 2016).

For the 2008 8-hour ozone NAAQS, states were required to submit RACT SIP revisions by July 20, 2014. On May 16, 2016, PADEP submitted a SIP revision addressing RACT under both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. Specifically, the May 16, 2016 SIP submittal intends to satisfy sections 182(b)(2)(C), 182(f), and 184 of the CAA for both the 1997 and 2008 8-hour ozone NAAQS for Pennsylvania's major NO_X and VOC non-CTG sources, except ethylene production plants, surface active agents manufacturing, and mobile equipment repair and refinishing.

use of NO_X averaging to meet RACT requirements for 2008 ozone NAAQS. However, the Court also found certain other provisions, not relevant to this action, unreasonable. The D.C. Cir. Court vacated the provisions it found unreasonable.

[2] EPA's NO_X RACT guidance ''Nitrogen Oxides Supplement to the General Preamble'' (57 FR 55625; November 25, 1992) encouraged states to develop RACT programs that are based on ''area wide average emission rates.'' Additional guidance on area-wide RACT provisions is provided by EPA's January 2001 economic incentive program guidance titled ''Improving Air Quality with Economic Incentive Programs,'' available at *http://www.epa.gov/ttn/oarpg/t1/memoranda/eipfin.pdf.* In addition, as mentioned previously, the D.C. Cir. Court recently upheld the use of NO_X averaging to meet RACT requirements for 2008 ozone NAAQS. *South Coast Air Quality Mgmt. Dist.* v. *EPA,* No. 15–1115 (D.C. Cir. Feb. 16, 2018).

[3] The September 15, 2006 SIP submittal initially included Pennsylvania's certification of NO_X RACT regulations; however, NO_X RACT portions were withdrawn by PADEP on June 27, 2016.

This notice includes EPA's rationale for proposing rulemaking action on the Pennsylvania May 16, 2016 SIP revision for purposes of meeting these RACT requirements under the CAA. EPA prepared two technical support documents (TSDs) in support of this proposed rulemaking action: ''Technical Support Document for the Pennsylvania State Implementation Plan Revision for Certain Reasonably Available Control Technology Requirements under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards'' and ''Technical Support Document for the Pennsylvania State Implementation Plan Revision for Certain Reasonably Available Control Technology Requirements under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards- Cost Effective Analyses for Coal Fired Boilers.'' For further details on this proposed rulemaking action, please refer to these TSDs, which are included as part of this rulemaking docket and are available online at *www.regulations.gov.*

II. Summary of SIP Revision and EPA's Evaluation

The RACT II Rule applies statewide to existing major NO_X and/or VOC sources in Pennsylvania, except those subject to other Pennsylvania regulations, as specified in 25 Pa. Code 129.96(a)–(b).[4] All but one of the exempted rules listed in section 129.96(a)–(b) have been previously approved by EPA into the SIP to meet RACT requirements under the CAA. The RACT II Rule exempts all VOC source categories for which PADEP had adopted CTG RACT regulations at the time the RACT II Rule was finalized. In addition, regulations exempted under the RACT II Rule also apply to three non-CTG VOC source categories: (1) Ethylene production plants, (2) surface active agents manufacturing, and (3) mobile equipment repair and refinishing. The RACT II Rule also exempts 25 Pa. Code sections 129.301–129.310, which has not been approved as RACT, although it is approved into the SIP. This regulation establishes NO_X control requirements for glass melting furnaces. Any other NO_X major sources in Pennsylvania are covered by the RACT II Rule.

The RACT II Rule requirements apply to any emissions unit or process at an affected major source having a PTE of 1 ton per year (TPY) or more of NO_X and/or VOC. In the context of the rule, existing major sources are those already in existence as of July 20, 2012 or any major sources installed or modified after July 20, 2012, which became a major source before January 1, 2017. The RACT II Rule establishes a general compliance date of January 1, 2017, as provided in paragraphs in 129.97(a) and 129.99(d)(4). EPA recognizes that RACT controls under the 1997 8-hour ozone NAAQS were required to be implemented in Pennsylvania by 2009 and that this requirement is past due; however, EPA believes that the May 16, 2016 SIP revision should sufficiently address the pending RACT obligations under the 1997 8-hour ozone NAAQS by addressing the more stringent RACT level of control under the 2008 8-hour ozone NAAQS. The general compliance date of the RACT II Rule is consistent with EPA's required deadline for states to implement RACT controls under the 2008 8-hour ozone NAAQS. *See* 80 FR 12279.

The RACT II Rule permits an affected major source that needs additional time to install an air pollution control device to meet the requirements under the RACT II Rule to petition PADEP for an alternative compliance schedule. The RACT II Rule also allows an owner or operator of a major source to petition an alternative compliance schedule if it needs additional time to install an air pollution control device on an affected emissions unit in order to comply with the RACT II requirements. These provisions allow the owner or operator in this situation to petition in writing for an alternative compliance schedule, by proposing an interim emission limit, and a later compliance date to implement such control device ''as soon as possible but not later than 3 years after the written approval of the petition.'' EPA believes that the language in the rule allows for Pennsylvania's implementation of RACT controls as expeditiously as practicable.

Section 129.97 of the RACT II Rule establishes NO_X and VOC emission limits or operational requirements on certain types of emissions units in the affected major sources which Pennsylvania presumes to meet RACT, thus referred to in the rule as presumptive RACT. Operating requirements apply to smaller emissions units; namely, combustion units with rated heat input equal to or greater than 20 million British Thermal Units per hour (MMBTU/hr) and less than 50 MMBTU/hr, NO_X sources with PTE of less than 5 TPY, VOC sources with PTE of less than 2.7 TPY, combustion units with rated heat input of less than 20 MMBTU/hour, and emergency generators operating less than 500 hours in a 12-month rolling period. Presumptive RACT NO_X limits are provided for combustion units, process heaters, combustion turbines, stationary internal combustion engines, cement kilns, and municipal waste combustors. Presumptive RACT VOC limits are provided for combustion turbines, stationary internal combustion engines, and municipal solid waste landfills.

In evaluating whether controls and emission limitations meet RACT, EPA generally considers controls that have been achieved in practice by other similar existing sources to be technologically and economically feasible. For that reason, to evaluate PADEP's RACT determinations under the RACT II Rule, EPA reviewed NO_X emissions limits in effect in adjacent OTR states for certain source categories addressed by Pennsylvania's rule.[5] EPA also reviewed and considered guidance documents that have been published to assist states in identifying NO_X RACT level of controls. EPA finds that the NO_X presumptive limits in 25 Pa. Code section 129.97 of the RACT II Rule are comparable to NO_X emission limitations in other states and consistent with EPA's RACT guidance on additional control requirements. EPA finds that the presumptive requirements of the RACT II Rule represent emission limitations achievable through implementation of reasonably available controls. EPA also finds the VOC presumptive limits for combustion turbines and internal combustion engines to be reasonable considering feasibility of available controls. For municipal solid waste landfills, the RACT II Rule incorporates by reference as VOC presumptive limits the federal New Source Performance Standards (NSPS) in 40 CFR part 60, subpart Cc (Subpart Cc) and subpart WWW (Subpart WWW). EPA finds that the NSPS standards represent reasonably achievable NO_X emissions limits based on the operation of reasonably available controls, and thus, meet RACT for this source category.

EPA further evaluated the NO_X presumptive requirements in 25 Pa. Code section 129.97 of the RACT II Rule that are applicable to large coal-fired boilers. Sources under these requirements would include utility boilers and large industrial boilers, which are a significant NO_X emissions sector in Pennsylvania. The RACT II Rule establishes more rigorous requirements for large coal-fired boilers with certain post-combustion controls

[4] In the context of the RACT II Rule, the terms ''major NO_X emitting facility'' and ''major VOC emitting facility,'' as defined in 25 Pa Code section 121.1, are used to refer to major stationary sources.

[5] EPA evaluated NO_X emission limits in adjacent OTR states because the OTR states are all subject to the same RACT requirements for the 1997 and 2008 ozone NAAQS under CAA section 184.

in place, specifically selective catalytic reduction (SCR), while other coal-fired boilers without these controls in place are the subject of less stringent NO_X emissions limits based on the boiler type. EPA finds that the presumptive limit of 0.12 pounds of NO_X per heat input in million British Thermal Unit (lb/MMBTU) is consistent with the operation of SCR presently installed and reasonably represents RACT for coal-fired boilers with this control in place. EPA evaluated economic feasibility of installing and operating additional post-combustion controls on any large coal-fired boilers in Pennsylvania that to date do not have these controls, in order to determine which RACT control level is reasonable as a basis for PADEP's presumptive requirements for this subset of boilers. EPA finds that Pennsylvania's presumptive RACT determination for coal-fired boilers without post-combustion controls is reasonable, as it is based on the economic infeasibility of retrofitting coal-fired boilers in Pennsylvania. Thus, EPA concludes that PADEP has adequately established for coal-fired boilers NO_X presumptive RACT requirements based on reasonably available controls that therefore represent RACT. For further details, refer to EPA's ''Technical Support Document for the Pennsylvania State Implementation Plan Revision for Certain Reasonably Available Control Technology Requirements under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards- Cost Effective Analyses for Coal Fired Boilers.''

Pursuant to 25 Pa. Code section 129.97(g)(4), any combustion unit firing multiple fuels and subject to different presumptive limits for each fuel, must comply with a single NO_X or VOC emission limit determined on a total heat input fuel weighted basis for any fuel representing 1% of more of the combustion unit's annual fuel combustion on a heat input basis. EPA finds the RACT II Rule's multiple fuel compliance method practicable and adequate for RACT.

Affected major sources subject to the presumptive requirements of 25 Pa. Code section 129.97 that cannot comply with the applicable presumptive NO_X limits for any given emissions units, may choose one of two alternative compliance options to establish RACT. Such sources may either propose an alternative NO_X emissions limit based on average NO_X emissions from multiple sources or else propose a source-specific emission NO_X or VOC limit.

The NO_X averaging provisions established in 25 Pa. Code section 129.98 allow the owner or operator of an affected major NO_X source that is unable to meet a NO_X presumptive limit for at least one of its emissions unit, to establish an alternative RACT limit by averaging the NO_X emissions from the non-compliant emissions unit and other emissions units. Participating NO_X emissions units can be located either within the same facility (facility-wide averaging) or in another facility but within the same nonattainment area (system-wide averaging). As discussed in the following section, EPA finds that 25 Pa. Code section 129.98 is not sufficient to address RACT for sources seeking averaging, without the specific NO_X averaging provisions for any affected sources being submitted to EPA for SIP approval. Therefore, EPA is proposing to conditionally approve the provisions in 25 Pa. Code section 129.98. Additional discussion and explanation for this conditional approval is provided in the following section III of this notice.

Under 25 Pa. Code section 129.99, the owner or operator of an affected major NO_X and/or VOC source that is unable to meet a presumptive requirement under section 129.97, may propose an alternative RACT emissions limit, based on the feasibility evaluation of reasonably available controls for each emissions unit. The resulting limits are typically unique to the affected emissions unit and achievable through the application of specific controls, therefore referred to as source-specific RACT limits. In addition, an affected major source of NO_X and/or VOC with any emissions unit that is not subject to any presumptive limits or requirements under 25 Pa. Code section 129.97, is required to propose a source-specific RACT limit under 25 Pa. Code section 129.99, similarly based on the evaluation of technologically and economically feasible controls.

Section 129.99 outlines a common procedure for proposing a source-specific RACT limit, whether proposed as an alternative under section 129.99(a) or as required under section 129.99(b)–(c). A written RACT proposal under section 129.99 must be submitted to PADEP or local agency for any affected emissions units with PTE of 5.0 TPY or more of NO_X and/or 2.7 TPY or more of VOC. Source-specific limits determined to be adequate by PADEP or local agency will be approved into federally enforceable permits and then submitted for EPA's review and approval into the SIP to meet RACT. As discussed in the following section, EPA finds that 25 Pa. Code section 129.99 is not approvable by itself without further information on specific sources and is therefore not approvable as RACT for sources seeking or required to establish an alternative RACT limit. Therefore, EPA is proposing to conditionally approve the provisions in 25 Pa. Code section 129.99. Additional discussion and explanation for this conditional approval is provided in the section III of this notice.

The RACT II Rule contains certain ancillary provisions to ensure RACT level of control for sources that have been previously subject to RACT or are subject to other federally enforceable requirements. Section 129.97(i) of the RACT II Rule provides that the presumptive requirements in section 129.97 will supersede any RACT requirements of a ''RACT permit'' issued prior April 23, 2016 under 25 Pa. Code sections 129.91–95, unless the RACT permit contains more stringent requirements. ''RACT permits'' under 25 Pa. Code sections 129.91–95 were submitted by Pennsylvania as SIP revisions and, if determined to meet RACT, were approved by EPA into the Pennsylvania SIP under 40 CFR 52.2020(d). Section 129.99(k) of the RACT II Rule provides that any source-specific requirements approved under section 129.99 will supersede any similar NO_X and/or VOC requirements that have been approved into an existing enforceable permit issued for the affected source prior to April 23, 2016, except to the extent the existing permit requirements are more stringent. Subsequent RACT SIP revisions under section 129.99 must include a demonstration consistent with CAA section 110(l) to supersede any previously SIP approved RACT requirements, and such revisions will be evaluated and acted on by EPA separately. EPA finds that the provisions in sections 129.97(i) and 129.99(k) are approvable, as they adequately ensure that additional SIP revisions establishing RACT for major NO_X and non-CTG VOC sources in Pennsylvania reflect the most stringent level of control for the affected sources.

25 Pa. Code section 129.100 of the RACT II Rule establishes compliance demonstration and recordkeeping requirements for affected sources. Specific monitoring and testing requirements are established for sources complying with presumptive RACT requirements under section 129.97. Recordkeeping requirements are established under section 129.100(d) for any affected sources under the RACT II Rule.

Additional compliance demonstration requirements for NO_X averaging or

source-specific RACT alternative limits will be established by PADEP or the local permitting agency on a source-specific basis, in accordance with sections 129.98 and 129.99, respectively, and consistent with section 129.100. In the case of sources complying with 129.99, such additional compliance demonstration requirements will be submitted to EPA for approval into the SIP, along with the source-specific limits. Because section 129.98 does not contain any similar requirement to submit NO_X averaging provisions for approval into the SIP, EPA finds that the RACT II Rule does not sufficiently establish compliance demonstration requirements for sources choosing to comply with NO_X averaging under section 129.98, without submitting those additional compliance demonstration requirements to EPA for approval in the SIP. EPA is proposing conditional approval of the NO_X averaging provisions in section 129.98, which will address the lack of specific compliance demonstration requirements for sources seeking to comply with these provisions. Additional discussion and explanation for this conditional approval is provided in the section III of this notice.

Any definitions related to the RACT II Rule are codified in 25 Pa. Code section 121.1. The May 16, 2016 SIP revision included amendments to *existing* definitions: ''CEMS—continuous emissions monitoring system,'' ''major NO_X emitting facility,'' ''major VOC emitting facility,'' ''stationary internal combustion engine or stationary reciprocating internal combustion engine;'' and included *new* definitions for ''process heater,'' ''refinery gas,'' ''regenerative cycle combustion cycle combustion turbine,'' ''simple cycle combustion turbine,'' and ''stationary combustion turbine.'' The definitional changes in 25 Pa. Code section 121.1 are consistent with requirements in the RACT II Rule and are thus approvable under CAA section 110.

EPA finds that the presumptive requirements of 25 Pa. Code section 129.97 represent RACT for the NO_X and VOC source categories affected by these provisions. EPA also finds that the applicability requirements of 25 Pa. Code section 129.96, the compliance demonstration requirements of 25 Pa. Code section 129.100, and the definitions in 25 Pa. Code section 121.1 are necessary to implement the RACT requirements of section 129.97. Thus, EPA finds that these particular provisions of the RACT II Rule are approvable in accordance with requirements in CAA sections 110, 172, 182, and 184 as meeting RACT for the affected major sources of non-CTG VOC and major sources of NO_X under both the 1997 and 2008 8-hour ozone NAAQS. As discussed in the following section, EPA is also proposing conditional approval of 25 Pa. Code sections 129.98 and 129.99.

Additional details of Pennsylvania's SIP submission and EPA's reasoning for proposing approval of this SIP revision can be found in the ''Technical Support Document for the Pennsylvania State Implementation Plan Revision for Certain Reasonably Available Control Technology Requirements under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards,'' prepared for this rulemaking action and available online at *www.regulations.gov* for this rulemaking.

III. Rationale for Proposing Conditional Approval of Certain Provisions

EPA identified deficiencies in 25 Pa. Code sections 129.98 and 129.99, respectively, that prevent full approval of the RACT II Rule SIP revision. The NO_X averaging provisions in 25 Pa. Code section 129.98 are deficient because they do not clearly specify how to properly establish an alternative RACT limit and do not require the submission of averaging NO_X limits to EPA for SIP approval as RACT. EPA finds that the NO_X averaging provisions, particularly as provided in section 129.98(e), are too vague to establish an adequate alternative RACT limit, without a specific determination for each source and specific inclusion into the Pennsylvania SIP of all permit conditions relevant to implementation of the NO_X alternative limit for each affected source. Although section 129.98 (e) intended to define the alternative NO_X RACT emission limit under a NO_X averaging plan, the equation provided only stipulates that the cumulative *actual* NO_X emissions from the emission units included in the averaging plan must be no greater than the cumulative *allowable* NO_X emissions for those emissions units. Section 129.98(e) also specifies that the alternative NO_X limit must be based on the application of the relevant presumptive NO_X limit (as an emissions rate) under 25 Pa. Code section 129.97 or a more stringent limit and must be expressed as NO_X mass emissions; and it requires compliance with the alternative NO_X limit determined on a 30-day rolling basis. Neither 25 Pa. Code section 129.98(e) nor any other provision in section 129.98 establish how to properly compute the alternative NO_X limit, such that an affected source can consistently establish an alternative limit and the resulting limit is practically and federally enforceable to meet RACT and in accordance with CAA section 110(a)(2)(A).

The lack of specificity in 25 Pa. Code section 129.98 allows certain unbounded discretion in determining an alternative NO_X RACT limit, which correspondingly results in our inability to determine if such limit would be adequate for RACT for any major source required to meet RACT. Also, this uncertainty prevents consistent implementation of the NO_X averaging provisions and ultimately prevents the adequate enforceability of these provisions as a practical matter. 25 Pa. Code Section 129.98 fails to provide, on its face, a generic mechanism to establish a presumptive alternative NO_X limit.

Further, EPA has long interpreted the RACT requirement of the CAA to mean states must adopt and submit regulations that include emission limitations[6] as applicable to the subject sources. In other words, a state would not fully meet the RACT requirement until it established emissions limitations applicable to the appropriate sets of sources. Hence, the NO_X averaging provisions in section 129.98, even if sufficiently specific, would not be adequate to fully meet RACT in the absence of the submitted RACT emissions limitations for approval into the SIP.[7] Consequently, NO_X averaging alternative limits would need to be established on a source-specific basis, and would need to be submitted to EPA for approval into the SIP.[8]

With respect to 25 Pa. Code section 129.99 for source-specific RACT, EPA finds that the generic process to subsequently establish source-specific RACT emissions limits is deficient, because it lacks a date certain by which Pennsylvania must submit the relevant source-specific RACT SIP revisions to EPA to meet RACT requirements for the 1997 and 2008 ozone NAAQS. According to EPA's longstanding policy, such ''generic rule'' or process cannot fully satisfy RACT, in the absence of the submitted emission limitations.[9] Thus,

[6] The use of the term emissions limitation is not meant to exclude the use of work practice standards or other operation and maintenance requirements that might be determined to be RACT.

[7] EPA's November 7, 1996 Memorandum ''Approval Option for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirements and Certain NO_X RACT Requirements.''

[8] However, as mentioned previously, the D.C. Cir. Court recently upheld the use of NO_X averaging to meet RACT requirements for 2008 ozone NAAQS. *South Coast Air Quality Mgmt. Dist.* v. *EPA,* No. 15–1115 (D.C. Cir. Feb. 16, 2018).

[9] EPA's November 7, 1996 Memorandum ''Approval Option for Generic RACT Rules

EPA cannot fully approve 25 Pa. Code section 129.99 of the RACT II Rule without the submission of all source-specific RACT limits established under these provisions.

Further, EPA finds that the RACT II Rule does not specify compliance demonstration requirements for sources choosing to meet RACT by complying with NO_X averaging under section 129.98. Section 129.100 only establishes recordkeeping requirements for sources complying with NO_X averaging under section 129.98. Section 129.98 requires each source included in the NO_X emissions averaging plan to provide methods for demonstrating compliance and recordkeeping and reporting requirements; however, those requirements are not required to be included into the SIP. Because these additional compliance demonstration requirements would need to be determined on a source-specific basis consistent with the limits and affected sources under a NO_X averaging plan, EPA requires the submission of such requirements for approval into the SIP, in order for the alternative NO_X limits under section 129.98 to be practically and federally enforceable, pursuant to CAA section 110(a)(2)(A).

On September 26, 2017, PADEP submitted a supplemental document to EPA that included PADEP's specific commitments to address the deficiencies in 25 Pa. Code sections 129.98 and 129.99. PADEP committed to submit to EPA, within 12 months of EPA's final rulemaking action, additional SIP revisions that include the portions of enforceable permits containing the terms and conditions relevant for compliance with section 129.98, which would include the alternative NO_X limits as averaging plans and relevant compliance demonstration requirements. PADEP also committed to submit within 12 months of EPA's final rulemaking action, additional source-specific RACT SIP revisions containing source-specific RACT limits approved by PADEP under 25 Pa. Code section 129.99. A copy of PADEP's September 22, 2017 documentation containing these commitments is available in the docket for this rulemaking and online at *www.regulations.gov.*

EPA finds Pennsylvania's commitments adequately address the deficiencies noted in this rulemaking action for 25 Pa. Code sections 129.98 and 129.99 and are a sufficient basis for EPA to propose conditional approval of these provisions as meeting RACT for sources seeking a NO_X averaging plan or source-specific RACT. Under section 110(k)(4) of the CAA, EPA may conditionally approve a plan based on a commitment from the state to adopt specific enforceable measures within 1 year from the date of approval. If the state fails to adopt and submit the specified measures by the end of 1 year (from the final conditional approval), or fails to submit anything at all, EPA will revert its conditional approval to a disapproval, triggering additional obligations under sections 179 and 110(c) of the CAA.

In this event, EPA will send a letter to the state finding that it had failed to meet its commitment and that the SIP submittal is disapproved. Subsequently, a disapproval notice will be published in the **Federal Register**, and appropriate language will be inserted in the Code of Federal Regulations. EPA's disapproval, effective as of the date of the letter to the state, will trigger a ''clock'' to impose sanctions under section 179(a) and for EPA to issue a federal implementation plan (FIP) under section 110(c)(1). For plan submittals required under Part D, such as ozone RACT, section 179(a) allows for up to 18 months for the state to correct the deficiency that is the subject of a finding or disapproval before EPA is required to impose sanctions. Further, section 110(c)(1) provides for up to 2 years for the state to correct the deficiency, or else additional sanctions apply at this time, and for EPA to approve a new submittal before being obligated to promulgate a FIP. Similarly, if EPA receives a submittal addressing the commitment but determines that the submittal is incomplete, EPA will send a letter to the state making such a finding. As with the failure to submit, the sanctions and FIP clocks will begin as of the date of the finding letter.

In addition, where the state does make a complete submittal by the end of the 1-year period, EPA will have to evaluate that submittal to determine if it may be approved and take final action on the submittal within 12 months after the date EPA determines the submittal is complete. If the submittal does not adequately address the deficiencies that were the subject of the conditional approval, and is therefore not approvable, EPA will go through notice-and-comment rulemaking to disapprove the submittal. The 18-month clock for sanctions and the 2-year clock for a FIP start as of the date of final disapproval. If EPA determines that the rule is approvable, EPA will propose approval of the rule. In either instance, whether EPA finally approves or disapproves the rule, the conditional approval remains in effect until EPA takes its final action.

By conditionally approving 25 Pa. Code sections 129.98 and 129.99, EPA would ensure that adequate RACT limits are established in addition to or as alternative to the presumptive RACT requirements of 25 Pa. Code section 129.97. Additional compliance demonstration requirements would also be approved into the SIP for sources complying with either 25 Pa. Code section 129.98 or 129.99, which would ensure adequate federal and practical enforceability of any additional RACT limits under the RACT II Rule for compliance with CAA section 110(a)(2)(A). In addition, with EPA's conditional approval of these requirements, EPA would set a specific schedule for producing enforceable RACT measures, resulting in more timely implementation of RACT controls in Pennsylvania than would otherwise occur if EPA was to disapprove these provisions and require a federal plan for control.

Conditional approval of 25 Pa. Code sections 129.98 and 129.99 should not result in the approved portions of the RACT II Rule being any more stringent than anticipated or intended by Pennsylvania. 25 Pa. Code 129.99 requires source-specific RACT to receive EPA approval and required sources complying with these requirements to submit an alternative proposal to PADEP by a date certain which has already passed. In addition, compliance with 25 Pa. Code sections 129.98 and 129.99 is intended in most cases as an alternative option for affected sources that are unable to comply with the established presumptive RACT emissions requirements under section 129.97. The presumptive RACT requirements in section 129.97 remain applicable unless and until a source receives approval of an alternative RACT limit (under 25 Pa. Code sections 129.98 and 129.99) and EPA approves such alternative RACT limits into the Pennsylvania SIP. Further, PADEP's September 22, 2017 commitments confirm PADEP's intention to submit alternative RACT limits under 25 Pa. Code sections 129.98 and 129.99 to EPA for SIP approval. The submission of any alternative RACT requirement approved by Pennsylvania as a SIP revision will not supplant the presumptive RACT requirements for purposes of Federal enforceability unless and until the alternative is fully approved by EPA into the SIP.

In conclusion, EPA is proposing conditional approval under CAA section 110(k)(4) only of 25 Pa. Code sections 129.98 and 129.99 of the RACT II Rule

Submitted to Meet the non-CTG VOC RACT Requirements and Certain NO_X RACT Requirements.''

for the reasons provided above. EPA is also proposing full approval under CAA 110 of the rest of the RACT II Rule included for incorporation in the Pennsylvania SIP through PADEP's May 16, 2016 SIP submittal, as EPA finds that the remainder of the RACT II Rule meets the intended RACT requirements under sections 172, 182, 184 and 110 of the CAA for the 1997 and 2008 ozone NAAQS.

IV. Proposed Action

EPA's review of the Pennsylvania May 16, 2016 SIP submittal indicates that certain portions of the submittal are adequate to meet RACT requirements under the CAA for both the 1997 and 2008 8-hour ozone NAAQS. EPA is proposing to fully approve into the SIP the provisions in 25 Pa. Code sections 129.96–129.97, and 129.100 of the RACT II Rule and relevant definitions in 25 Pa. Code section 121.1, adopted by Pennsylvania on April 23, 2016, as meeting RACT for the 1997 and 2008 ozone NAAQS. These provisions are adequate to meet the ozone-specific RACT requirements of sections 172, 182(b)(2)(C), 182(f), and 184 of the CAA for both the 1997 and 2008 8-hour ozone NAAQS for specific NO_X and VOC sources in Pennsylvania, and in accordance with section 110.

In addition, EPA is proposing to conditionally approve 25 Pa. Code sections 129.98 and 129.99, as these provisions provide alternative RACT requirements which require further PADEP and EPA action in order to meet RACT requirements under the CAA. The provisions of 25 Pa. Code sections 129.98 and 129.99 will become fully approvable, if PADEP submits to EPA, within 12 months of EPA's final action, additional SIP revisions that include any alternative NO_X averaging limits and source-specific RACT limits adopted under sections 129.98 and 129.99, respectively, as well as any relevant compliance demonstration requirements. Once EPA has determined that PADEP has satisfied this condition, EPA shall remove the conditional nature of its approval and, at that time, the provisions in 25 Pa. Code sections 129.98 and 129.99 will receive a full approval status. Should PADEP fail to meet this condition, the final conditional approval of 25 Pa. Code sections 129.98 and 129.99 will convert to a disapproval. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the regulatory provisions of 25 Pa. Code sections 129.96–129.100 of the RACT II Rule and related amendments of 25 Pa Code section 121.1, as adopted by Pennsylvania on April 23, 2016. EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

V. Statutory and Executive Order Reviews

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 proposed 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, this proposed rule, concerning Pennsylvania's 1997 and 2008 8-hour ozone reasonably available control technology for certain major NOx and VOC sources, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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.

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

Dated: February 23, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2018–04933 Filed 3–13–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2016–0110; FXES11130900000 178 FF09E42000]

RIN 1018–BB79

Endangered and Threatened Wildlife and Plants; Removing the Black-Capped Vireo From the Federal List of Endangered and Threatened Wildlife; Availability of Post-Delisting Monitoring Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the

availability of our draft post-delisting monitoring (PDM) plan for the black-capped vireo (*Vireo atricapilla*). The draft PDM plan describes the methods we propose to monitor the status of the vireo and its habitat, in cooperation with the States of Texas and Oklahoma and other conservation partners, for a 12-year period if we remove this species from the Federal List of Endangered and Threatened Wildlife. The draft PDM plan also provides a strategy for identifying and responding to any future population declines or habitat loss. We are accepting comments on the draft PDM plan.

DATES: We will accept comments on the draft PDM plan for black-capped vireo until April 13, 2018.

ADDRESSES: *Document availability:* The draft PDM plan is available for review on the internet at *www.regulations.gov* in Docket No. FWS–R2–ES–2016–0110 and at *http://endangered.fws.gov* and *https://www.fws.gov/southwest/es/ArlingtonTexas/.* To request a copy of the draft PDM plan, contact us at U.S. Fish and Wildlife Service, Arlington Ecological Services Field Office, 2005 NE Green Oaks Blvd., Suite 140, Arlington, TX 76006; telephone 817–277–1100; facsimile 817–277–1129; *ARLES@fws.gov.* Supporting documentation we used in preparing the draft PDM plan is available for public inspection, by appointment, during normal business hours, at the above office.

Comment submission: You may submit comments on the draft PDM plan by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R2–ES–2016–0110, which is the docket number for this rulemaking. Then, click on the Search button. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2016–0110, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Request for Public Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Debra Bills, U.S. Fish and Wildlife Service, Arlington Ecological Services Field Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800/877–8339.

SUPPLEMENTARY INFORMATION:

Background

The black-capped vireo is an insectivorous songbird that breeds in Oklahoma, Texas, and northern Mexico, and winters along the western coastal states of Mexico. The vireo was listed as endangered under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), in 1987, due primarily to nest parasitism by brown-headed cowbirds (*Molothrus ater*) and loss of habitat from urbanization, grazing, removal of vegetation for range improvement, and succession (52 FR 37420, October 6, 1987).

On December 15, 2016, we published a proposed rule to remove the black-capped vireo from the Federal List of Endangered and Threatened Wildlife (List) (81 FR 90762). Our proposed rule was based largely on the Species Status Assessment (SSA) Report, which characterized the overall species' viability in the future. In the SSA Report, the impact of brown-headed cowbird parasitism on certain locations was expressed in terms of sustainability and expansion of populations. Additionally, the black-capped vireo was identified as ''conservation-reliant'' due to successful recovery actions being implemented, largely cowbird management. In this document, we provide clarification to the information regarding cowbird management.

The Service believes cowbird management was a major factor leading to the recovery of the species, and the importance of cowbird management was discussed in the SSA Report. Particularly, the black-capped vireo population in Oklahoma and localities in the eastern portion of the Texas range may be reliant on cowbird management periodically, or perpetually, to ensure minimal losses of current population numbers. In this regard, we assume the species may be ''conservation reliant,'' due to efforts necessary to retain healthy shrublands and reduce brown-headed cowbird parasitism under certain conditions in portions of the range. Based on the comprehensive information collected for the SSA Report, there is inherent uncertainty in forecasting future threats and population status scenarios over a 50-year timeframe. To address this uncertainty and ensure that the black-capped vireo continues to prosper, the SSA Report noted the importance of continued management of known populations of the species. To further this recommendation, the Service has obtained mutual commitments with many of our partners in the form of cooperative management agreements or other strategies to continue to manage known populations of the black-capped vireo and implement the PDM plan. These cooperative management agreements are included in the PDM plan, and provide assurances that PDM will detect trends in the black-capped vireo status and threats and the species' biological status will continue to improve.

In addition, we have corrected errors in Table 14 of the SSA Report (page 105). This table presented the results of forecast scenarios under short- and long-term managed and unmanaged conditions from Table 13, which is correct. Among the corrections to Table 14 was the shifting of one ''likely resilient locality'' in the short-term worst-case scenario between recovery units, and identifying one less ''manageable locality'' in the long-term worst-case scenario. These corrections do not change the results of the SSA analysis. The SSA with the corrected table is included in the docket (FWS–R2–ES–2016–0110) for the proposed rule on *www.regulations.gov* and can also be accessed at *https://www.fws.gov/southwest/es/ArlingtonTexas/.*

For more background information on the black-capped vireo, refer to our Black-capped Vireo Species Status Assessment (SSA) Report available in the docket (FWS–R2–ES–2016–0110) for the proposed rule on *www.regulations.gov* and also at *https://www.fws.gov/southwest/es/ArlingtonTexas/.*

The Act, section 4(g)(1), requires us to implement a system, in cooperation with the States, to effectively monitor the status of each species we remove from the Federal Lists of Endangered and Threatened Wildlife and Plants due to recovery. The monitoring must occur for at least 5 years. The PDM's purpose is to verify that a species we delist due to recovery remains secure from risk of extinction after we remove the Act's protections.

To fulfill the PDM requirement, we drafted a black-capped vireo monitoring plan in cooperation with the Texas Parks and Wildlife Department, Oklahoma Department of Wildlife Conservation, Fort Hood and Fort Sill Military Installations, and The Nature Conservancy of Texas. Over a 12-year period, we propose to monitor abundance trends at managed localities with known populations of greater than 30 adult male vireos, estimate population trends at 4 major localities, and monitor the residual threats of brown-headed cowbird parasitism, land

use changes, and densities of livestock and deer.

Abundance monitoring would focus on known black-capped vireo localities under some form of management and for which the SSA Report forecasted future persistence. Through monitoring these localities, we can track abundance trends and compare those to the SSA Report forecasts. Additionally, four major localities with several years of population trend data will continue to be monitored to detect changes in trends over the 12-year period. In conjunction with abundance monitoring, a subset of vireo nests will be monitored to determine brown-headed cowbird parasitism rates at these localities. The PDM plan defines monitoring thresholds which, if reached, may result in additional actions. The monitoring thresholds are based on maintaining resiliency, redundancy, and representation, as described in the black-capped vireo SSA Report. Land use trends, livestock, and deer within the vireo's range will also be monitored to ensure we detect changes that may affect the species.

The draft PDM plan includes both interim and final reporting requirements. If PDM results in a concern regarding the vireo's status or increasing threats, possible responses may include an extended or intensified monitoring effort, additional research, or an increased effort to improve habitat and reduce the threat. If future information collected from the PDM, or any other reliable source, indicates an increased likelihood that the species may become in danger of extinction, we will initiate a black-capped vireo status review and determine if re-listing the species is warranted.

In addition to public review of the draft PDM plan, we are requesting independent expert peer review from knowledgeable individuals with scientific expertise that includes knowledge of song bird ecology and conservation biology principles. Draft PDM plan peer review is in accordance with our policy ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' published on July 1, 1994 (59 FR 34270).

Viewing Documents

Comments and materials we receive from the public and peer reviewers, as well as supporting documentation we used in preparing the draft PDM plan, will be available for public inspection by appointment, during normal business hours at the Arlington Ecological Services Field Office (see **ADDRESSES**) and on the internet at *www.regulations.gov* in Docket No. FWS–R2–ES–2016–0110. Once approved, the final black-capped vireo PDM plan and any future PDM plan revisions will be available at *www.regulations.gov* and on our web page (*http://endangered.fws.gov*) and the Arlington Ecological Services Field Office web page (*https://www.fws.gov/southwest/es/ArlingtonTexas/*).

Request for Public Comments

We intend for our final PDM plan to be as accurate and as effective as possible. Therefore, we request comments or suggestions on this black-capped vireo draft PDM plan from the public, concerned governmental agencies, the scientific community, industry, or any other interested party. We will take into consideration substantive comments we receive by the comment due date (see **DATES**). These comments, and any additional information we receive, may lead us to develop a final PDM plan that differs from this draft PDM plan. If you have already submitted a comment in response to the proposed rule, the comment has been incorporated into the record for the rulemaking, is being considered, and does not need to be submitted again.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire document—including your personal identifying information—may be made publicly available at any time. While you may request at the top of your document that we withhold this information from public review, we cannot guarantee that we will be able to do so.

Authors

The primary authors of this document are staff at the Arlington Ecological Services Field Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: February 7, 2018.

James W. Kurth.

Deputy Director, U.S. Fish and Wildlife Service Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2018–05146 Filed 3–13–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BG75

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Electronic Reporting for Federally Permitted Charter Vessels and Headboats in Atlantic Fisheries

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

ACTION: Notice of availability (NOA); request for comments.

SUMMARY: The South Atlantic Fishery Management Council (South Atlantic Council) and Gulf of Mexico (Gulf) Fishery Management Council (Gulf Council) have submitted the For-hire Reporting Amendment for review, approval, and implementation by NMFS. The For-hire Reporting Amendment includes Amendment 27 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagic (CMP) Resources of the Gulf and Atlantic Region (CMP FMP), Amendment 9 to the FMP for the Dolphin and Wahoo Fishery off the Atlantic States (Dolphin Wahoo FMP), and Amendment 39 to the FMP for Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP). If approved by the Secretary of Commerce, the For-hire Reporting Amendment would establish new, and revise existing, electronic reporting requirements for federally permitted charter vessels and headboats (for-hire vessels), respectively. The For-hire Reporting Amendment would require a charter vessel with a Federal charter vessel/headboat permit for Atlantic CMP, Atlantic dolphin and wahoo, or South Atlantic snapper-grouper species to submit an electronic fishing report weekly, or at shorter intervals if notified by NMFS, through NMFS approved hardware and software. The For-hire Reporting Amendment would also reduce the time allowed for headboats to submit an electronic fishing report. The purpose of the For-hire Reporting Amendment is to increase and improve fisheries information collected from federally permitted for-hire vessels in the Atlantic. The information is expected to improve recreational fisheries management of the for-hire component in the Atlantic.

DATES: Written comments on the For-hire Reporting Amendment must be received by May 13, 2018.

ADDRESSES: You may submit comments on the For-hire Reporting Amendment, identified by ''NOAA–NMFS–2017–0152,'' by either of the following methods:

• *Electronic submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/docket?D=NOAA-NMFS-2017-0152, click the ''Comment Now!''* icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit all written comments to Karla Gore, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in required fields if you wish to remain anonymous).

Electronic copies of the For-hire Reporting Amendment may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_sa/generic/2017/for_hire_reporting/index.html.* The For-hire Reporting Amendment includes an environmental assessment, regulatory impact review, Regulatory Flexibility Act analysis, and fishery impact statement.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: *karla.gore@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The FMPs being revised by the For-hire Reporting Amendment were prepared by the South Atlantic Council and the Gulf Council, and the For-hire Reporting Amendment, if approved, would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The Magnuson-Stevens Act requires that NMFS and regional fishery management councils prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act states that the collection of reliable data is essential to the effective conservation, management, and scientific understanding of the nation's fishery resources.

On July 1, 2012, NMFS implemented management measures contained in Amendment 18A to the Snapper-Grouper FMP, which established a provision that allowed the Science Research Director (SRD) at the NMFS Southeast Fisheries Science Center (SEFSC) to require for-hire vessels fishing for snapper-grouper species, when selected by the SRD, to submit fishing reports electronically on a weekly or daily basis to the SEFSC to better improve data on catch and bycatch (77 FR 32408, June 1, 2012). However, upon implementation of Amendment 18A in 2012, a data system to collect electronic reports had not been developed and no vessels were selected by the SEFSC for electronic reporting. Therefore, both prior to and after the implementation of Amendment 18A, only paper logbook forms were used to collect fishing reports from selected for-hire vessels.

In 2013, an electronic logbook reporting requirement for federally permitted headboats fishing for Atlantic CMP, dolphin and wahoo, and snapper-grouper species was implemented by the final rule for Amendment 22 to the CMP FMP, Amendment 6 to the Dolphin Wahoo FMP, and Amendment 31 to the Snapper-Grouper FMP (collectively referred to as the Headboat Reporting Amendment) to improve the quality and timeliness of catch data (78 FR 78779, December 27, 2013). The final rule for the Headboat Reporting Amendment required all headboats with a Federal charter vessel/headboat permit for Atlantic CMP, Atlantic dolphin and wahoo, or South Atlantic snapper-grouper species to report landings electronically on a weekly basis to the SEFSC. The final rule also implemented a provision that authorizes NMFS to require reporting more frequently than weekly if notified by the SRD, and prohibits headboats from continuing to fish if they are delinquent in submitting reports. This headboat reporting program, called the Southeast Region Headboat Survey (SRHS), is managed and operated by the SEFSC. Currently, headboats submit an electronic fishing report to NMFS via the internet by the Sunday following the end of each reporting week, which runs from Monday through Sunday. The For-hire Reporting Amendment would shorten the time to report and proposes that headboats submit electronic fishing reports to NMFS by the Tuesday following the end of a reporting week, which would make the reporting deadline for headboats consistent with the proposed reporting deadline for federally permitted charter vessels. The South Atlantic Council believes that changing the timing of reporting would achieve consistency between federally permitted headboats and the proposed charter vessel reporting requirements. In addition, the South Atlantic Council believes that the shortened window for reporting could reduce recall bias and improve the timeliness of data availability.

Similarly, the For-hire Reporting Amendment also would require that information from a federally permitted charter vessel be reported weekly, through the submission of electronic fishing reports on Tuesday following a reporting week. Currently, landings and discards from federally permitted charter vessels in Atlantic CMP, Atlantic dolphin wahoo, and South Atlantic snapper-grouper fisheries are monitored through the survey of charter vessels by the Marine Recreational Information Program (MRIP). Fishing effort is calculated based on a monthly phone sample of federally permitted charter vessels, though the phone survey is transitioning to a new mail survey. Catch rate observations and catch sampling are provided through dockside monitoring, also conducted by MRIP. This MRIP charter vessel information is then available in 2-month increments known as waves, so that there are six waves during the calendar year, *e.g.,* January through February, March through April, etc. If NMFS implements the electronic reporting requirements described in the For-hire Reporting Amendment, the MRIP survey

of charter vessels would continue until the proposed electronic reporting program described in the For-hire Reporting Amendment is certified by NMFS, and then the electronic reporting program replaces the MRIP survey of charter vessels.

Accurate and reliable fisheries information about catch, effort, and discards is critical to stock assessment and management evaluations. In addition, catch from federally permitted charter vessels represents a substantial portion of the total recreational catch for some South Atlantic Council managed fish species, such as king mackerel, black sea bass, dolphin, and wahoo. The South Atlantic Council believes that weekly electronic reporting for federally permitted charter vessels could provide more timely information than the current MRIP survey, and more accurate and reliable information for many species with low catches, low annual catch limits, or for species that are only rarely encountered by fishery participants. However, the South Atlantic Council recognizes that before the electronic reporting program described in this amendment could replace the MRIP survey program, the individual states would have to implement a similar for-hire electronic reporting requirement. The South Atlantic Council has determined that weekly electronic reporting by all federally permitted charter vessels would be expected to enhance data collection efforts for potentially better fisheries management, such as through more data-rich stock assessments.

Actions Contained in the For-Hire Reporting Amendment

The For-hire Reporting Amendment includes actions to establish weekly electronic reporting for federally permitted charter vessels in the previously described Atlantic fisheries, and change the electronic reporting deadline for federally permitted headboats. The For-hire Reporting Amendment would also require an owner or operator of a federally permitted charter vessel to report their fishing locations to the nearest square nautical mile, or in degrees and minutes.

Electronic Reporting by Federally Permitted Charter Vessels

In the For-hire Reporting Amendment, the South Atlantic Council has stated their need for increased data collection from federally permitted charter vessels, such as reporting fishing locations, compared with what the MRIP survey currently provides, as well as more timely data submission. The South Atlantic Council has determined that weekly reporting by federally permitted charter vessels could make data available to the science and management process more quickly and could improve data accuracy, as reports would be completed shortly after each trip. The For-hire Reporting Amendment would require an owner or operator of a charter vessel with a Federal charter vessel/headboat permit for Atlantic CMP species, Atlantic dolphin and wahoo, or South Atlantic snapper-grouper to submit an electronic fishing report to NMFS weekly, or at intervals shorter than a week if notified by the SRD, regardless if they were fishing in state or Federal waters, or what species they caught. The use of NMFS approved hardware and software would be required to submit weekly electronic fishing reports by the Tuesday following each reporting week.

If the For-hire Reporting Amendment is approved and implemented, a federally permitted charter vessel fishing for Atlantic CMP, or dolphin and wahoo, or South Atlantic snapper-grouper species would be required to submit an electronic fishing report using hardware and software that meets NMFS technical requirements and has been type approved by NMFS. NMFS approved hardware could include electronic devices such as computers, tablets, and smartphones that allow for internet access and are capable of operating approved software. NMFS is currently evaluating potential software applications for the electronic for-hire reporting program and is considering the use of existing software applications already being used by partners in the region, including e-trips online and e-trips mobile, which are products developed by the Atlantic Coastal Cooperative Statistics Program. Hardware and software that meet the NMFS type approval would be posted on the NMFS Southeast Region website upon publication of any final rule to implement the for-hire electronic reporting program.

An electronic fishing report would be required from a charter vessel regardless of where fishing occurs or which species are caught or harvested. For example, a vessel subject to these proposed requirements under a Federal charter vessel/headboat permit for Atlantic CMP, Atlantic dolphin wahoo, or South Atlantic snapper-grouper must report if they fish in state waters, in the Gulf, or in any other area. If a charter vessel does not fish during a week, submission of a ''no-fishing'' report would be required by the Tuesday of the following week. The SEFSC would allow an advance submission of a no-fishing report for up to 30 days, as they currently allow for headboats.

In an effort to reduce duplicative reporting by charter vessels, fishermen with Federal charter vessel/headboat permits subject to electronic reporting requirements in other regions, such as the Mid-Atlantic and as proposed by the Gulf Council for the Gulf, would be required to comply with the electronic reporting program that is more restrictive, regardless of where fishermen are fishing. For example, the NMFS Greater Atlantic Regional Fisheries Office (GARFO) has implemented an electronic reporting requirement for owners and operators of a charter vessel or party boat (headboat) issued a Federal for-hire permit for species managed by Mid-Atlantic Fishery Management Council to submit an electronic vessel trip report using NMFS-approved software within 48 hours of completing a for-hire fishing trip (82 FR 42610, September 11, 2017). Because NMFS GARFO requires more restrictive reporting than what is proposed in the For-hire Reporting Amendment, owners and operators of a vessel issued a Federal for-hire permit for species in both the Mid-Atlantic and South Atlantic would be required to report under the electronic reporting program managed by GARFO, regardless of where fishing occurs or what species are caught.

The Gulf Council has also recommended amendments to their Gulf CMP FMP and their FMP for Reef Fish Resources of the Gulf of Mexico to address for-hire electronic reporting. The Gulf Council has submitted these amendments for review and implementation by the Secretary of Commerce. The Gulf Council's recommendations of for-hire electronic reporting for charter vessels are more stringent than those reporting requirements contained in the For-hire Reporting Amendment. The proposed Gulf for-hire electronic reporting program would require trip-level reporting, a pre-trip notification to NMFS, and location information monitored by a vessel monitoring system, among other requirements. Thus, an owner or operator of a charter vessel that has been issued Federal charter vessel/headboat permits for applicable fisheries in both the Atlantic and the Gulf would be required to comply with the Gulf Council's more stringent for-hire electronic reporting program requirements, if the Gulf Council's amendments to address for-hire electronic reporting are approved and implemented. The intent of the South Atlantic Council is to prevent a vessel with multiple Federal for-hire

permits from having to report to multiple reporting programs. A headboat with Federal charter vessel/headboat permits for applicable fisheries in both the Atlantic and the Gulf would continue to be required to comply with the electronic reporting requirements in effect based on where they are fishing, *e.g.,* in the Atlantic or the Gulf. If NMFS implements the measures in the For-hire Reporting Amendment before approving and implementing the Gulf Council's amendments for the for-hire electronic reporting program, vessels issued the applicable Federal charter vessel/headboat permits in the Atlantic and Gulf would be required to comply with the Atlantic electronic reporting program until a Gulf electronic reporting program is implemented, even if the for-hire trips only occur in the Gulf. Then, if NMFS implements the Gulf for-hire electronic reporting program, fishermen on for-hire vessels would need to comply with the Gulf electronic reporting program.

The For-hire Reporting Amendment also extends other provisions to federally permitted charter vessels that currently apply to headboats for reporting during catastrophic conditions, delinquent reporting, and video monitoring. During catastrophic conditions, NMFS may accept paper reporting forms, and can modify or waive reporting requirements. A delinquent report results in a prohibition on the harvest or possession of the applicable species by the charter vessel permit holder until all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements. Finally, charter vessels must participate in a video monitoring program if selected by the SRD.

Location Reporting

The For-hire Reporting Amendment specifies core data elements to be collected through the for-hire electronic reporting program. These core data elements include, but are not limited to, information about the permit holder, vessel, location fished, catch, discards, fishing effort, and socio-economic data. Other information that could further benefit the management of federally permitted for-hire vessels included under the For-hire Reporting Amendment may also be subject to collection as determined by NMFS in the future.

If approved by the Secretary of Commerce, the For-hire Reporting Amendment would require charter vessels to report their locations fished by either inputting their latitude and longitude in an electronic reporting program or by selecting their fishing locations on a geographic grid in an electronic reporting program. The location accuracy of either reporting method would be to the nearest square nautical mile, or degrees and minutes. This location reporting requirement is consistent with what is collected currently for headboats in the SRHS.

Timing of Electronic Reporting by Federally Permitted Headboats

The For-hire Reporting Amendment also revises the reporting deadline for federally permitted headboats to submit electronic fishing reports to further improve the accuracy and timeliness of data reported through the SRHS. Headboats currently submit an electronic fishing report for each trip at weekly intervals, or at intervals shorter than a week if notified by the SRD. Electronic fishing reports are currently due by the Sunday following a reporting week, where the reporting week runs from Monday through Sunday; in other words, reports are due within 7 days after a reporting week ends.

The For-hire Reporting Amendment would change the deadline for headboats to submit an electronic fishing report after a reporting week ends. Headboats would continue to submit electronic fishing reports through the SRHS on a weekly basis with reports due on each Tuesday following a reporting week; in other words, reports would be due within 2 days after a reporting week ends. This proposed change would make the reporting deadline for headboats consistent with the proposed reporting deadline for charter vessels.

Headboats with applicable Federal charter vessel/headboat permits in both Atlantic and Gulf fisheries would continue to be required to comply with the electronic reporting standards in effect based on where they are fishing, *e.g.,* in the Atlantic or the Gulf. Other than changing the deadline for submitting the fishing reports, no other aspect of the headboat reporting program would be changed by the For-hire Reporting Amendment.

Proposed Rule for the For-Hire Reporting Amendment

A proposed rule that would implement the For-hire Reporting Amendment has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMPs, the Magnuson-Stevens Act, and other applicable laws. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The South Atlantic Council has submitted the For-hire Reporting Amendment for Secretarial review, approval, and implementation. Comments on the For-hire Reporting Amendment must be received by May 13, 2018. Comments received during the respective comment periods, whether specifically directed to the For-hire Reporting Amendment or the proposed rule will be considered by NMFS in the decision to approve, disapprove, or partially approve the For-hire Reporting Amendment. Comments received after the comment periods will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: March 9, 2018.

Emily H. Menashes,

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

[FR Doc. 2018–05191 Filed 3–13–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 83, No. 50

Wednesday, March 14, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 9, 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 April 13, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *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 and Nutrition Service

Title: Study of Third-Party Processor (TPP) Services, Fees, and Business Practices.

OMB Control Number: 0584–NEW.

Summary of Collection: Section 4011 of the Agricultural Act of 2014 (Pub. L. 113–79; ''2014 Farm Bill'') ended the provision of EBT equipment and services free of charge to retailers participating in SNAP. Retailers that previously received EBT equipment and payment processing services free of charge are now required to procure equipment and services independently. The goal of the study is to understand the business practices of Third Party Processors (TPPs) and independent sales organizations (ISOs) that provide Electronic Benefit Transfer (EBT) processing services and equipment to authorized retailers participating in the Supplemental Nutrition Assistance Program (SNAP).

Need and Use of the Information: This study seeks to understand the business practices of TPPs and ISOs that provide EBT processing services and equipment to SNAP retailers to (1) assess retailers' satisfaction with EBT products and services needed to participate in the SNAP program; and (2) develop a set of best practices to inform FNS's guidance for retailers on what to consider when selecting, contracting with, and working with EBT vendors (TPPs and ISOs). The study results will also provide FNS with the information needed to inform future FNS policies regarding requirements for vendors providing EBT equipment and services to authorized retailers and TPP services-related guidance for retailers.

Description of Respondents: Business-not-for-profit.

Number of Respondents: 1,875.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 579.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–05135 Filed 3–13–18; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 9, 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 April 13, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR 1901–E, Civil Rights Compliance Requirements.

OMB Control Number: 0575–0018.

Summary of Collection: Rural Development (RD) is required to provide Federal financial assistance through its farmer, housing, and community and business programs on an equal opportunity basis. The laws implemented in 7 CFR 1901–E, require the recipients of Rural Development's Federal financial assistance to collect various types of information by race, color, and national origin.

Need and Use of the Information: RD will use the information to monitor a recipient's compliance with the civil rights laws, and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis. This information is made available to USDA officials, officials of other Federal agencies and to Congress for reporting purposes. Without the required information, RD and its recipient will lack the necessary documentation to demonstrate that their programs are being administered in a nondiscriminatory manner and in full compliance with the civil rights laws.

Description of Respondents: Individuals or households; Not-for-profit institutions; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 27,000.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 542,369.

Rural Housing Service

Title: 7 CFR 1951–E, Servicing of Community and Direct Business Programs Loans and Grants.

OMB Control Number: 0575–0066.

Summary of Collection: Rural Development (Agency) is the credit agency for agriculture and rural development for the U.S. Department of Agriculture. The Community Facilities program is authorized to make loans and grants for the development of essential community facilities primarily serving rural residents. The Direct Business and Industry Program is authorized to make loans to improve, develop, or finance business, industry, and employment, and improve the economic and environmental climate in rural communities. Section 331 and 335 of the Consolidated Farm and Rural Development Act, as amended, authorizes the Secretary of Agriculture, acting through the Agency, to establish provisions for security servicing policies for the loans and grants in questions. When there is a problem, a recipient of the loan, grant, or loan guarantee must furnish financial information to aid in resolving the problem through reamortization, sale, transfer, debt restructuring, liquidation, or other means provided in the regulations.

Need and Use of the Information: The Agency will use several different forms to collect information from applicants, borrowers, consultants, lenders and attorneys. This information is used to determine applicant/borrower eligibility and project feasibility for various servicing actions. The information enables field staff to ensure that borrowers operate on a sound basis and use loan and grant funds for authorized purposes.

Description of Respondents: State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 154.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,540.

Rural Housing Service

Title: 7 CFR 3550—Direct Single Family Housing Loan and Grant Program, HB–1–3550, HB–2–3550.

OMB Control Number: 0575–0172.

Summary of Collection: USDA Rural Development (RD) is committed to helping improve the economy and quality of life in rural America. RD's Rural Housing Service (RHS or Agency) offers a variety of programs to build or improve housing and essential community facilities in rural areas. The Housing Act of 1949 provides the authority for the RHS' direct single family housing loan and grant programs. The programs provide eligible applicants with financial assistance to own adequate but modest homes in rural areas. 7 CFR part 3550 sets forth the programs' policies and the programs' procedures can be found in its accompanying handbooks (Handbook-1–3550 and Handbook-2–3550). To originate and service direct loans and grants that comply with the programs' statute, policies, and procedures, RHS must collect information from low- and very low-income applicants, third parties associated with or working on behalf of the applicants, borrowers, and third parties associated with or working on behalf of the borrowers. RHS will collect information using several forms.

Need and Use of the Information: RHS will collect information to verify program eligibility requirements; continued eligibility requirements for borrower assistance; servicing of loans; eligibility for special servicing assistance such as: Payment subsidies, moratorium (stop) on payments, delinquency workout agreements; liquidation of loans; and, debt settlement. The information is used to ensure that the direct Single Family Housing Programs are administered in a manner consistent with legislative and administrative requirements. Without the information RHS would be unable to determine if a borrower would qualify for services or if assistance has been granted to which the customer would not be eligible under current regulations and statutes.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 106,300.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 315,570.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–05114 Filed 3–13–18; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Indiana Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Indiana Advisory Committee (Committee) will hold a meeting on Saturday March 31, 2018, from 10:00 a.m.–11:30 a.m. EDT for the purpose of hearing public testimony on voting rights issues in the state.

DATES: The meeting will be held on Saturday, March 31, 2018, from 10:00 a.m.–11:30 a.m. EDT.

ADDRESSES: The community forum will take place at Ivy Tech Community College, 1440 E. 35th Ave. Gary, IN 46409.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION:

Public Call Information: Dial: 800–967–7141; Conference ID 1621861.

This meeting is free and open to the public. Members of the public may appear in person and participate. This meeting is also available to the public through the above listed toll free call in number (audio only). Members of the public will be invited to make a statement as time allows.

For those individuals who join by phone, the conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Indiana Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=247*). Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit Office at the above email or street address.

This is the fourth in a series of public meetings the Committee will hold on this topic. Please consult the **Federal Register** or contact the Regional Programs Unit for additional information on these meetings.

Agenda

Welcome and Introductions

Public Comment: Voting Rights in Indiana

Closing Statements

Adjournment

Dated: March 9, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–05139 Filed 3–13–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–64–2017]

Foreign-Trade Zone (FTZ) 153—San Diego, California; Authorization of Production Activity; Plantronics, Inc. (Electronics/Telecommunications); San Diego, California

On October 13, 2017, Plantronics, Inc., submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 153—Site 8, in San Diego, California.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (82 FR 49178, October 24, 2017). On February 12, 2018, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: March 8, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–05147 Filed 3–13–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–068]

Forged Steel Fittings From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of forged steel fittings from the People's Republic of China (China). The period of investigation is January 1, 2016, through December 31, 2016.

DATES: Applicable March 14, 2018.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Janae Martin, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–0238, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on November 1, 2017.[1] On December 1, 2017, the Department postponed the preliminary determination of this investigation by no later than 130 days after the date on which Commerce initiated this investigation.[2]

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a nonbusiness day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the publication of the preliminary determination of this investigation is now March 7, 2018.[3]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all

[1] *See Forged Steel Fittings from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 82 FR 50623 (November 1, 2017) (*Initiation Notice*).

[2] *See Forged Steel Fittings from the People's Republic of China: Postponement of Preliminary Determination of Countervailing Duty Investigation,* 82 FR 59584 (December 15, 2017).

[3] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Forged Steel Fittings from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are forged steel fittings from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[5] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.,* scope).[6] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.*

For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[7] The Department is preliminarily modifying the scope language as it appeared in the *Initiation Notice.*[8] As stated in the Preliminary Scope Decision Memorandum, all interested parties are invited to comment on the proposed modifications no later than March 19, 2018; rebuttal comments are due no later than March 26, 2018. Such comments must be filed via ACCESS on the records of this countervailing duty investigation and the concurrent antidumping duty investigations of forged steel fittings from China, Italy and Taiwan.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[9]

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.[10] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of forged steel fittings from China based on a request made by the petitioners.[11] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than July 23, 2018, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, the Department shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

The Department calculated an individual estimated countervailable subsidy rate for Both-Well (Taizhou) Steel Fittings, Co., Ltd. (Both-Well), the only individually examined exporter/producer in this investigation. Because the only individually calculated rate is not zero, *de minimis,* or based entirely under section 776 of the Act, the estimated weighted-average rate calculated for Both-Well is the rate assigned to all-other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

Preliminary Determination

The Department preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Both-Well (Taizhou) Steel Fittings, Co., Ltd	13.79
All-Others	13.79

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the ''Scope of the Investigation'' section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the

[5] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[6] *See Initiation Notice.*

[7] *See* Memorandum, ''Certain Forged Steel Fittings from China, Italy, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

[8] *See* Appendix I.

[9] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[10] *See* sections 776(a) and (b) of the Act.

[11] *See* Letter from the petitioners, ''Forged Steel Fittings from the People's Republic of China: Request for Alignment,'' dated January 10, 2018.

[12] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after Commerce's final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: March 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 I

Scope of the Investigation

The merchandise covered by this investigation is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings and unions. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections.

While these fittings are generally manufactured to specifications ASME B16.11, MSS SP–79, and MSS SP–83, ASTM A105, ASTM A350 and ASTM A182, the scope is not limited to fittings made to these specifications.

The term forged is an industry term used to describe a class of products included in applicable standards, and does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casting. Pursuant to the applicable specifications, subject fittings may also be machined from bar stock or machined from seamless pipe and tube.

All types of fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure rating (usually, but not necessarily expressed in pounds of pressure, *e.g.,* 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated.

Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, butt weld fittings, and nipples.

Also excluded are fittings certified to the following standards and specifications, so long as the fittings are not also manufactured to the specifications of ASME B16.11, MSS SP–79, and MSS SP–83, ASTM A105, ASTM A350 and ASTM A182:

- American Petroleum Institute (API) 5CT, API 5L, or API 11B
- Society of Automotive Engineering (SAE) J476, SAE J514, SAE J516, SAE J517, SAE J518, SAE J1026, SAE J1231, SAE J1453, SAE J1926 or J2044
- Underwriter's Laboratories (UL) certified electrical conduit fittings
- ASTM A153, A536, A576, or A865
- Casing Conductor Connectors 16–42 inches in diameter made to proprietary specifications

To be excluded from the scope, products must have the appropriate standard markings and/or be accompanied by documentation showing product compliance to the applicable standard, *e.g.,* ''API 5CT'' mark and/or a mill certification report.

Subject carbon and alloy forged steel fittings are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They also may be entered under HTSUS 7307.92.3010, 7307.92.3030, 7307.92.9000, and 7326.19.0010. The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Alignment
VI. Injury Test
VII. Application of the CVD Law to Imports From China
VIII. Use of Facts Otherwise Available and Adverse Inferences
IX. Subsidies Valuation
X. Benchmarks and Interest Rates
XI. Analysis of Programs
XII. Conclusion

[FR Doc. 2018–05154 Filed 3–13–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–814]

Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Determination of No Shipments; Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is issuing a final no shipments determination in the final results of the antidumping duty administrative review on utility scale wind towers (wind towers) from the Socialist Republic of Vietnam (Vietnam) because Commerce continues to find that CS Wind Group did not have any shipments of subject merchandise by CS Wind Group during the period of review (POR). This review covers CS Wind Group where the company was the producer but not the exporter, or the exporter but not the producer of subject merchandise.

DATES: Applicable March 14, 2018.

FOR FURTHER INFORMATION CONTACT: Trisha Tran, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4852.

SUPPLEMENTARY INFORMATION:

Background

On May 31, 2017, Commerce published its *Amended Initiation Notice.*[1] According to the *Amended Initiation Notice,* Commerce stated it was initiating an administrative review only on entries where CS Wind Group

[1] *See Utility Scale Wind Towers from the Socialist Republic of Vietnam: Notice of Amended Initiation of Antidumping Duty Administrative Review; 2016–2017,* 82 FR 24943 (May 31, 2017) (*Amended Initiation Notice*). In the *Amended Initiation Notice,* Commerce stated that it inadvertently initiated an administrative review on all entries of merchandise exported by CS Wind Group. Because wind towers that are produced *and* exported by CS Wind Group were excluded from the antidumping duty order on wind towers from Vietnam effective March 26, 2017, Commerce clarified in the *Amended Initiation Notice* that we should only have initiated the administrative review on wind towers produced in Vietnam with respect to the CS Wind Group where CS Wind Group was (1) the producer but not the exporter, or (2) the exporter but not the producer. To correct this error in the Initiation Notice, Commerce explained it was issuing the *Amended Initiation Notice* with respect to the CS Wind Group. More specifically, Commerce stated it was initiating an administrative review only on entries where CS Wind Group was (1) the producer but not the exporter, or (2) the exporter but not the producer of subject merchandise.

was (1) the producer but not the exporter, or (2) the exporter but not the producer of subject merchandise. On November 6, 2017, Commerce published the *Preliminary Results*.[2] The POR is February 1, 2016, through January 31, 2017. We invited interested parties to comment on the *Preliminary Results*. No party provided comments. Commerce has conducted this administrative review in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by this order are certain wind towers, whether or not tapered, and sections thereof. Certain wind towers are designed to support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof.

Merchandise covered by the order is currently classified in the Harmonized Tariff System of the United States (HTSUS) under subheadings 7308.20.0020[3] or 8502.31.0000.[4] Prior to 2011, merchandise covered by the order was classified in the HTSUS under subheading 7308.20.0000 and may continue to be to some degree. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Final Determination of No Shipments

As explained above, in the *Preliminary Results,* Commerce found that CS Wind Group did not have any shipments of subject merchandise during the POR where CS Wind Group was (1) the producer but not the exporter, or (2) the exporter but not the producer of subject merchandise. Also, in the *Preliminary Results,* consistent with Commerce's assessment practice in non-market economy cases, Commerce stated it was not rescinding this review but intended to complete the review with respect to CS Wind Group for which it had preliminarily found no shipments and issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on the final results of the review.[5]

After issuing the *Preliminary Results,* Commerce received no comments from interested parties, and has not received any information that would cause it to alter our preliminary determination of no shipments. Therefore, for these final results, Commerce continues to find that CS Wind Group did not have any shipments of subject merchandise during the POR where CS Wind Group was (1) the producer but not the exporter, or (2) the exporter but not the producer of subject merchandise. As Commerce received no comments or new information for consideration in these final results, Commerce has not prepared an Issues and Decision Memorandum for this administrative review.

Assessment Rates

Commerce has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.[6] Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. Additionally, because Commerce determined that CS Wind Group had no shipments of subject merchandise during the POR, any suspended entries that entered under CS Wind Group's antidumping duty case number (*i.e.,* at that exporter's rate) will be liquidated at the Vietnam-wide rate.[7]

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 by section 751(a)(2)(C) of the Act: (1) For CS Wind Group, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to CS Wind Group in the most recently issued Notice of Court Decision Not in Harmony with the Final Determination of Less Than Fair Value Determination;[8] (2) for previously investigated Vietnam and non-Vietnam exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Vietnam exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate previously established for the Vietnam-wide entity (*i.e.,* 58.54 percent); and (4) for all non-Vietnam exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnam exporter that supplied that non-Vietnam exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

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 antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

[2] *See Utility Scale Wind Towers from the Socialist Republic of Vietnam: Preliminary Determination of No Shipments, and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 2016–2017,* 82 FR 51386 (November 6, 2017) (*Preliminary Results*).

[3] Wind towers are classified under HTSUS 7308.20.0020 when imported as a tower or tower section(s) alone.

[4] Wind towers may also be classified under HTSUS 8502.31.0000 when imported as part of a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades).

[5] *See Preliminary Results* at 82 FR 51387.

[6] *See* 19 CFR 351.212(b).

[7] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), for a full discussion of this practice.

[8] *See Utility Scale Wind Towers from the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony With the Final Determination of Less Than Fair Value Investigation and Notice of Amended Final Determination of Investigation,* 82 FR 15493 (March 29, 2017).

In accordance with 19 CFR 351.305(a)(3), this notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These final results of this administrative review and notice are published in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.213(h).

Dated: March 8, 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. 2018–05151 Filed 3–13–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–825]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Notice of Court Decision Not in Harmony With the Amended Final Determination of the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2018, the Court of International Trade (CIT) entered final judgment sustaining the Department of Commerce's (Commerce's) remand redetermination in the countervailing duty (CVD) investigation of heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Turkey (Turkey). Commerce is notifying the public that the Court's final judgment in this case is not in harmony with Commerce's amended final determination with respect to Ozdemir Boru Profil San. Ve Tic. Ltd. Sti. (Ozdemir) and all other exporters and producers.

DATES: Applicable February 12, 2018.[1]

FOR FURTHER INFORMATION CONTACT: Brian Smith or Janae Martin, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–1766 or (202) 482–0238, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 21, 2016, Commerce published its final determination in the CVD investigation of HWR pipes and tubes from Turkey.[2] On September 13, 2016, Commerce published an amended final determination and the CVD order.[3]

The Court remanded one aspect of Commerce's findings for further consideration.[4] Specifically, in its *Remand and Opinion Order,* the Court held that, if Commerce decided to maintain its Land for Less than Adequate Remuneration (LTAR) benchmark calculation, it must explain the following: (1) Why the high prices for the Istanbul and Yalova Altinova (Yalova) land parcels were not aberrational, and how calculating a simple average of all the land parcel prices used in the land benchmark calculation successfully moderated the price disparities; (2) whether the Istanbul and Yalova land parcels were located in more highly developed areas of Turkey and how that affected Commerce's analysis; and (3) why the future usage of the land parcels is relevant under the applicable provisions of the statute and Commerce's regulations.[5]

On December 11, 2017, Commerce issued its *Remand Redetermination.*[6] In its *Remand Redetermination,* Commerce determined that there was a reasonable basis for treating the Istanbul and Yalova land parcels as outliers because (1) the prices of these parcels deviated substantially from the other prices in the dataset; and (2) the average price of the land parcels in the benchmark would be skewed if the Istanbul and Yalova land parcels were not removed from the dataset.[7] Additionally, in its *Remand Redetermination,* Commerce stated that although it generally avoids selectively removing prices from datasets, it has occasionally done so after finding certain data to be clearly aberrational or unreliable.[8] In removing the two parcels at issue from the benchmark, Commerce found that other issues raised by the Court, namely the relative levels of development of the land parcels in the benchmark, the importance of a land parcel's future usage in Commerce's benchmark selection, and other issues involving comparability, were moot.[9] Therefore, Commerce did not address these issues in the *Remand Redetermination.*

On February 1, 2018, the CIT sustained Commerce's *Remand Redetermination.*[10]

Timken Notice

In its decision in *Timken,*[11] as clarified by *Diamond Sawblades,*[12] the United States Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's February 1, 2018, final judgment affirming the *Remand Redetermination* constitutes a final decision of that court which is not in harmony with the *Amended Final Determination and Order.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, Commerce will continue suspension of liquidation of subject merchandise pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Determination

As there is now a final court decision, Commerce amends its *Amended Final*

[1] February 11, 2018, ten days after the Court's opinion was issued, falls on a Sunday. Therefore, the effective date is Monday, February 12, 2018. See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

[2] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination,* 81 FR 47349 (July 21, 2016).

[3] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 81 FR 62874 (September 13, 2016) (*Amended Final Determination and Order*).

[4] *See Ozdemir Boru San. Ve Tic. Ltd. Sti.,* v. *United States and Atlas Tube and Independence Tube Corporation Court No. 16–00206, Slip Op. 17–142* (CIT October 16, 2017) (*Remand Opinion and Order*).

[5] *Id.* at 44–45.

[6] *See Final Results of Remand Redetermination Pursuant to Court Remand,* Court No. 16–00206, dated December 11, 2017, available at: *http://ia.ita.doc.gov/remands/* (*Remand Redetermination*).

[7] *Id.* at 2.

[8] *Id.*

[9] *Id.*

[10] *See Ozdemir Boru San. Ve Tic. Ltd. Sti.,* v. *United States and Atlas Tube and Independence Tube Corporation Court No. 16–00206, Slip Op.18–6.* (CIT February 1, 2018).

[11] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[12] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Determination and Order. Commerce finds that the following revised net countervailable subsidy rates exist:

Producer/exporter	Net subsidy rate
MMZ Onur Boru Profit uretirn San Ve Tic. A.S	9.87
Ozdemir Boru Profil San ve Tic. Ltd Sti	14.66
All-Others	12.36

Cash Deposit Requirements

Because there has been no subsequent administrative review for MMZ Onur Boru Profit uretirn San Ve Tic. A.S. (MMZ) and Ozdemir, Commerce will instruct U.S. Customs and Border Protection (CBP) to set the cash deposit rates for these companies to the rates listed above, pending a final and conclusive court decision.

Pursuant to section 705(c)(5)(A) of the Act, companies not individually investigated are assigned an ''all-others'' countervailing duty rate. As a general rule, the all-others rate is equal to the weighted-average of the countervailable subsidy rates established for individually investigated producers, excluding any zero and *de minimis* countervailable subsidy rates.[13] Commerce will instruct CBP that the ''all-others'' cash deposit rate is to be amended to reflect the revised subsidy rate calculated for Ozdemir, as listed above.

This notice is issued and published in accordance with sections 516A(e)(1), 705(c)(1)(B), and 777(i)(1) of the Act.

Dated: March 8, 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. 2018–05149 Filed 3–13–18; 8:45 am]

BILLING CODE 3510–DS–P

[13] *See* section 705(c)(5)(A)(i) of the Act. For a full discussion of the calculation of the all-others rate, *see* Memorandum ''Remand Redetermination Calculation of the 'All Others' Rate,'' dated December 12, 2017.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–823, A–823–816]

Carbon and Alloy Steel Wire Rod From the Republic of South Africa and Ukraine: Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (the ITC), Commerce is issuing antidumping duty orders on carbon and alloy steel wire rod (wire rod) from the Republic of South Africa (South Africa) and Ukraine.

DATES: Applicable March 14, 2018.

FOR FURTHER INFORMATION CONTACT: Moses Song at (202) 482–5041 or John McGowan (202) 482–3019 (South Africa), Julia Hancock at (202) 482–1394, Annathea Cook at (202) 482–0250, or Courtney Canales at (202) 482–4997 (Ukraine), AD/CVD Operations, Office V & VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on January 16, 2018, Commerce published its affirmative final determinations in the less-than-fair-value (LTFV) investigations of wire rod from South Africa and Ukraine.[1] On March 1, 2018, the ITC notified Commerce of its final affirmative determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the LTFV imports of wire rod from South Africa and Ukraine, and its determination that critical circumstances do not exist with respect to imports of wire rod from South Africa subject to Commerce's affirmative critical circumstances determination.[2] The ITC published its final determination on March 7, 2018.[3]

Scope of the Orders

The merchandise covered by these orders is wire rod from South Africa and Ukraine. For a complete description of the scope of these orders, *see* the Appendix to this notice.

[1] *See Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Affirmative Final Determination of Sales at Less Than Fair Value and Affirmative Finding of Critical Circumstances,* 83 FR 2141 (January 16, 2018) (*South Africa Final Determination*); *Carbon and Alloy Steel Wire Rod from Ukraine: Affirmative Final Determination of Sales at Less Than Fair Value,* 83 FR 2135 (January 16, 2018) (*Ukraine Final Determination*).

[2] *See* Letter from the ITC to the Hon. Gary Taverman, dated March 1, 2018 (ITC Notification Letter).

[3] *See Carbon and Certain Alloy Steel Wire Rod from South Africa and Ukraine; Determinations,* 83 FR 9749 (March 7, 2018).

Antidumping Duty Orders

On March 1, 2018, in accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC notified Commerce of its final determinations in these investigations, in which it found that an industry in the United States is materially injured by reasons of imports of wire rod from South Africa and Ukraine.[4] The ITC also notified Commerce of its determination that critical circumstances do not exist with respect to imports of wire rod from South Africa subject to Commerce's critical circumstances finding.[5] Therefore, in accordance with section 735(c)(2) of the Act, we are issuing these AD orders. Because the ITC determined that imports of wire rod from South Africa and Ukraine are materially injuring a U.S. industry, unliquidated entries of such merchandise from South Africa and Ukraine, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

As a result of the ITC's final affirmative determinations, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of wire rod from South Africa and Ukraine. Antidumping duties will be assessed on unliquidated entries of wire rod from South Africa and Ukraine entered, or withdrawn from warehouse, for consumption on or after October 31, 2017, the date of publication of the preliminary determinations,[6] but will not include entries occurring after the expiration of the provisional measures period and before publication in the **Federal Register** of the ITC's final injury determination, as further described below.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct

[4] *See* ITC Notification Letter.

[5] *Id.*

[6] *See Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and preliminary Determination of No Shipments,* 82 FR 50383 (October 31, 2017) (*South Africa Preliminary Determination*); *Carbon and Alloy Steel Wire Rod from Ukraine: Preliminary Affirmative Determination of Sales at Less Than Fair Value: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 82 FR 50375 (October 31, 2017) (*Ukraine Preliminary Determination*).

CBP to reinstitute suspension of liquidation on all relevant entries of wire rod from South Africa and Ukraine. These instructions suspending liquidation will remain in effect until further notice.

Commerce will also instruct CBP to require cash deposits for estimated antidumping duties equal to the estimated weighted-average dumping margins indicated below. Accordingly, effective the date of publication of the ITC's final affirmative injury determination in the **Federal Register**, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average dumping margins listed below.[7] The relevant ''all-others'' rates apply to all producers or exporters not specifically listed, as appropriate.

Provisional Measures

Section 733(d) of the Act states that the suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except that Commerce may extend the four-month period to no more than six months at the request of exporters representing a significant proportion of exports of the subject merchandise. In reference to these proceedings, a request to extend the final determination and extend provisional measures pursuant to 19 CFR 351.210(e) was received from exporters of wire rod from South Africa and the Ukraine. Commerce's preliminary determinations were published on October 31, 2017.[8] Commerce's final determinations were not extended, and were published on January 16, 2018. As such, the four-month period ended on February 27, 2018. Pursuant to section 737(b) of the Act, the collection of cash deposits at the rates listed below will begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of wire rod from South Africa and Ukraine entered, or withdrawn from warehouse, for consumption after February 27, 2018, the date on which provisional measures expired, through the day preceding the date of publication of the ITC's final determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Critical Circumstances

With regard to the ITC's negative critical circumstances determination regarding imports of wire rod from South Africa, Commerce will instruct CBP to lift suspension and refund any cash deposits made to secure payment of estimated antidumping duties on subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 2, 2017, (*i.e.,* 90 days prior to the date of publication of the preliminary determinations), but before October 31, 2017, (*i.e.,* the date of publication of the preliminary determinations).

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins for each antidumping order are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)
South Africa:	
ArcelorMittal South Africa Limited, Scaw South Africa (Pty) Ltd. (also known as Scaw Metals Group), and Consolidated Wire Industries[9]	[10] 142.26
All-Others	[11] 135.46
Ukraine:	
ArcelorMittal Steel Kryvyi Rih	[12] 44.03
Public Joint Stock Company Yenakiieve Iron And Steel Works	[13] 44.03
All-Others	[14] 34.98

Notification to Interested Parties

This notice constitutes the antidumping duty orders with respect to wire rod from South Africa and Ukraine pursuant to section 736(a) of the Act. Interested parties can find a list of AD orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: March 8. 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

Scope of the Orders

The scope of these orders covers certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high-nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.,* products that contain by weight one or more of the following elements: 0.1 percent of more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject

[7] *See* section 736(a)(3) of the Act.

[8] *See Preliminary Determinations.*

[9] Commerce has determined that ArcelorMittal South Africa Limited, Scaw South Africa (Pty) Ltd. (also known as Scaw Metals Group), and Consolidated Wire Industries are a single entity. *See* Memorandum, ''Less-Than-Fair-Value Investigation of Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Affiliation and Collapsing Memorandum for ArcelorMittal South Africa Limited, Scaw South Africa (Pty) Ltd. and Consolidated Wire Industries,'' dated October 24, 2017, unchanged in *South Africa Final Determination.*

[10] *See South Africa Final Determination,* 83 FR at 2141.

[11] *Id.*

[12] *See Ukraine Final Determination,* 83 FR 2135.

[13] *Id.*

[14] *Id.*

merchandise that are not specifically excluded are included in this scope.

The products under these orders are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS may also be included in this scope if they meet the physical description of subject merchandise above. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these proceedings is dispositive.

[FR Doc. 2018–05153 Filed 3–13–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–953]

Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Yama Ribbons and Bows Co., Ltd (Yama), an exporter/producer of narrow woven ribbons with woven selvedge (ribbons) from the People's Republic of China (China), received countervailable subsidies during the period of review (POR) January 1, 2015, through December 31, 2015.

DATES: Applicable March 14, 2018.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1280.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review in the **Federal Register** on September 7, 2017.[1] We invited interested parties to comment on the *Preliminary Results*. On October 24, 2017, we received a timely case brief from Yama.[2] On October 31, 2017, we received timely rebuttal comments from Berwick Offray LLC (the petitioner).[3] On November 28, 2017, Commerce postponed the final results of review until March 6, 2018. Based on an analysis of the comments received, Commerce has made no changes to the subsidy rate determined for the respondent. The final subsidy rate is listed below in the ''Final Results of Administrative Review'' section.

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. The revised deadline for the final determination of this investigation is now March 9, 2018.[4]

Scope of the Order

The merchandise covered by the order are narrow woven ribbons with woven selvedge from China. A full description of the scope of the order is contained in the Issues and Decision Memorandum, which is hereby adopted by this notice.[5]

Analysis of Comments Received

All issues raised in interested parties' briefs are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues raised by interested parties and to which we responded in the Issues and Decision Memorandum is provided in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and 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 access directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties, we made no changes to our subsidy rate calculation. For a discussion of these issues, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we find that there is a subsidy, *i.e.,* a financial contribution from a government or public entity that gives rise to a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying all of Commerce's conclusions, including any determination that relied upon the use of adverse facts available pursuant to sections 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

Final Results of Administrative Review

In accordance with section 777A(e) of the Act and 19 CFR 351.221(b)(5), we determine the total net countervailable subsidy rate for the period January 1, 2015 to December 31, 2015 to be:

Company	Subsidy rate (%)
Yama Ribbons and Bows Co., Ltd	23.37

Assessment Rates

In accordance with 19 CFR 351.212(b)(2), Commerce intends to issue appropriate instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of the final results of this review. Commerce will instruct CBP to liquidate shipments of subject merchandise produced and/or exported by the company listed above, entered, or withdrawn from warehouse, for consumption, from January 1, 2015, through December 31, 2015, at the *ad valorem* rate listed above.

Cash Deposit Requirements

Commerce intends also to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above for Yama, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of

[1] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015,* 82 FR 42296 (September 7, 2017) (*Preliminary Results*).

[2] *See* Letter from Yama, '' Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Case Brief,'' dated October 24, 2017.

[3] *See* Letter from the petitioner, ''Rebuttal Brief of Petitioner Berwick Offray LLC,'' dated October 31, 2017.

[4] *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

[5] A full description of the scope of the order is contained in Memorandum, '' Decision Memorandum for the Final Results of 2015 Countervailing Duty Administrative Review: Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China,'' dated concurrently with this notice (Issues and Decision Memorandum).

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

publication of the final results of this review. For all non-reviewed firms, Commerce will instruct CBP to continue to collect cash deposits at the most recent company-specific or all-others rate applicable to the company, as appropriate. Accordingly, the cash deposit requirements that will be applied to companies covered by this order, but not examined in this administrative review, are those established in the most recently completed segment of the proceeding for each company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

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 sanctionable violation.

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 8, 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. Use of Facts Adverse Facts Available (AFA)
V. Subsidies Valuation
  A. Allocation Period
  B. Attribution of Subsides
  C. Denominators
VI. Interest Rate Benchmarks, Discount Rates, Input and Electricity
VII. Programs Determined to be Countervailable
VIII. Programs Determined not to Provide Measurable Benefits During the POR
IX. Programs Determined not to be Used During the POR
X. Analysis of Comments
  Comment 1: The Application of Adverse Facts Available (AFA) to the Provision of Synthetic Yarn and Caustic Soda for Less-than-Adequate Remuneration Programs
  Comment 2: The Application of AFA to the Export-Import (EXIM) Buyer's Credit Program
  Comment 3: The Application of AFA to Yama Due to Non-Cooperation of the Government of China (GOC)
  Comment 4: Whether Programs Found to be Countervailable Based on AFA are Specific
XI. Recommendation

[FR Doc. 2018–05150 Filed 3–13–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Request for Nominations for Members To Serve on National Institute of Standards and Technology Federal Advisory Committees

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites and requests nomination of individuals for appointment to eight existing Federal Advisory Committees: Board of Overseers of the Malcolm Baldrige National Quality Award; Judges Panel of the Malcolm Baldrige National Quality Award; Information Security and Privacy Advisory Board; Manufacturing Extension Partnership Advisory Board; National Construction Safety Team Advisory Committee; Advisory Committee on Earthquake Hazards Reduction; NIST Smart Grid Advisory Committee; and Visiting Committee on Advanced Technology. NIST will consider nominations received in response to this notice for appointment to the Committees, in addition to nominations already received. Registered Federal lobbyists may not serve on NIST Federal Advisory Committees in an individual capacity.

DATES: Nominations for all committees will be accepted on an ongoing basis and will be considered as and when vacancies arise.

ADDRESSES: See below.

SUPPLEMENTARY INFORMATION:

Board of Overseers of the Malcolm Baldrige National Quality Award

ADDRESSES: Please submit nominations to Robert Fangmeyer, Director, Baldrige Performance Excellence Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also be submitted via fax to 301–975–4967. Additional information regarding the Committee, including its charter, current membership list, and executive summary, may be found at *http://www.nist.gov/baldrige/community/overseers.cfm.*

FOR FURTHER INFORMATION CONTACT: Robert Fangmeyer, Director, Baldrige Performance Excellence Program and Designated Federal Officer, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020; telephone 301–975–4781; fax 301–975–4967; or via email at *robert.fangmeyer@nist.gov.*

Committee Information

The Board of Overseers of the Malcolm Baldrige National Quality Award (Board) was established in accordance with 15 U.S.C. 3711a(d)(2)(B), pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Objectives and Duties

1. The Board shall review the work of the private sector contractor(s), which assists the Director of NIST in administering the Malcolm Baldrige National Quality Award (Award). The Board will make such suggestions for the improvement of the Award process as it deems necessary.

2. The Board shall make an annual report on the results of Award activities to the Director of NIST, along with its recommendations for the improvement of the Award process.

3. The Board will function solely as an advisory committee under the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

4. The Board will report to the Director of NIST.

Membership

1. The Board will consist of at least five and approximately 12 members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance, and for their preeminence in the field of organizational performance excellence. There will be a balanced representation from U.S. service, manufacturing, nonprofit, education, and health care industries. The Board will include members familiar with the quality, performance improvement operations, and competitiveness issues of manufacturing companies, service companies, small businesses, nonprofits, health care providers, and educational institutions.

2. Board members will be appointed by the Secretary of Commerce for three-year terms and will serve at the discretion of the Secretary. All terms will commence on March 1 and end on

the last day of February of the appropriate years.

Miscellaneous

1. Members of the Board shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*

2. The Board will meet at least annually, but usually two times a year. Additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are usually one day in duration.

3. Board meetings are open to the public. Board members do not have access to classified or proprietary information in connection with their Board duties.

Nomination Information

1. Nominations are sought from the private and public sector as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations and competitiveness issues of manufacturing companies, service companies, small businesses, educational institutions, health care providers, and nonprofit organizations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on Federal advisory boards and Federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the Board, and will actively participate in good faith in the tasks of the Board. Besides participation at meetings, it is desired that members be able to devote the equivalent of seven days between meetings to either developing or researching topics of potential interest, and so forth, in furtherance of their Board duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Board membership.

Judges Panel of the Malcolm Baldrige National Quality Award

ADDRESSES: Please submit nominations to Robert Fangmeyer, Director, Baldrige Performance Excellence Program, NIST, 100 Bureau Drive Mail Stop 1020, Gaithersburg, MD 20899–1020. Nominations may also be submitted via fax to 301–975–4967. Additional information regarding the Committee, including its charter, current membership list, and executive summary, may be found at *http://patapsco.nist.gov/BoardofExam/Examiners_Judge2.cfm.*

FOR FURTHER INFORMATION CONTACT: Robert Fangmeyer, Director, Baldrige Performance Excellence Program and Designated Federal Officer, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899–1020; telephone 301–975–4781; fax 301–975–4967; or via email at *robert.fangmeyer@nist.gov.*

Committee Information

The Judges Panel of the Malcolm Baldrige National Quality Award (Panel) was established in accordance with 15 U.S.C. 3711a(d)(1) and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Objectives and Duties

1. The Panel will ensure the integrity of the Malcolm Baldrige National Quality Award (Award) selection process. Based on a review of results of examiners' scoring of written applications, Panel members will vote on which applicants' merit site visits by examiners to verify the accuracy of quality improvements claimed by applicants. The Panel will also review results and findings from site visits, and recommend Award recipients.

2. The Panel will ensure that individual judges will not participate in the review of applicants as to which they have any real or perceived conflict of interest.

3. The Panel will function solely as an advisory body, and will comply with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

4. The Panel will report to the Director of NIST.

Membership

1. The Panel will consist of no less than 9, and not more than 12, members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. There will be a balanced representation from U.S. service, manufacturing, small business, nonprofit, education, and health care industries. The Panel will include members familiar with the quality improvement operations and competitiveness issues of manufacturing companies, service companies, small businesses, nonprofits, health care providers, and educational institutions.

2. Panel members will be appointed by the Secretary of Commerce for three-year terms and will serve at the discretion of the Secretary. All terms will commence on March 1 and end on the last day of February of the appropriate year.

Miscellaneous

1. Members of the Panel shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*

2. The Panel will meet three times per year. Additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are usually one to four days in duration. In addition, each Judge must attend an annual three-day Examiner training course.

3. When approved by the Department of Commerce Chief Financial Officer and Assistant Secretary for Administration, Panel meetings are closed or partially closed to the public.

Nomination Information

1. Nominations are sought from all U.S. service and manufacturing industries, small businesses, education, health care, and nonprofits as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations and competitiveness issues of manufacturing companies, service companies, small businesses, health care providers, educational institutions, and nonprofit organizations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the Panel, and will actively participate in good faith in the tasks of the Panel. Besides participation at meetings, it is desired that members be either developing or researching topics of potential interest, reading Baldrige applications, and so forth, in furtherance of their Panel duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Panel membership.

Information Security and Privacy Advisory Board (ISPAB)

ADDRESSES: Please submit nominations to Matt Scholl, NIST, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899–8930. Nominations may also be submitted via fax to 301–975–8670, Attn: ISPAB Nominations. Additional information regarding the ISPAB, including its charter and current membership list, may be found on its electronic home page at *http://csrc.nist.gov/groups/SMA/ispab/index.html.*

FOR FURTHER INFORMATION CONTACT: Matt Scholl, ISPAB Designated Federal Officer (DFO), NIST, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899–8930; telephone 301–975–2941; fax: 301–975–8670; or via email at *matthew.scholl@nist.gov.*

Committee Information

The ISPAB (Committee or Board) was originally chartered as the Computer System Security and Privacy Advisory Board by the Department of Commerce pursuant to the Computer Security Act of 1987 (Pub. L. 100–235). The E-Government Act of 2002 (Pub. L. 107–347, Title III), amended Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–4), including changing the Committee's name, and the charter was amended accordingly.

Objectives and Duties

1. The Board will identify emerging managerial, technical, administrative, and physical safeguard issues relative to information security and privacy.

2. The Board will advise NIST, the Secretary of Homeland Security, and the Director of the Office of Management and Budget (OMB) on information security and privacy issues pertaining to Federal Government information systems, including thorough review of proposed standards and guidelines developed by NIST.

3. The Board shall report to the Director of NIST.

4. The Board reports annually to the Secretary of Commerce, the Secretary of Homeland Security, the Director of OMB, the Director of the National Security Agency, and the appropriate committees of the Congress.

5. The Board will function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Membership

1. The Director of NIST will appoint the Chairperson and the members of the ISPAB, and members serve at the discretion of the NIST Director. Members will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

2. The ISPAB will consist of a total of 12 members and a Chairperson.

- The Board will include four members from outside the Federal Government who are eminent in the information technology industry, at least one of whom is representative of small or medium sized companies in such industries.
- The Board will include four members from outside the Federal Government who are eminent in the fields of information technology, or related disciplines, but who are not employed by or representative of a producer of information technology.
- The Board will include four members from the Federal Government who have information system management experience, including experience in information security and privacy, at least one of whom shall be from the National Security Agency.

Miscellaneous

1. Members of the Board, other than full-time employees of the Federal government, will not be compensated for their services, but will, upon request, be allowed travel expenses pursuant to 5 U.S.C. 5701 *et seq.,* while otherwise performing duties at the request of the Board Chairperson, while away from their homes or a regular place of business.

2. Meetings of the ISPAB are usually two to three days in duration and are usually held quarterly. ISPAB meetings are open to the public, including the press. Members do not have access to classified or proprietary information in connection with their ISPAB duties.

Nomination Information

1. Nominations are being accepted in all three categories described above.

2. Nominees should have specific experience related to information security or privacy issues, particularly as they pertain to Federal information technology. Letters of nomination should include the category of membership for which the candidate is applying and a summary of the candidate's qualifications for that specific category. Also include (where applicable) current or former service on Federal advisory boards and any Federal employment. Each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the ISPAB, and that they will actively participate in good faith in the tasks of the ISPAB.

3. Besides participation at meetings, it is desired that members be able to devote a minimum of two days between meetings to developing draft issue papers, researching topics of potential interest, and so forth in furtherance of their ISPAB duties.

4. Selection of ISPAB members will not be limited to individuals who are nominated. Nominations that are received and meet the requirements will be kept on file to be reviewed as ISPAB vacancies occur.

5. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse ISPAB membership.

Manufacturing Extension Partnership (MEP) Advisory Board

ADDRESSES: Please submit nominations to Ms. Cheryl Gendron, NIST, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899–4800. Nominations may also be submitted via fax to 301–963–6556, or via email at *Cheryl.Gendron@nist.gov.* Additional information regarding MEP, including its charter may be found on its electronic home page at *http://www.nist.gov/mep/advisory-board.cfm.*

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Gendron, NIST, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899–4800; telephone 301–975–4919, fax 301–963–6556; or via email at *Cheryl.Gendron@nist.gov.*

Committee Information

The MEP Advisory Board (Board) is authorized under section 501 of the American Innovation and Competitiveness Act (Pub. L. 114–329); codified at 15 U.S.C. 278k(m), as amended, in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Objectives and Duties

1. The Board will provide advice on MEP activities, plans, and policies.

2. The Board will assess the soundness of MEP plans and strategies.

3. The Board will assess current performance against MEP program plans.

4. The Board will function solely in an advisory capacity, and in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

5. The Board shall transmit through the Director of NIST an annual report to the Secretary of Commerce for transmittal to Congress not later than 30 days after the submission to Congress of

the President's annual budget request each year. The report shall address the status of the MEP program.

Membership

1. The Board shall consist of not fewer than10 members, appointed by the Director of NIST and broadly representative of stakeholders. At least 2 members shall be employed by or on an advisory board for the MEP Centers, at least 5 members shall be from U.S. small businesses in the manufacturing sector, and at least 1 member shall represent a community college. No member shall be an employee of the Federal Government.

2. The Director of NIST shall appoint the members of the Board. Members shall be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. Board members serve at the discretion of the Director of NIST.

3. The term of office of each member of the Board shall be three years, except that vacancy appointments shall be for the remainder of the unexpired term of the vacancy. Any person who has completed two consecutive full terms of service on the Board shall thereafter be ineligible for appointment during the one-year period following the expiration of the second term.

Miscellaneous

1. Members of the Board will not be compensated for their services but will, upon request, be allowed travel and per diem expenses as authorized by 5 U.S.C. 5701 *et seq.,* while attending meetings of the Board or subcommittees thereof, or while otherwise performing duties at the request of the Chair, while away from their homes or regular places of business.

2. The Board will meet at least biannually. Additional meetings may be called by the Director of NIST or the Designated Federal Officer (DFO) or his or her designee.

3. Committee meetings are open to the public.

Nomination Information

1. Nominations are being accepted in all categories described above.

2. Nominees should have specific experience related to manufacturing and industrial extension services. Letters of nomination should include the category of membership for which the candidate is applying and a summary of the candidate's qualifications for that specific category. Each nomination letter should state that the person agrees to the nomination and acknowledges the responsibilities of serving on the MEP Advisory Board.

3. Selection of MEP Advisory Board members will not be limited to individuals who are nominated. Nominations that are received and meet the requirements will be kept on file to be reviewed as Board vacancies occur.

4. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse MEP Advisory Board membership.

National Construction Safety Team (NCST) Advisory Committee

ADDRESSES: Please submit nominations to Benjamin Davis, NIST, 100 Bureau Drive, Mail Stop 8615, Gaithersburg, MD 20899–8604. Additional information regarding the NCST, including its charter may be found on its electronic home page at *https://www.nist.gov/el/disaster-resilience/disaster-and-failure-studies/national-construction-safety-team-ncst/advisory.*

FOR FURTHER INFORMATION CONTACT: Judith Mitrani-Reiser, Director, Disaster and Failure Studies Program, NIST, 100 Bureau Drive, Mail Stop 8615, Gaithersburg, MD 20899–8604, telephone 301–975–0684; or via email at *judith.mitrani-reiser@nist.gov.*

Committee Information

The NCST Advisory Committee (Committee) was established in accordance with the National Construction Safety Team Act, Public Law 107–231 and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Objectives and Duties

1. The Committee shall advise the Director of NIST on carrying out the National Construction Safety Team Act (Act), review the procedures developed under section 2(c)(1) of the Act, and review the reports issued under section 8 of the Act.

2. The Committee functions solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. On January 1 of each year, the Committee shall transmit to the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate a report that includes: (1) An evaluation of National Construction Safety Team (Team) activities, along with recommendations to improve the operation and effectiveness of Teams, and (2) an assessment of the implementation of the recommendations of Teams and of the Committee.

Membership

1. The Committee shall consist of no less than 4 and no more than 12 members. Members shall reflect the wide diversity of technical disciplines and competencies involved in the National Construction Safety Teams investigations. Members shall be selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting the National Construction Safety Teams.

2. The Director of the NIST shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

Miscellaneous

1. Members of the Committee shall not be compensated for their services but may, upon request, be allowed travel and per diem expenses in accordance with 5 U.S.C. 5703.

2. Members of the Committee shall serve as Special Government Employees (SGEs), will be subject to the ethics standards applicable to SGEs, and are required to file an annual Executive Branch Confidential Financial Disclosure Report.

3. The Committee shall meet at least once per year. Additional meetings may be called whenever requested by the NIST Director or the Designated Federal Officer (DFO); such meetings may be in the form of telephone conference calls and/or videoconferences.

Nomination Information

1. Nominations are sought from industry and other communities having an interest in the National Construction Safety Teams investigations.

2. Nominees should have established records of distinguished service. The field of expertise that the candidate represents should be specified in the nomination letter. Nominations for a particular field should come from organizations or individuals within that field. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the nominee agrees to the nomination, acknowledges the responsibilities of serving on the Committee, and will actively participate in good faith in the tasks of the Committee.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Committee membership.

Advisory Committee on Earthquake Hazards Reduction (ACEHR)

ADDRESSES: Please submit nominations to Tina Faecke, Management and Program Analyst, National Earthquake Hazards Reduction Program, NIST, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, MD 20899–8604. Nominations may also be submitted via fax to 301–975–4032 or email at *tina.faecke@nist.gov.* Additional information regarding the ACEHR, including its charter and executive summary may be found on its electronic home page at *http://www.nehrp.gov.*

FOR FURTHER INFORMATION CONTACT: Steven McCabe, Director, National Earthquake Hazards Reduction Program, NIST, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, MD 20899–8604, telephone 301–975–8549, fax 301–975–4032; or via email at *steven.mccabe@nist.gov.*

Committee Information

The Advisory Committee on Earthquake Hazards Reduction (Committee) was established in accordance with the National Earthquake Hazards Reduction Program Reauthorization Act of 2004, Public Law 108–360 (42 U.S.C. 7704) and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Objectives and Duties

1. The Committee will act in the public interest to assess trends and developments in the science and engineering of earthquake hazards reduction; effectiveness of the National Earthquake Hazards Reduction Program (Program) in carrying out the activities under section (a)(2) of the Earthquake Hazards Reduction Act of 1977, as amended, (42 U.S.C. 7704(a)(2)); the need to revise the Program; and the management, coordination, implementation, and activities of the Program.

2. The Committee will function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. The Committee shall report to the Director of NIST at least once every two years on its findings of the assessments and its recommendations for ways to improve the Program. In developing recommendations, the Committee shall consider the recommendations of the United States Geological Survey (USGS) Scientific Earthquake Studies Advisory Committee (SESAC).

Membership

1. The Committee shall consist of not fewer than 11, nor more than 17 members. Members shall reflect the wide diversity of technical disciplines, competencies, and communities involved in earthquake hazards reduction. Members shall be selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting the National Earthquake Hazards Reduction Program.

2. The Director of NIST shall appoint the members of the Committee. Members shall be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

3. The term of office of each member of the Committee shall be three years, except that vacancy appointments shall be for the remainder of the unexpired term of the vacancy and that members shall have staggered terms such that the Committee will have approximately one-third new or reappointed members each year.

Miscellaneous

1. Members of the Committee shall not be compensated for their services, but may, upon request, be allowed travel and per diem expenses in accordance with 5 U.S.C. 5701 *et seq.,* while attending meetings of the Committee or subcommittees thereof, or while otherwise performing duties at the request of the Chairperson, while away from their homes or regular places of business.

2. Members of the Committee shall serve as Special Government Employees (SGEs) and will be subject to the ethics standards applicable to SGEs, and are required to file an annual Executive Branch Confidential Financial Disclosure Report.

3. The Committee members shall meet face-to-face at least once per year. Additional meetings may be called whenever requested by the NIST Director or the Chairperson; such meetings may be in the form of telephone conference calls and/or videoconferences.

4. Committee meetings are open to the public.

Nomination Information

1. Members will be drawn from industry and other communities having an interest in the National Earthquake Hazards Reduction Program, such as, but not limited to, research and academic institutions, industry standards development organizations, state and local government, and financial communities, who are qualified to provide advice on earthquake hazards reduction and represent all related scientific, architectural, and engineering disciplines.

2. Any person who has completed two consecutive full terms of service on the Committee shall be ineligible for appointment for a third term during the two-year period following the expiration of the second term.

3. Nominees should have established records of distinguished service. The field of expertise that the candidate represents should be specified in the nomination letter. Nominations for a particular field should come from organizations or individuals within that field. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the nominee agrees to the nomination, acknowledges the responsibilities of serving on the Committee, and will actively participate in good faith in the tasks of the Committee.

4. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad based and diverse Committee membership.

NIST Smart Grid Advisory Committee

ADDRESSES: Please submit nominations to Mr. Cuong Nguyen, Smart Grid and Cyber-Physical Systems Program Office, NIST, 100 Bureau Drive, Mail Stop 8200, Gaithersburg, MD 20899–8200. Nominations may also be submitted via email to *cuong.nguyen@nist.gov.* Information about the NIST Smart Grid Advisory Committee may be found at *https://www.nist.gov/engineering-laboratory/smart-grid/smart-grid-federal-advisory-committee.*

FOR FURTHER INFORMATION CONTACT: Mr. Cuong Nguyen, Smart Grid and Cyber-Physical Systems Program Office, NIST, 100 Bureau Drive, Mail Stop 8200, Gaithersburg, MD 20899–8200; telephone 301–975–2254, fax 301–948–5668; or via email at *cuong.nguyen@nist.gov.*

Committee Information

The NIST Smart Grid Advisory Committee (Committee) was established in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. App and with the concurrence of the General Services Administration.

Objectives and Duties

1. The Committee shall advise the Director of NIST in carrying out duties authorized by section 1305 of the Energy Independence and Security Act of 2007 (Pub. L. 110–140).

2. The Committee duties are solely advisory in nature in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

3. The Committee shall report to the Director of NIST.

4. The Committee shall provide input to NIST on the Smart Grid Standards, Priorities, and Gaps, on the overall direction, status and health of the Smart Grid implementation by the Smart Grid industry including identification of issues and needs, and on the direction of smart grid research and standards activities.

5. Upon request of the Director of NIST, the Committee will prepare reports on issues affecting Smart Grid activities.

Membership

1. The Committee shall consist of no less than 9 and no more than 15 members. Members shall be selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting Smart Grid deployment and operations. Members shall reflect the wide diversity of technical disciplines and competencies involved in the Smart Grid deployment and operations and will come from a cross section of organizations.

2. The Director of NIST shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

Miscellaneous

1. Members of the Committee shall not be compensated for their service, but will, upon request, be allowed travel and per diem expenses, in accordance with 5 U.S.C. 5701 *et seq.,* while attending meetings of the Committee or subcommittees thereof, while away from their homes or regular places of business.

2. The Committee shall meet approximately two times per year at the call of the Designated Federal Officer (DFO). Additional meetings may be called by the DFO whenever one-third or more of the members so request it in writing or whenever the Director of NIST requests a meeting.

Nomination Information

1. Nominations are sought from all fields involved in issues affecting the Smart Grid.

2. Nominees should have established records of distinguished service. The field of expertise that the candidate represents should be specified in the nomination letter. Nominations for a particular field should come from organizations or individuals within that field. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on Federal advisory boards and Federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the Committee, and will actively participate in good faith in the tasks of the Committee. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Committee membership.

Visiting Committee on Advanced Technology (VCAT)

ADDRESSES: Please submit nominations to Stephanie Shaw, Designated Federal Officer, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, MD 20899–1060. Nominations may also be submitted via fax to 301–216–0529 or via email at *stephanie.shaw@nist.gov.* Additional information regarding the VCAT, including its charter, current membership list, and past reports may be found on its electronic homepage at *http://www.nist.gov/director/vcat/.*

FOR FURTHER INFORMATION CONTACT: Stephanie Shaw, Designated Federal Officer, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, MD 20899–1060, telephone 301–975–2667, fax 301–216–0529; or via email at *stephanie.shaw@nist.gov.*

Committee Information

The VCAT (Committee) was established in accordance with 15 U.S.C. 278 and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Objectives and Duties

1. The Committee shall review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs, within the framework of applicable national policies as set forth by the President and the Congress. 15 U.S.C. 278(a).

2. The Committee will function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

3. The Committee shall report to the Director of NIST.

4. The Committee shall provide an annual report, through the Director of NIST, to the Secretary of Commerce for submission to the Congress not later than 30 days after the submittal to Congress of the President's annual budget request in each year. Such report shall deal essentially, though not necessarily exclusively, with policy issues or matters which affect NIST, or with which the Committee in its official role as the private sector policy adviser of NIST is concerned. Each such report shall identify areas of research and research techniques of the Institute of potential importance to the long-term competitiveness of United States industry, in which the Institute possesses special competence, which could be used to assist United States enterprises and Untied States industrial joint research and development ventures. 15 U.S.C. 278(h)(1). The Committee shall submit, through the Director of NIST, to the Secretary and the Congress such additional reports on specific policy matters as it deems appropriate. 15 U.S.C. 278(h)(2).

Membership

1. The Committee shall consist of not fewer than nine members appointed by the Director of NIST, a majority of whom shall be from United States industry. 15 U.S.C. 278(a). Members shall be selected solely on the basis of established records of distinguished service; shall provide representation of a cross-section of traditional and emerging United States industries; and shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. No employee of the Federal Government shall serve as a member of the Committee. 15 U.S.C. 278(b).

2. The Director of NIST shall appoint the members of the Committee. Members shall be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. 15 U.S.C. 278(a).

3. The term of office of each member of the Committee shall be three years, except that vacancy appointments shall be for the remainder of the unexpired term of the vacancy. 15 U.S.C. 278(c)(1).

Miscellaneous

1. Members of the Committee will not be compensated for their services, but will, upon request, be allowed travel expenses in accordance with 5 U.S.C.

5701 *et seq.,* while attending meetings of the Committee or of its subcommittees, or while otherwise performing duties at the request of the chairperson, while away from their homes or a regular place of business.

2. Members of the Committee shall serve as Special Government Employees (SGEs) and will be subject to the ethics standards applicable to SGEs.

3. Meetings of the VCAT usually take place at the NIST headquarters in Gaithersburg, Maryland. The Committee will meet at least twice each year at the call of the chairperson or whenever one-third of the members so request in writing. The Committee shall not act in the absence of a quorum, which shall consist of a majority of the members of the Committee not having a conflict of interest in the matter being considered by the Committee. 15 U.S.C. 278(d).

4. Generally, Committee meetings are open to the public.

Nomination Information

1. Nominations are sought from all fields described above.

2. Nominees should have established records of distinguished service and shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environment and international relations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on Federal advisory boards and Federal employment. In addition, each nomination letter should state that the candidate agrees to the nomination, acknowledges the responsibilities of serving on the VCAT, and will actively participate in good faith in the tasks of the VCAT.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse VCAT membership.

Kevin Kimball,

NIST Chief of Staff.

[FR Doc. 2018–05092 Filed 3–13–18; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board (SAB); Public Meeting of the NOAA Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC)

ACTION: Notice of Open Meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Monday, 9 April, 2018 from 9:45 a.m. EDT to 5:00 p.m. EDT and on Tuesday, April 10, 2018 from 9:00 a.m. EDT to 11:40 p.m. EDT. These times and agenda topics described below are subject to change. Please refer to the web page *www.sab.noaa.gov/SABMeetings.aspx* for the most up-to-date meeting times and agenda.

Place: The meeting will be held at The Westin DC City Center, 1400 M Street NW, Washington, DC.

Status: The meeting will be open to public participation with a 15-minute public comment period on April 9 from 4:45–5:00 p.m. EDT (check website to confirm time). The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Individuals or groups planning to make a verbal presentation should contact the SAB Executive Director by April 2, 2018 to schedule their presentation. Written comments should be received in the SAB Executive Director's Office by April 2, 2018, to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after April 2nd, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Seating at the meeting will be available on a first-come, first-served basis.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed no later than 12:00 p.m. on April 2, 2018, to Dr. Cynthia Decker, SAB Executive Director, SSMC3, Room 11230, 1315 East-West Highway, Silver Spring, MC 20910; Email: *Cynthia.Decker@noaa.gov.*

Matters To Be Considered: The meeting will include the following topics: (1) SAB Biennial Work Plan: Discussion to Date and Discussion of Next Steps on SAB Biennial Work Plan; (2) Discussion of SAB Report on Arctic Research Review; (3) Discussion of SAB Report on Emerging Technologies for NOAA Ocean Research, Operations and Management in the Ecosystem Context; (4)Presentation of National Academy of Sciences Report: ''Thriving on Our Changing Planet—A Decadal Strategy of Earth Observations from Space''; (5) Presentation of Report from the Environmental Information Services Working Group (EISWG); (6) Updates to the Terms of Reference (TOR) for Climate, Data Archive and Access and Environmental Information Systems Working Groups; and (7) Updates from the Acting NOAA Administrator and Acting Chief Scientist.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Room 11230, 1315 East-West Highway, Silver Spring, MD 20910. Email: *Cynthia.Decker@noaa.gov;* or visit the NOAA SAB website at *http://www.sab.noaa.gov.*

Dated: February 27, 2018.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2018–05175 Filed 3–13–18; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG024

Western Pacific Fishery Management Council (Council); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Western Pacific Stock Assessment Review (WPSAR) Steering Committee will convene a public meeting to discuss and approve the 5-year calendar for stock assessments, and to address any other concerns related to the WPSAR process.

DATES: The Steering Committee will meet from 1 to 3 p.m. on April 13, 2018.

ADDRESSES: The meeting will be at the Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Marlow Sabater, (808) 522–8143 or *marlowe.sabater@noaa.gov*.

SUPPLEMENTARY INFORMATION: The WPSAR steering committee consists of the Council's Executive Director, the Director of the NMFS Pacific Islands Fisheries Science Center, and the Regional Administrator of the NMFS Pacific Islands Regional Office. You may read more about WPSAR at *https://www.pifsc.noaa.gov/peer_reviews/wpsar/index.php*.

The public will have an opportunity to comment during the meeting. The agenda order may change. The meeting will run as late as necessary to complete scheduled business.

Meeting Agenda

1. Introductions.
2. Discuss and update the 5-year stock assessment review schedule, including any changes to the scheduling of reviews for stock assessments already on the calendar, and any new additions to the schedule.
3. Discuss and update review levels, that is, whether the stock assessments on the calendar will be benchmark assessments (new assessments) or assessment updates (updates of existing models with recent data).
4. Review the upcoming schedule and nominate additional products for review by the Center for Independent Experts, if necessary.
5. Discuss the Stock Assessment Prioritization process.
6. Discuss any changes related to the proposed action to reclassify certain management unit species as ecosystem component species.
7. Discuss process and timing for efficient release of information, that is, from WPSAR to the Council's Scientific and Statistical Committee, to the Council, and to NMFS for rulemaking.
8. Public Comment.

Special Accommodations

The meeting is physically accessible to people with disabilities. Make direct requests for sign language interpretation or other auxiliary aids to Marlowe Sabater at (808) 522–8143 or *marlowe.sabater@noaa.gov,* at least 5 days prior to the meeting date.

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

Dated: March 8, 2018.

Emily H. Menashes,

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

[FR Doc. 2018–05145 Filed 3–13–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2018–0011; OMB Control Number 0704–0255]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Construction and Architect-Engineer Contracts

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the 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 the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through September 30, 2018. DoD proposes that OMB extend its approval for three additional years.

DATES: DoD will consider all comments received by May 14, 2018.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0255, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0255 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (A&S) DPAP (DARS), 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Mark Gomersall, 571–372–6099. The information collection requirements addressed in this notice are available electronically on the internet at: *http://www.acq.osd.mil/dpap/dfars/index.htm.* Paper copies are available from Mr. Mark Gomersall, OUSD (A&S) DPAP (DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) part 236, Construction and Architect-Engineer Contracts, and related clauses at DFARS 252.236; OMB Control Number 0704–0255.

Needs and Uses: DoD contracting officers need this information to evaluate contractor proposals for contract modifications; to determine that a contractor has removed obstructions to navigation; to review contractor requests for payment for mobilization and preparatory work; to determine reasonableness of costs allocated to mobilization and demobilization; and to determine eligibility for the 20 percent evaluation preference for United States firms in the award of some overseas construction contracts.

Affected Public: Businesses and other for-profit entities.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: Revision of a currently approved collection.

Reporting Frequency: On occasion.

Number of Respondents: 1,735.

Responses per Respondent: 5.

Annual Responses: 8,675.

Average Burden per Response: 12.

Annual Response Burden Hours: 104,100.

Summary of Information Collection

DFARS 236.570(a) prescribes use of the clause at DFARS 252.236–7000, Modification Proposals—Price Breakdown, in all fixed-price construction solicitations and contracts. The clause requires the contractor to

submit a price breakdown with any proposal for a contract modification.

DFARS 236.570(b) prescribes use of the following clauses in fixed-price construction contracts and solicitations as applicable:

(1) The clause at DFARS 252.236–7002, Obstruction of Navigable Waterways, requires the contractor to notify the contracting officer of obstructions in navigable waterways.

(2) The clause at DFARS 252.236–7003, Payment for Mobilization and Preparatory Work, requires the contractor to provide supporting documentation when submitting requests for payment for mobilization and preparatory work.

(3) The clause at DFARS 252.236–7004, Payment for Mobilization and Demobilization, permits the contracting officer to require the contractor to furnish cost data justifying the percentage of the cost split between mobilization and demobilization, if the contracting officer believes that the proposed percentages do not bear a reasonable relation to the cost of the work.

DFARS 236.570(c) prescribes use of the following provisions in solicitations for military construction contracts that are funded with military construction appropriations and are estimated to exceed $1,000,000:

(1) The provision at DFARS 252.236–7010, Overseas Military Construction—Preference for United States Firms, when contract performance will be in a United States outlying area in the Pacific or in a country bordering the Arabian Gulf, requires an offeror to specify whether or not it is a United States firm.

(2) The provision at DFARS 252.236–7012, Military Construction on Kwajalein Atoll—Evaluation Preference, when contract performance will be on Kwajalein Atoll, requires an offeror to specify whether it is a United States firm, a Marshallese firm, or other firm.

Jennifer L. Hawes,

Regulatory Control Officer,Defense Acquisition Regulations System.

[FR Doc. 2018–05183 Filed 3–13–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2018–0010; OMB Control Number 0704–0187]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Information Collection in Support of the DoD Acquisition Process (Various Miscellaneous Requirements)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the 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 the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through July 31, 2018. DoD proposes that OMB extend its approval for three additional years.

DATES: DoD will consider all comments received by May 14, 2018.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0187, using any of the following methods:

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

○ *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0187 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (A&S) DPAP (DARS), 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 571–372–6106. The information collection requirements addressed in this notice are available electronically on the internet at: *http://www.acq.osd.mil/dpap/dfars/index.htm.* Paper copies are available from Ms. Amy Williams, OUSD (A&S) DPAP (DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Information Collection in Support of the DoD Acquisition Process (Various Miscellaneous Requirements); OMB Control Number 0704–0187.

Needs and Uses: This information collection requirement pertains to information required in DFARS parts 208, 209, 235, and associated clauses in part 252 that an offeror must submit to DoD in response to a request for proposals or an invitation for bids or a contract requirement. DoD uses this information to—

- Determine whether to provide precious metals as Government-furnished material;
- Determine whether a foreign government owns or controls the offeror to prevent access to proscribed information;
- Determine whether there is a compelling reason for a contractor to enter into a subcontract in excess of $30,000 with a firm, or subsidiary of a firm, that is identified in the ''List of Parties Excluded from Federal Procurement and Nonprocurement'' as being ineligible for award of Defense subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism;
- Evaluate claims of indemnification for losses or damages occurring under a research and development contract; and
- Keep track of radio frequencies on electronic equipment under research and development contracts so that the user does not override or interfere with the use of that frequency by another user.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 308.

Responses per Respondent: 1.

Annual Responses: 308.

Average Burden per Response: 2 hours.

Annual Burden Hours: 616.

Frequency: On occasion.

Summary of Information Collection

This information collection pertains to information, as required in DFARS Parts 208, 209, 235, and associated clauses in Part 252 that an offeror must submit to DoD in response to a request for proposals or an invitation for bids or a contract requirement. The information collection covers the following DFARS requirements:

• *252.208–7000, Intent to Furnish Precious Metals as Government-Furnished Material.* Paragraph (b) of this clause requires an offeror to cite the type and quantity of precious metals required in the performance of the contract. Paragraph (c) requires the offeror to submit two prices for each deliverable item that contains precious metals: one based on the Government furnishing the precious metals, and the other based on the contractor furnishing the precious metals.

• *252.209–7002, Disclosure of Ownership or Control by a Foreign Government.* Paragraph (d) requires the offeror to provide a disclosure with its offer of any interest a foreign government has in the offeror when that interest constitutes control of the offeror by a foreign government.

• *252.209–7004, Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism.* Paragraph (b) requires the Contractor to notify the contracting officer in writing before entering into a subcontract in excess of $30,000 with a party that is identified in the List of Parties Excluded from Federal Procurement and Nonprocurement Programs as being ineligible for award of Defense subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism. The contractor must provide the name of the proposed subcontractor and the compelling reasons for doing business with the subcontractor.

• *252.235–7000, Indemnification under 10 U.S.C. 2534—Fixed Price; 252.235–7001, and Indemnification under 10 U.S.C. 2534—Cost-Reimbursement.* Paragraphs (f) and (e), respectively, of these clauses require contractors to notify the contracting officer of any claim and provide (i) proof or evidence of a claim and (ii) copies of all pertinent papers when the contractor is to be indemnified.

• *DFARS 252.235–7003, Frequency Authorization.* Paragraph (b) requires that the contractor or subcontractor provide to the contracting officer the technical operating characteristics for any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made.

Jennifer L. Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2018–05177 Filed 3–13–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2018–0012; OMB Control Number 0704–0454]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Administrative Matters

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the 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 the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through September 30, 2018. DoD proposes that OMB extend its approval for three additional years.

DATES: DoD will consider all comments received by May 14, 2018.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0454, using any of the following methods:

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

○ *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0454 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(A&S)DPAP(DARS), 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Mark Gomersall, 571–372–6099. The information collection requirements addressed in this notice are available electronically on the internet at: *http://www.acq.osd.mil/dpap/dfars/index.htm.* Paper copies are available from Mr. Mark Gomersall, OUSD(A&S)DPAP(DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), U.S.-International Atomic Energy Agency Additional Protocol; OMB Control Number 0704–0454.

Needs and Uses: This requirement is necessary to provide for protection of information or activities with national security significance. As such, this information collection requires contractors to comply with the notification process at DFARS 252.204–7010, Requirement for Contractor to Notify DoD if the Contractor's Activities are Subject to Reporting Under the U.S.-International Atomic Energy Agency Additional Protocol.

Affected Public: Businesses and other for-profit entities and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: Renewal of a currently approved collection.

Reporting Frequency: On occasion.

Number of Respondents: 300.

Responses Per Respondent: 1.

Annual Responses: 300.

Average Burden Per Response: 1 hour.

Annual Response Burden Hours: 300.

Summary of Information Collection

Under the U.S.-International Atomic Energy Agency (IAEA) Additional Protocol, the United States is required to declare a wide range of public and private nuclear-related activities to the IAEA and potentially provide access to IAEA inspectors for verification purposes. The U.S.-IAEA Additional Protocol permits the United States unilaterally to declare exclusions from inspection requirements for activities with direct national security significance.

The DFARS clause at 252.204–7010, as prescribed at DFARS 204.470–3, is included in contracts for research and development or major defense acquisition programs involving fissionable materials (*e.g.,* uranium, plutonium, neptunium, thorium, americium); other radiological source materials; or technologies directly related to nuclear power production, including nuclear or radiological waste materials.

The clause requires a contractor to provide written notification to the applicable DoD program manager and a copy of the notification to the contracting officer if the contractor is required to report its activities under the U.S.-IAEA Additional Protocol. Upon such notification, DoD will determine if access may be granted to IAEA inspectors, or if a national security exclusion should be applied.

Jennifer L. Hawes,

Regulatory Control Officer Defense Acquisition Regulations System.

[FR Doc. 2018–05185 Filed 3–13–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2018–HA–0009]

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 Office of the Assistant Secretary of Defense for Health Affairs 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 May 14, 2018.

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 08D09B, 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.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

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 Defense Health Agency (DHA), Public Health Division, Health Care Operations Directorate (ATTN: Major Mary Bauza-Lawver), 7700 Arlington Blvd., Falls Church, VA 22042 or call 703–681–5870.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Screening and Monitoring of DoD Personnel Deployed to Ebola Outbreak Areas; DD Form 2990 and DD Form 2991; OMB Control Number 0720–0056.

Needs and Uses: The information collection requirement is necessary to ensure DoD personnel deployed in support of Operation UNITED ASSISTANCE are promptly evaluated for possible exposure(s) to the Ebola virus during deployment to, and within 12 hours prior to departing from, an Ebola outbreak country or region. Ebola is a Quarantinable Communicable Disease as named in Executive Order 13295 and supported by several DoD regulations and Federal laws. This information will be used by DoD medical and public health officials to (1) ensure Ebola exposure risk is evaluated, (2) proper prevention and quarantine efforts are implemented, (3) appropriate medical care is provided, (4) medical surveillance programs are robust and (5) the spread of Ebola beyond area of concern is minimized. The DoD has consulted with the Centers for Disease Control and Prevention, the Department of State, the Agency for International Development, and several Defense Agencies regarding disease control efforts and health surveillance in response to the public health emergency in West Africa and worldwide. DoD has also specifically discussed these new information collections with representatives of the various Military Services, representing deploying military members who have participated in the development of the content of these forms.

Affected Public: Individuals or Households.

Annual Burden Hours: 480.

Number of Respondents: 1,200.

Responses per Respondent: 2.

Annual Responses: 2400.

Average Burden per Response: 12 minutes.

Frequency: On occasion.

Respondents are DoD personnel (active duty service members, federal civilian employees and contractors). Using the DD2990 and DD2991, information will be collected from respondents during deployment and just prior to redeployment (return from deployment). This information will provide for health surveillance while deployed, removal from duty if representing a health risk to self or others, apprehension and detention, or conditional release of individuals to prevent the introduction, transmission, or spread of suspected communicable diseases, pursuant to section 361(b) of the Public Health Service Act (42 U.S.C. 264), UCMJ, DoD Directive 6490.02E, DoD Instruction 6490.03, 5 CFR 339.301. The information will also be collected in order to identify any health concerns and to refer individuals for additional assessment and/or care. The overall intent is to protect the health of the individual and public from EBV. This information will also be included in deployer's medical records.

Dated: March 9, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–05192 Filed 3–13–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2016–OS–0078]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness 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 May 14, 2018.

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 08D09B, 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.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

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 Defense Manpower Data Center (DMDC) at: ATTN: Joint Personnel Adjudication System (JPAS), Defense Manpower Data Center (DMDC); Suite 04E25, 4800 Mark Center Drive, Alexandria, VA 22350–3100, or fax at 571–372–1059.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Joint Personnel Adjudication System (JPAS); OMB Control Number 0704–0496.

Needs and Uses: This information collection is necessary as the JPAS system requires personal data collection to facilitate the initiation, investigation and adjudication of information relevant to DoD security clearances and employment suitability determinations for active duty military, civilian employees and contractors requiring such credentials. As a Personnel Security System it is the authoritative source for clearance information resulting in accesses determinations to sensitive/classified information and facilities.

Affected Public: Individuals or Households.

Annual Burden Hours: 333,375.

Number of Respondents: 22,225.

Responses per Respondent: 45.

Annual Responses: 1,000,125.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

The Joint Personnel Adjudication System (JPAS) is a DoD personnel security system and is the authoritative source for clearance information resulting in access determinations to sensitive/classified information and facilities. Collection and maintenance of personal data in JPAS is required to facilitate the initiation, investigation and adjudication of information relevant to DoD security clearances and employment suitability determinations for active duty military, civilian employees, and contractors requiring such credentials. Facility Security Officers (FSOs) working in private companies that contract with DoD and who need access to the JPAS system to update security-related information about their company's employees must complete DD Form 2962. Specific uses include: Facilitation for DoD Adjudicators and Security Managers to obtain accurate up-to-date eligibility and access information on all personnel (military, civilian and contractor personnel) adjudicated by the DoD. The DoD Adjudicators and Security Managers are also able to update eligibility and access levels of military, civilian and contractor personnel nominated for access to sensitive DoD information. Once granted access, the FSOs maintain employee personal information, submit requests for investigations, and submit other relevant personnel security information into JPAS on over 1,000,000 contract employees annually.

Dated: March 9, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–05196 Filed 3–13–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2017–IES–0082]

Privacy Act of 1974; System of Records

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (the Department) publishes this notice of a new system of records entitled ''Impact Study of Feedback for Teachers based on Classroom Videos (18–13–40).'' This system contains individually identifying information provided by individuals and school districts who participate in the impact study. The information contained in the records maintained in this system will be used to conduct a rigorous study of the effectiveness of support to teachers based on their teaching practices within their classroom.

DATES: Submit your comments on this new system of records notice on or before April 13, 2018.

This new system of records will become applicable upon publication in the **Federal Register** on March 14, 2018, unless the new system of records notice needs to be changed as a result of public comment. The routine uses listed under ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES'' will become applicable on April 13, 2018, unless the new system of records notice needs to be changed as a result of public comment. The Department will publish any significant changes to the system of

records or routine uses that result from public comment.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''help'' tab.
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this new system of records, address them to: Teresa Cahalan, SORN Coordinator, Institute of Education Sciences, U.S. Department of Education, Potomac Center Plaza, 550 12th Street SW, Room 4126, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Teresa Cahalan, SORN Coordinator, Institute of Education Sciences, U.S. Department of Education, Potomac Center Plaza, 550 12th Street SW, Room 4126, Washington, DC 20202 or by email at *IES_SORN@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you may call the Federal Relay Service, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction: The information contained in the records maintained in this system will be used to conduct a rigorous study of the effectiveness of feedback for teachers based on classroom videos to inform effective teacher preparation and professional development.

The study will address the following central research questions: What is the impact on teaching practices and student achievement of providing novice teachers with feedback on their teaching using multiple videos of their classroom practices? What is the impact on teaching practices and student achievement of providing early career teachers (those in their second, third, or fourth year of teaching) with feedback on their teaching using multiple videos of their classroom practices? Secondary research questions for the study are: Is intensive feedback more effective for certain types of teachers or students? On which teaching practices should feedback interventions focus?

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 8, 2018.

Thomas Brock,

Commissioner, National Center for Education Research, Delegated the Duties of the Director of the Institute of Education Sciences.

SYSTEM NAME AND NUMBER:

Impact Study of Feedback for Teachers based on Classroom Videos (18–13–40).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The location is at Mathematica Policy Research, P.O. Box 2393, Princeton, NJ 08543–2393 (contractor).

SYSTEM MANAGER:

Project's contracting officer representative, Institute of Education Sciences, U.S. Department of Education, Potomac Center Plaza, 550 12th Street SW, Room 4114, Washington, DC 20202.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The study is authorized under sections 171(b) and 173 of the Education Sciences Reform Act of 2002 (ESRA)(20 U.S.C. 9561(b) and 9563) and section 8601 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (20 U.S.C. 7981).

PURPOSE(S) OF THE SYSTEM:

The information contained in the records maintained in this system will be used to conduct a rigorous study of the effectiveness of feedback for teachers based on classroom videos to inform effective teacher preparation and professional development.

The study will address the following central research questions: What is the impact on teaching practices and student achievement of providing novice teachers with feedback on their teaching using multiple videos of their classroom practices? What is the impact on teaching practices and student achievement of providing early career teachers (those in their second, third, or fourth year of teaching) with feedback on their teaching using multiple videos of their classroom practices? Secondary research questions for the study are: Is intensive feedback more effective for certain types of teachers or students? On which teaching practices should feedback interventions focus?

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records will include individually identifying information about teachers who participate in the study and their students. The system will contain records on approximately 500 teachers and 10,625 students from up to 12 school districts.

CATEGORIES OF RECORDS IN THE SYSTEM:

For teachers, this information will include, but will not necessarily be limited to, teacher name, background characteristics, teaching experience, teacher preparation experiences, knowledge of teaching practice, experience with professional development, feedback to support their teaching practice, and videos of classroom practice and ratings of

teaching practice conducted by the study team using the videos. For students, this information will include, but will not necessarily be limited to, standardized math and English/Language Arts test scores, age, sex, race/ethnicity, grade, eligibility for free/reduced-price lunches, English Learner status, and individualized education plan status.

RECORD SOURCE CATEGORIES:

Data will be obtained through: Human resource and student administrative records maintained by the school districts; videos of classroom practice and ratings of teaching practice conducted by the study team using the videos; and surveys of teachers administered by the study team.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis. Any disclosure of individually identifiable information from a record in this system must also comply with the requirements of section 183 of the ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collection, reporting, and publication of data by the Institute of Education Sciences. Any disclosure of personally identifiable information from student education records that were obtained from school districts must also comply with the requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g; 34 CFR part 99), which protects the privacy of student education records.

(1) *Teacher Identification Disclosure.* In order for the Department to link teacher data that the Department maintains as part of this study to the administrative records of that teacher's students maintained by the participating school districts for purposes consistent with the conduct of the study, the Department may disclose to each participating school district the identities of teachers from that school district who are participating in this study.

(2) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department will require the contractor to agree to maintain safeguards to protect the security and confidentiality of the records disclosed from the system.

(3) *Research Disclosure.* The Director of the Institute of Education Sciences may disclose information from this system of records to qualified researchers solely for the purpose of carrying out specific research that is compatible with the purpose(s) of this system of records. The classroom videos will not be included in disclosures of records that are made under this routine use. The researcher must agree to maintain safeguards to protect the security and confidentiality, consistent with section 183(c) of the ESRA (20 U.S.C. 9573(c)) of the records disclosed from this system. When personally identifiable information from a student's education record will be disclosed to the researcher, under FERPA (20 U.S.C. 1232g(b)), the researcher also must agree to comply with the requirements in the applicable FERPA exception to consent.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system of records are maintained in a secure, password-protected electronic system.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system will be indexed and retrieved by a unique number assigned to each teacher that will be cross-referenced by the individual's name on a separate list.

The contractor's employees who ''maintain'' (collect, maintain, use, or disseminate) data in this system must comply with the requirements of the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a) and the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The Department shall submit a retention and disposition schedule that covers the records contained in this system to the National Archives and Records Administration (NARA) for review. The records will not be destroyed until such time as NARA approves said schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Security protocols for this system of records (Impact Study of Feedback for Teachers based on Classroom Videos) meet all required security standards

The contractor is required to ensure that information identifying individuals is in files physically separated from other research data and electronic files identifying individuals are separated from other electronic research data files. The contractor will maintain security of the complete set of all master data files and documentation. Access to individually identifiable data will be strictly controlled. All information will be kept in locked file cabinets during nonworking hours, and work on hardcopy data will take place in a single room, except for data entry.

Physical security of electronic data also will be maintained. Security features that protect project data will include: Password-protected accounts that authorize users to use the contractor's system but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; and additional security features that the network administrators will establish for projects as needed. The contractor's employees who ''maintain'' (collect, maintain, use, or disseminate) data in this system must comply with the requirements of the Privacy Act and the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

RECORD ACCESS PROCEDURES:

If you wish to request access to your records, you must contact the system manager at the address listed under SYSTEM MANAGER AND ADDRESS. Your request must provide the necessary particulars of your full name, address, telephone number, and any other identifying information requested by the Department while processing the request, to distinguish between individuals with the same name. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, you must contact the system manager at the address listed above. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to inquire whether a record exists regarding you in this system, you must contact the system manager at the address listed above. You must provide the necessary particulars of your full name, address, telephone number, and any other

identifying information requested by the Department while processing the request, to distinguish between individuals with the same name. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2018–05195 Filed 3–13–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14868–000]

Pioneer Valley Renewables; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 13, 2018, Pioneer Valley Renewables, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Scotlandville Bend Project (Scotlandville Project or project) to be located on the Mississippi River, in West Baton Rouge and East Baton Rouge Parishes, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) Four underwater, carbon fiber shroud and blade design turbine-generating units, each with a diameter of 18 meters and a cross section of 4 meters; (2) each pair of units will be mounted on a riverbed secured piling, 30 meters apart; (3) flexible cables would convey power to a metering station; and (4) a transmission line would interconnect with the power grid. Each unit would have an installed capacity of 1.5 megawatts for a total generating capacity of 6 megawatts. The proposed project would have an estimated average annual generation of 40,000 megawatt-hours, which would be sold.

Applicant Contact: Mr. Mark D. Farb, Pioneer Valley Renewables, 240 Central Avenue, 1J, Lawrence, New York 11559; phone: (631) 552–0284.

FERC Contact: Michael Spencer, (202) 502–6093, *michael.spencer@ferc.gov*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications 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–14868–000.

More information about this project, including a copy of the application, can be viewed or printed on the eLibrary link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14868) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 7, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–05110 Filed 3–13–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Attendance at the Colorado Public Utilities Commission's Fifth Commissioner Information Meeting

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of its staff may attend the Colorado Public Utilities Commission's Commissioner Information Meeting (CIM) as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

The CIM will be held on March 20, 2018 from 9:00 a.m. until 3:00 p.m. Mountain Time at the Colorado Public Utilities Commission, Hearing Room A, 1560 Broadway, Suite 250, Denver, CO 80202. The phone number is (303) 894–2533.

The discussions may address matters at issue in the following proceedings:

Docket No. ER12–1179, *Southwest Power Pool, Inc.*
Docket No. ER15–1809, *ATX Southwest, LLC*
Docket No. ER15–2028, *Southwest Power Pool, Inc.*
Docket No. ER15–2115, *Southwest Power Pool, Inc.*
Docket No. ER15–2236, *Midwest Power Transmission Arkansas, LLC*
Docket No. ER15–2237, *Kanstar Transmission, LLC*
Docket No. ER15–2324, *Southwest Power Pool, Inc.*
Docket No. ER15–2594, *South Central MCN LLC*
Docket No. EL16–91, *Southwest Power Pool, Inc.*
Docket No. EL18–19, *Southwest Power Pool, Inc.*
Docket No. EL16–108, *Tilton Energy* v. *Midcontinent Independent System Operator, Inc.*
Docket No. EL16–110, *Southwest Power Pool, Inc.*
Docket No. ER16–204, *Southwest Power Pool, Inc.*
Docket No. ER16–2522, *Southwest Power Pool, Inc.*
Docket No. ER16–2523, *Southwest Power Pool, Inc.*
Docket No. EL17–11, *Alabama Power Co.* v. *Southwest Power Pool, Inc.*
Docket No. EL17–21, *Kansas Electric Co.* v. *Southwest Power Pool, Inc.*
Docket No. EL17–69, *Buffalo Dunes et al.* v. *Southwest Power Pool, Inc.*
Docket No. EL17–86, *Nebraska Public Power District* v. *Southwest Power Pool, Inc.*
Docket No. ER17–426, *Southwest Power Pool, Inc.*
Docket No. ER17–428, *Southwest Power Pool, Inc.*
Docket No. ER17–469, *Southwest Power Pool, Inc.*
Docket No. ER17–772, *Southwest Power Pool, Inc.*
Docket No. ER17–889, *Southwest Power Pool, Inc.*
Docket No. ER17–953, *South Central MCN LLC*
Docket No. ER17–1092, *Southwest Power Pool, Inc.*
Docket No. ER17–1575, *Southwest Power Pool, Inc.*
Docket No. ER17–2229, *Southwest Power Pool, Inc.*
Docket No. ER18–171, *Southwest Power Pool, Inc.*
Docket No. ER18–194, *Southwest Power Pool, Inc.*
Docket No. ER18–195, *Southwest Power Pool, Inc.*
Docket No. ER18–374, *Southwest Power Pool, Inc.*
Docket No. ER18–381, *Southwest Power Pool, Inc.*
Docket No. ER18–499, *Southwestern Electric Power Company*

Docket No. ER18–500, *Southwestern Electric Power Company*
Docket No. ER18–590, *Southwest Power Pool, Inc.*
Docket No. ER18–594, *Southwest Power Pool, Inc.*
Docket No. ER18–592, *Southwest Power Pool, Inc.*
Docket No. ER18–599, *Southwest Power Pool, Inc.*
Docket No. ER18–736, *Southwest Power Pool, Inc.*
Docket No. ER18–748, *Southwest Power Pool, Inc.*
Docket No. ER18–769, *Southwest Power Pool, Inc.*
Docket No. ER18–840, *Xcel Energy Services, Inc.*
Docket No. ER18–854, *Southwest Power Pool, Inc.*
Docket No. EL18–9–000, *Xcel Energy Services, Inc.* v. *Southwest Power Pool, Inc.*
Docket No. EL18–20–000, *Indicated SPP Transmission Owners* v. *Southwest Power Pool, Inc.*
Docket No. EL18–26, *EDF Renewable Energy, Inc.* v. *Midcontinent Independent System Operator, Inc., Southwest Power Pool, Inc., and PJM Interconnection, L.L.C.*
Docket No. EL18–35, *Southwest Power Pool, Inc.*

This meeting is open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Dated: March 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–05106 Filed 3–13–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL18–123–000; QF87–481–002]

T.E.S. Filer City Station Limited Partnership; Notice of Application

Take notice that on March 5, 2018, T.E.S. Filer City Station Limited Partnership, filed an application for Commission Certification as a Qualifying Cogeneration Facility.

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 Applicant.

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 14 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 March 27, 2018.

Dated: March 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–05105 Filed 3–13–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

State Edge Wind I LLC	EG18–20–000
State Edge Wind I Holdings LLC	EG18–21–000
Hardin Wind Energy LLC	EG18–22–000
Hardin Wind Energy Holdings LLC	EG18–23–000
Beech Ridge Energy II Holdings LLC	EG18–24–000
Clean Energy Future-Lordstown, LLC	EG18–25–000
Tahoka Wind, LLC	EG18–26–000

Take notice that during the month of February 2018, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2017).

Dated: March 8, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2018–05096 Filed 3–13–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR18–17–000]

TransMontaigne Product Services LLC v. Colonial Pipeline Company; Notice of Complaint

Take notice that on March 1, 2018, pursuant to Rule 206 of the Rules of the Practice and Procedure of the Federal Energy Regulatory Commission (Commission) 18 CFR 385.206 (2017), Part 343 of the Commission's Rules and Regulations, 18 CFR 343 *et seq.* (2017) and sections 1(5), 6, 8, 9, 13, 15 and 16 of the Interstate Commerce Act, 49 U.S.C. App 1(5), 6, 8, 9, 13,15, and 16 and Section 1803 of the Energy Policy Act of 1992, TransMontaigne Product Services LLC (TransMontaigne or Complainant) filed a complaint against Colonial Pipeline Company (Colonial or Respondent) challenging that the justness and reasonableness of the rates charged by Colonial for transportation service pursuant to certain tariffs on file with the Commission, all as more fully explained in the complaint.

TransMontaigne certifies that copies of the complaint were served on the contacts for Colonial as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the

website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 2, 2018.

Dated: March 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–05107 Filed 3–13–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–974–000]

NTE Carolinas, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding NTE Carolinas, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 28, 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: March 8, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–05097 Filed 3–13–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP18–276–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Technical Conference

Take notice that a technical conference will be held on Wednesday, March 21, 2018 at 10:00 a.m. (Eastern Standard Time), in a room to be determined at the offices of the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

At the technical conference, the Commission Staff and the parties to the proceeding should be prepared to discuss all issues set for technical conference as established in the January 30, 2018 Order, *Southern Star Central Gas Pipeline, Inc.,* 162 FERC 61,070. All interested persons are permitted to attend.

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 this technical conference, please contact Richard Wartchow, 202–502–6000.

Dated: March 7, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–05111 Filed 3–13–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–96–000]

Elkton Acquisition Corp.; Notice of Application

Take notice that on February 28, 2018, Elkton Acquisition Corp. (EAC), 7 St. Paul Street, Suite 820, Baltimore, Maryland 21202, filed in Docket No. CP18–96–000, an application pursuant to section 7(f) of the Natural Gas Act (NGA) requesting a service area determination to allow it to provide natural gas distribution service from certain facilities (Elkton Facilities) in Delaware across the state line into Maryland. EAC is acquiring the Elkton Facilities from Elkton Gas (Elkton), a Maryland local distribution company. The Commission previously granted Elkton a service area determination subject to the regulatory oversight of the Maryland Public Service Commission (MdPSC). EAC seeks to succeed that service area determination because the Elkton Facilities will be owned and operated by a new corporate entity. EAC states that after its acquisition of Elkton, it will continue to provide the same natural gas services previously provided by Elkton, subject to the regulatory oversight of the MdPSC. EAC additionally requests that the Commission determine that EAC qualifies as a local distribution company for the purposes of transportation under section 311 of the Natural Gas Policy Act of 1978 and that it be granted waiver of all reporting and accounting requirements, as well as other rules and regulations that are normally applicable to natural gas companies subject to the Commission's jurisdiction, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Kirstin E. Gibbs, Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue NW, Washington, DC 20004–2541, by telephone at (202) 739–5026, by fax at (202) 739–3001, or by email at *kirstin.gibbs@morganlewis.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on March 29, 2018.

Dated: March 8, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–05104 Filed 3–13–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Membership of Performance Review Board for Senior Executives

The Federal Energy Regulatory Commission hereby provides notice of the membership of its Performance Review Board (PRB) for the Commission's Senior Executive Service (SES) members. The function of this board is to make recommendations relating to the performance of senior executives in the Commission. This action is undertaken in accordance with Title 5, U.S.C., Section 4314(c)(4).

The Commission's PRB will remove the following members:

Steven Wellner
David Morenoff
Michael Bardee

The Commission's PRB will add the following members:

Anthony Pugliese
James Danly
Joseph McClelland
Nils Nichols

Dated: March 7, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–05109 Filed 3–13–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–51–000.
Applicants: MDU Resources Group, Inc.
Description: Supplement to January 31, 2018 Application [Revised Exhibit N] for Authorization Under Section 203 of the Federal Power Act of MDU Resources Group, Inc.
Filed Date: 3/7/18.
Accession Number: 20180307–5144.
Comments Due: 5 p.m. ET 3/28/18.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG18–49–000.
Applicants: Midway Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Midway Wind, LLC.
Filed Date: 3/8/18.
Accession Number: 20180308–5018.
Comments Due: 5 p.m. ET 3/29/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–378–002.
Applicants: Public Service Company of Colorado.
Description: Tariff Amendment: 20180308 5th Amended IREA PPA—Amended to be effective 12/5/2017.
Filed Date: 3/8/18.
Accession Number: 20180308–5143.
Comments Due: 5 p.m. ET 3/29/18.

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: March 8, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–05094 Filed 3–13–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC18–2–000]

Commision Information Collection Activities (FERC–725Y), Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of extension of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection FERC–725Y, Mandatory Reliability Standards (Personnel Performance, Training, and Qualifications), to the Office of Management and Budget (OMB) for review of the information collection requirements.

Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously published a Notice in the **Federal Register** on 12/26/2017 requesting public comments. The Commission received no comments on the FERC–725Y information collection and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by April 13, 2018.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0279, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–0710.

A copy of the comments should also be sent to the Commission, in Docket No. IC18–2–000, by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725Y, Mandatory Reliability Standard (Personnel Performance, Training, and Qualifications).

OMB Control No.: 1902–0279.

Type of Request: Three-year extension of the FERC–725Y information collection requirements with no changes to the reporting requirements.

Abstract: The FERC–725Y information collection is intended to help ensure the safe and reliable operation of the interconnected grid through the retention of suitably trained and qualified personnel in positions that can impact the reliable operation of the Bulk-Power System. The Commission uses the FERC–725Y to implement the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System. FERC–725Y will ensure that personnel performing or supporting real-time operations on the Bulk Electric System (BES) are trained using a systematic approach. The Reliability Standard requires entities to maintain records subject to review by the Commission and NERC to ensure compliance with the Reliability Standard.

The Reliability Standard requires entities to maintain records subject to review by the Commission and NERC to ensure compliance with the Reliability Standard. This Reliability Standard contains of five Requirements:

- R1 requires reliability coordinators, balancing authorities, and transmission operators to develop and implement a training program for system operators.
- R2 requires transmission owners to develop and implement a training program for system operators.
- R3 requires reliability coordinators, balancing authorities, transmission operators and transmission owners to verify the capabilities of their identified personnel.
- R4 requires reliability coordinators, balancing authorities, transmission operators and transmission owners to provide those personnel with emergency operations training using simulation technology.
- R6 requires applicable generator operators to develop and implement training for certain of their dispatch personnel at a centrally located dispatch center.

Type of Respondents: Transmission owners and generator owners.

Estimate of Annual Burden: [1] Our estimate below regarding the number of respondents is based on the NERC compliance registry as of September 29, 2017. According to the NERC compliance registry, NERC has registered 176 transmission operators, 331 transmission owners and 890 generator operators.

The Commission estimates the additional annual reporting burden and cost as follows:

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC–725Y IN DOCKET NO. IC18–2–000

	Number and type of respondents [2] (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Avg. burden & cost per response [3] (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent (5) ÷ (1)
Annual Evaluation and Update of Training Program and Task List.	TO (331), GOP (890) ...	1	[4] 1,064	6 hrs.; $408.72 hr	6,384 hrs.; $434,878	$68.12
Retention of Records	TO (331), GOP (890) ...	1	[4] 1,064	10 hrs.; $408.90 hr	10,640 hrs.; $435,070 ..	40.89
Verification and Retention of Evidence of capabilities of personnel [R3, M3, C1.2], and Creation and Retention of Records on Simulation Training.	TO (331)	1	331	10 hrs.; $408.90 hr	3,310 hrs.; $135,346	40.89
Total	.....	.....	.....	.....	20,334 hrs.; $1,005,294	.....

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–05102 Filed 3–13–18; 8:45 am]

BILLING CODE 6717–01–P

[2] TO = Transmission Owner; GOP = Generator Operator.

[3] The estimates for cost per response are loaded hourly wage figure (includes benefits) is based on the average of three occupational categories for 2016 found on the Bureau of Labor Statistics website (*http://www.bls.gov/oes/current/naics2_22.htm*): Electrical Engineer (Occupation Code: 17–2071): $68.12; Office and Administrative Support (Occupation Code: 43–0000): $40.89.

[4] Some transmission owners are also generator operators. To eliminate double counting some entities, this figure reflects the number of unique entities (1064) within the group of TOs and GOPs. That approach is used throughout the table.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1773–000]

Yellowstone Hydroelectric Project; Notice of Existing Licensee's Notice of Intent To Not File a Subsequent License Application, and Soliciting Pre-Application Documents and Notices of Intent To File a License Application

At least five years before the expiration of a license for a minor water power project not subject to sections 14 and 15 of the Federal Power Act (*i.e.,* a project having an installed capacity of 1.5 megawatts or less), the licensee must file with the Commission a letter that contains an unequivocal statement of the licensee's intent to file or not to file an application for a subsequent license.[1]

If such a licensee informs the Commission that it does not intend to file an application for a subsequent license, nonpower license, or exemption for the project, the licensee may not file an application for a subsequent license, nonpower license, or exemption for the project, either individually or in conjunction with an entity or entities that are not currently licensees of the project.[2]

On September 26, 2017, Moon Lake Electric Association, the existing licensee for the Yellowstone Hydroelectric Project No. 1773, filed notice of its intent to not file an application for a subsequent license. Therefore, pursuant to section 16.24(b)(1) of the Commission's regulations, Moon Lake may not file an application for a subsequent license for the project, either individually or in conjunction with an entity or entities that are not currently licensees of the project.

The 900-kilowatt (kW) Yellowstone Hydroelectric Project is located on the Yellowstone River, in Duchesne County, Utah. The diversion dam, and portions of the penstock, are located within the Ashley National Forest. The existing minor license for the project expires on October 15, 2022.

The principal project works consist of: (1) A 15-foot-high, 313-foot-long rock filled, timber-crib dam that impounds a small reservoir covering approximately 3.8 acres; (2) a concrete intake structure with a gate valve; (3) a 14,126-foot-long, 44-inch-diameter and 42-inch-diameter steel penstock; (4) a powerhouse with three turbine-generators rated at 300 kW each; (5) a substation; (6) a 14.27-mile-long, 7.2-kilovolt overhead transmission line and underlain telephone line; and (7) and appurtenant facilities.

Any party interested in filing a license application (*i.e.,* potential applicant) for the Yellowstone Hydroelectric Project No. 1773 must file a Notice of Intent (NOI)[3] and pre-application document (PAD).[4] Additionally, while the integrated licensing process (ILP) is the default process for preparing an application for a subsequent license, a potential applicant may request to use alternative licensing procedures when it files its NOI.[5]

The deadline for potential applicants, other than the existing licensee, to file NOIs, PADs, and requests to use an alternative licensing process is 120 days from the issuance date of this notice.

Applications for a subsequent license from potential applicants, other than the existing licensee, must be filed with the Commission at least 24 months prior to the expiration of the existing license.[6] Because the existing license expires on October 15, 2022, applications for

[1] 18 CFR 16.19(b) (2017) (citing 18 CFR 16.6(b)). Section 16.19(b) applies to licenses not subject to Parts 14 and 15 of the Federal Power Act.

[2] 18 CFR 16.24(b)(1) (2017).

[3] 18 CFR 5.5 (2017).

[4] 18 CFR 5.6 (2017).

[5] 18 CFR 5.3(b) (2017).

[6] 18 CFR 16.20 (2017).

license for this project must be filed by October 15, 2020.[7]

Questions concerning this notice should be directed to Evan Williams (202) 502–8462 or *evan.williams@ferc.gov*.

Dated: March 8, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–05100 Filed 3–13–18; 8:45 am]

BILLING CODE 6717–01–P

[7] To the extent an interested applicant files an NOI and PAD and elects or is required to use the Commission's ILP, a process plan will be issued within 180 days of this notice, which accelerates the steps of the ILP to allow for filing a subsequent license application by the October 15, 2020, deadline.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–178–000]

Alaska Gasline Development Corporation; Notice of Technical Conference

Take notice that a technical conference will be held on Thursday, March 22, 2018 at 9:00 a.m., in Room 3M–4 A and B at the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The technical conference will provide an opportunity for Commission staff and representatives from Alaska Gasline Development Corporation to discuss clarifications on the Commission staff's February 15, 2018 environmental data request for the Alaska LNG Project. While all interested persons and Commission staff are permitted to attend, no comments or statements during the conference will be permitted. Further, there will be no discussion of Critical Energy Infrastructure Information or privileged materials. For further information please contact Jennifer Zielinski at (202) 502–6259 or email *jennifer.zielinski@ferc.gov*.

Federal Energy Regulatory 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 (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

Dated: March 8, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–05095 Filed 3–13–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–124–000]

T.E.S. Filer City Station Limited Partnership; Consumers Energy Company; Notice of Petition for Declaratory Order

Take notice that on March 5, 2018, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2), T.E.S. Filer City Station Limited Partnership (Filer City) and Consumers Energy Company (Consumers) (jointly Petitioners) submitted a Petition for Declaratory Order requesting confirmation that, pursuant to 18 CFR 292.601(c), sales of energy and capacity from the T.E.S. Filer City Station Plant (Facility), pursuant to a 1988 power purchase agreement between Filer City and Consumers (PPA), will continue to be exempt from Federal Power Act sections 205 and 206, 16 U.S.C. 824d, 824e, after the PPA is amended in connection with a plan to repower and modernize the Facility, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on April 4, 2018.

Dated: March 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–05101 Filed 3–13–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–90–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Application

Take notice that on February 22, 2018, Transcontinental Gas Pipe Line Company, LLC (Transco), P.O. Box 1396, Houston, Texas 77251, filed an application in Docket No. CP18–90–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) requesting authorization to amend its certificate authority granted in Docket No. CP15–536–000 to abandon by sale to Tana Exploration Company LLC (Tana) approximately 26.55 miles of 20-inch-diameter gathering pipeline extending from Matagorda Island Block 669 to Brazos Block 133 Platform A, offshore Texas. Transco now seeks to abandon these facilities in place, rather than by sale to Tana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Marg Camardello, Regulatory Analyst, Lead, Rates & Regulatory, Transcontinental Gas Pipe Line Company, LLC, P.O. Box 1396, Houston, Texas 77251, or by telephone at (713) 215–3380.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or

issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: March 28, 2018.

Dated: March 7, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–05108 Filed 3–13–18; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0084]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection, as required by the Paperwork Reduction Act of 1995. On December 28, 2017, the FDIC requested comment for 60 days on a proposal to renew the information collection described below. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of this collection, and again invites comment on this renewal.

DATES: Comments must be submitted on or before April 13, 2018.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Jennifer Jones (202–898–6768), Counsel, MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jennifer Jones, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

On December 28, 2017, the FDIC requested comment for 60 days on a proposal to renew the information collection described below. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of this collection, and again invites comment on this renewal.

Proposal To Renew the Following Currently Approved Collections of Information

1. *Title:* Account Based Disclosures in Connection with Consumer Financial Protection Bureau Regulations E and DD and Federal Reserve Regulation CC.

OMB Number: 3064–0084.

Form Number: None.

Affected Public: FDIC-Supervised Institutions.

Burden Estimate

SUMMARY OF ANNUAL BURDEN

	Type of burden	Obligation to respond	Estimated number of respondents	Estimated time per response (hours)	Estimated frequency	Frequency of response	Total annual estimated burden
Reg E—12 CFR Part 1005							
Initial disclosures:							
General (1005.7(b))	Disclosure	Mandatory	3,674	0.025	83	On Occasion	7,624
Payroll cards (1005.18(c)(1))	Disclosure	Mandatory	6	0.025	5,000	On Occasion	750
Change-in-terms (1005.8(a))	Disclosure	Mandatory	3,674	0.017	113	On Occasion	6,919
Transaction disclosures (sections 1005.9(a) and 1005.10).	Disclosure						0
Periodic statements (section 1005.9(b))	Disclosure						0
Error resolution rules:							
General (1005.8(b) and 1005.11)	Disclosure	Mandatory	3,674	0.500	3	On Occasion	5,511
Payroll cards (1005.18)	Disclosure	Mandatory	6	0.500	8	On Occasion	24
Overdraft opt-in disclosures (1005.17, FRB R–1343):							
Revise and update initial disclosures (1005.17(c)(2)) for new customers.	Disclosure	Mandatory	3,625	16.000	1	On Occasion	58,000
Prepare and send new opt-in notices to existing customers (1005.17(c)(1)).	Disclosure	Mandatory	3,625	16.000	1	On Occasion	58,000
Consumer response (section 1005.17)	Recordkeeping	Voluntary	3,625	0.083	7,207	On Occasion	2,177,115
Gift card/gift certificate (section 1005.20, FRB R–1377):							
Exclusion policies & procedures (1005.20(b)(2)) one-time.	Recordkeeping	Mandatory	6	40.000	1	On Occasion	240
Exclusion policies & procedures (1005.20(b)(2) ongoing.	Recordkeeping	Mandatory	6	8.000	1	On Occasion	48
Policy & procedures (1005.20(e)(1)) one-time	Recordkeeping	Mandatory	6	40.000	1	On Occasion	240
Policy & procedures (1005.20(e)(1)) ongoing	Recordkeeping	Mandatory	6	8.000	1	On Occasion	48
Systems change to implement disclosure update (1005.20(e)(3)).	Disclosure	Mandatory	6	40.000	1	On Occasion	240
Subtotal Reg E Burden							2,314,759
Regulation CC—12 CFR Part 229							
Specific availability policy disclosure (initial notice, upon request, upon change in policy) (sections 229.16, 229.17 and 229.18(d)).	Disclosure	Mandatory	3,674	0.017	140	On Occasion	8,573
Case-by-case hold notice (section 229.16(c))	Disclosure	Mandatory	3,674	0.050	717	On Occasion	131,713
Notice of exceptions to hold policy (section 229.13(g)).	Disclosure	Mandatory	3,674	0.050	247	On Occasion	45,374
Notice posted where consumers make deposits (including at ATMs) (sections 229.18(b) and 229.18(c)).	Disclosure	Mandatory	3,674	0.250	1	On Occasion	919
Notice of changes in policy (section 229.18(e))	Disclosure	Mandatory	20	20.000	1	On Occasion	400
Annual notice of new ATMs (section 229.18(e)) (see Appendix E to Part 229, Commentary, section XII, E., comment no. 3).	Disclosure	Mandatory	3,674	5.000	1	On Occasion	18,370
Notice of nonpayment—notice to depositary bank (section 229.33(a) and (d)).	Disclosure	Mandatory	3,674	0.017	2,211	On Occasion	135,387
Response to consumer's recredit claim (validation, denial, reversal) (section 229.54(e)).	Disclosure	Mandatory	3,674	0.250	12	On Occasion	11,022
Bank's claim against an indemnifying bank (section 229.55).	Reporting	Mandatory	3,674	0.250	5	On Occasion	4,593
Consumer awareness disclosure (section 229.57)	Disclosure	Mandatory	3,674	0.017	170	On Occasion	10,410
Reg CC Consumer Burden—Expedited recredit claim notice (section 229.54(a) and (b)(2)).	Reporting	Mandatory	3,674	0.250	8	On Occasion	7,348
Subtotal Reg CC Burden							374,107
Regulation DD—12 CFR Part 1030							
Account disclosures (upon request and new accounts) (section 1030.4).	Disclosure	Mandatory	3,674	0.025	170	On Occasion	15,615
Subsequent notices (section 1030.5):							
Change in terms	Disclosure	Mandatory	3,674	0.017	380	On Occasion	23,269
Prematurity (renewal) notices	Disclosure	Mandatory	3,674	0.017	340	On Occasion	20,819
Disclosures on periodic statements (section 1030.6)	Disclosure	Mandatory	3,674	4.000	12	On Occasion	176,352
Advertising (section 1030.8)	Disclosure	Mandatory	3,674	0.500	12	On Occasion	22,044
Subtotal Reg DD Burden							258,099
Total Burden							2,946,964

General Description of Collection: Regulations E & DD (Consumer Financial Protection Bureau's Regulations) and Regulation CC (the Federal Reserve's Regulation) ensure adequate disclosures regarding accounts, including electronic fund transfer services, availability of funds, and fees and annual percentage yield for

deposit accounts. Generally, the Regulation E disclosures are designed to ensure consumers receive adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services provided to them so that they can make informed decisions. Institutions offering EFT services must disclose to consumers certain information, including: Initial and updated EFT terms, transaction information, the consumer's potential liability for unauthorized transfers, and error resolution rights and procedures.

Like Regulation E, Regulation CC has consumer protection disclosure requirements. Specifically, Regulation CC requires depository institutions to make funds deposited in transaction accounts available within specified time periods, disclose their availability policies to customers, and begin accruing interest on such deposits promptly. The disclosures are intended to alert customers that their ability to use deposited funds may be delayed, prevent unintentional (and costly) overdrafts, and allow customers to compare the policies of different institutions before deciding at which institution to deposit funds. Depository institutions must also provide an awareness disclosure regarding substitute checks. The regulation also requires notice to the depositary bank and to a customer of nonpayment of a check.

Regulation DD also has similar consumer protection disclosure requirements that are intended to assist consumers in comparing deposit accounts offered by institutions, principally through the disclosure of fees, the annual percentage yield, and other account terms. Regulation DD requires depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, and when changes in terms occur. Depository institutions that provide periodic statements are required to include information about fees imposed, interest earned, and the annual percentage yield (APY) earned during those statement periods. It also contains rules about advertising deposit accounts.

There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation and the reduced number of FDIC-supervised institutions since the last submission in 2014. In particular, the number of respondents has decreased while the hours per response and frequency of responses have remained the same.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, on March 9, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–05112 Filed 3–13–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012456–001.

Title: Turkon Lines—Nile Dutch Africa Space and Sailing Agreement.

Parties: Nile Dutch Africa Line BV and Turkon Container Transportation & Shipping, Inc..

Filing Party: Eric Lee, Esq.; Holland & Knight LLP; 800 17th Street NW, Suite 1100, Washington, DC 20006.

Synopsis: The amendment specifies a range of vessel sizes to be used under the Agreement.

By Order of the Federal Maritime Commission.

Dated: March 9, 2018.

Rachel E. Dickon,

Secretary.

[FR Doc. 2018–05198 Filed 3–13–18; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0062; Docket 2018–0003; Sequence 5]

Information Collection; Material and Workmanship

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

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 concerning material and workmanship.

DATES: Submit comments on or before May 14, 2018.

ADDRESSES: Submit comments identified by Information Collection 9000–0062, Material and Workmanship, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB Control number 9000–0062. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0062, Material and Workmanship''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0062, Material and Workmanship'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0062, Material and Workmanship.

Instructions: Please submit comments only and cite Information Collection 9000–0062, Material and Workmanship, 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. Curtis E. Glover, Sr., Procurement Analyst, Federal Acquisition Policy Division, GSA, telephone 202–501–1448, or via email at *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Under Federal contracts requiring that equipment (*e.g.,* pumps, fans, generators, chillers, etc.) be installed in a project, the Government must determine that the equipment meets the contract requirements. Therefore, the contractor must submit sufficient data on the particular equipment to allow the Government to analyze the item.

The Government uses the submitted data to determine whether or not the equipment meets the contract requirements in the categories of performance, construction, and durability. This data is placed in the contract file and used during the inspection of the equipment when it arrives on the project and when it is made operable.

B. Annual Reporting Burden

The information collection requirement at FAR clause 52.236–5 has decreased based on information from the FY 2017 FPDS database which shows a lower number of estimated respondents that are subject to the clause.

Respondents: 1,377.
Responses per Respondent: 2.0.
Annual Responses: 2,754.
Hours per Response: .25.
Total Burden Hours: 689.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and 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. 9000–0062, Material and Workmanship, in all correspondence.

Dated: March 7, 2018.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2018–05065 Filed 3–13–18; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0163; Docket 2018–0003; Sequence 3]

Information Collection; Small Business Size Re-Representation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

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 for approval of a previously approved information collection requirement regarding small business size re-representation.

DATES: Submit comments on or before: May 14, 2018.

ADDRESSES: Submit comments identified by Information Collection 9000–0163, Small Business Size Re-representation, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB Control number 9000–0163. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0163, Small Business Size Re-representation''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0163, Small Business Size Re-representation'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0163, Small Business Size Re-representation.

Instructions: Please submit comments only and cite ''Information Collection 9000–0163, Small Business Size Re-representation,'' 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: Ms. Janet Fry, Procurement Analyst, Office of Government-wide Policy, contact via telephone 703–605–3167 or email *janet.fry@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal Acquisition Regulation (FAR) 19.301 and the FAR clause at 52.219–28, Post-Award Small Business Program Re-representation, implement the Small Business Administration's (SBA's) regulation at 13 CFR 121.404(g), requiring that a concern that initially represented itself as small at the time of its initial offer must recertify its status as a small business under the following circumstances:

- Within thirty days of an approved contract novation;
- Within thirty days in the case of a merger or acquisition, where contract novation is not required; or
- Within 120 days prior to the end of the fifth year of a contract, and no more than 120 days prior to the exercise of any option thereafter.

The implementation of SBA's regulation in FAR 19.301 and the FAR clause at 52.219–28 require that contractors re-represent size status by updating their representations at the prime contract level in the Representations and Certifications section of the System for Award Management (SAM) and notifying the contracting officer that it has made the required update.

The purpose of implementing small business re-representations in the FAR is to ensure that small business size status is accurately represented and reported over the life of long-term contracts. The FAR also provides for provisions designed to ensure more accurate reporting of size status for contracts that are novated, or performed

by small businesses that have merged with or been acquired by another business. This information is used by the SBA, Congress, Federal agencies and the general public for various reasons such as determining if agencies are meeting statutory goals, set-aside determinations, and market research.

B. Annual Reporting Burden

An upward adjustment is being made to the estimated annual reporting burden since the last notice regarding an extension for this clearance published on May 4, 2015 in the **Federal Register** at 80 FR 25293. Based on fiscal year 2017 re-representation modification data from the Federal Procurement Data System (FPDS), the number of annual respondents has increased from 1,700 to 2,200.

Respondents: 2,200.

Responses per Respondent: 1.

Total Number of Responses: 2,200.

Hours per Response: 0.5.

Total Burden Hours: 1,100.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and 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. 9000–0163, Small Business Size Re-representation, in all correspondence.

Dated: March 7, 2018.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2018–05066 Filed 3–13–18; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project ''*Ambulatory Surgery Center Survey on Patient Safety Culture Database.*''

DATES: Comments on this notice must be received by May 14, 2018.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Ambulatory Surgery Center Survey on Patient Safety Culture Database

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, the Agency for Healthcare Research and Quality (AHRQ) invites the public to comment on this proposed information collection. Ambulatory surgery centers (ASCs) are a fast-growing health care setting, demonstrating tremendous growth both in the volume and complexity of procedures being performed. ASCs provide surgical services to patients who are not expected to need an inpatient stay following surgery. The Centers for Medicare and Medicaid Services (CMS) defines ASCs as distinct entities that operate exclusively to provide surgical services to patients who do not require hospitalization and are not expected to need to stay in a surgical facility longer than 24 hours.

How AHRQ's Mission and Directives Relate to ASCs. As described in its 1999 reauthorizing legislation, Congress directed AHRQ to enhance the quality, appropriateness, and effectiveness of health services, as well as access to such services, by establishing a broad base of scientific research and promoting clinical and health systems practice improvements. The legislation also directed AHRQ to ''conduct and support research, evaluations, and training, support demonstration projects, research networks, and multidisciplinary centers, provide technical assistance, and disseminate information on health care and on systems for the delivery of such care, including activities with respect to health statistics, surveys, database development, and epidemiology.'' 42 U.S.C. 299a(a)(8).

Shortly after Congress enacted this legislation, the Institute of Medicine (IOM) published ''To Err is Human,'' a seminal report on medical errors that connected the dots between errors and workplace culture. In it, the IOM called for health care organizations to develop a ''culture of safety'' such that staffing and system processes are aligned to improve the reliability and safety of patient care. This appeal for safety culture improvements directly relates to AHRQ's legislative directive and mission (*i.e.,* ''to produce evidence to make health care safer, higher quality, more accessible, equitable, and affordable, and to work within the U.S. Department of Health and Human Services and with other partners to make sure that the evidence is understood and used''). Given its legislatively mandated role, AHRQ is uniquely positioned to support data collection and analyses that will help fuel ASC patient safety culture improvements.

The expanding volume and scope of ASC services, the growing attention of federal regulators on patient safety within ASCs, and the resultant implications for public health has prompted AHRQ to present this application to the Office of Management and Budget (OMB). In this request, AHRQ seeks OMB approval to expand its Surveys on Patient Safety Culture™ (SOPS™) program by creating an ASC SOPS Database to capture and report on ASC SOPS data voluntarily submitted by ASCs that have administered the ASC SOPS. This is the newest database for the SOPS program and would be modeled after four other SOPS databases developed by AHRQ: Hospital SOPS [OMB NO. 0935–0162; last approved 10/18/2016]; Medical Office SOPS [OMB NO. 0935–0196; last approved 08/25/15]; Nursing Home SOPS [OMB NO. 0935–0195; last approved 09/30/15]; and Community Pharmacy SOPS [OMB NO. 0935–0218; last approved 06/26/17].

Background on ASC SOPS. This section provides context for this request to the OMB regarding the need for AHRQ's requested database. Factors include the continued ASC growth trajectory and increasing public attention on the quality of ASC care—particularly as it relates to patient safety culture.

Rapid ASC Growth. Medicare-certified ASCs have experienced impressive growth in the last 35 years—up from 239 facilities in 1983 to 5,316 in 2010. In recent years, Medicare ASCs have seen continued growth in both their number and scope, as illustrated by the annual average growth rate of 1.1 percent between 2010 to 2014. In 2015, CMS spent $4.1 billion for 3.4 million fee-for service Medicare beneficiaries to receive care across 5,500 Medicare-certified ASCs. Research suggests that transitioning eligible surgical procedures from inpatient to ASC settings may yield significant and sustained Medicare cost savings.

Federal Attention on ASC Care Quality and Safety Culture. Concern about the quality of ASC care is not new. Following a 2008 Hepatitis C outbreak in Nevada blamed on poor ASC infection control practices, HHS's Office of the Secretary oversaw a $10 million program for state survey agencies to improve healthcare-associated infection reduction in ASCs. The Centers for Disease Control's National Healthcare Safety Network subsequently expanded its surgical site infection (SSI) surveillance efforts to enable ASC data submission to accommodate state SSI reporting mandates. Through the Affordable Care Act of 2010, Congress also pursued ASC performance improvement by directing the HHS Secretary to implement an ASC-focused Medicare value-based purchasing program.

The relationship between patient safety culture and the quality of ASC care has attracted more recent attention from policymakers and regulators. On the national level, the Joint Commission in early 2017 within its ASC accreditation manual established a new chapter on patient safety systems improvement, which includes strategies for ''motivating staff to uphold a fair and just safety culture.'' CMS, meanwhile, published in November 2017 its Final Rule outlining the ASC Quality Reporting Program, which ties quality and patient safety performance to reimbursement.

ASC SOPS Pilot. AHRQ developed and pilot tested the ASC SOPS with OMB approval (OMB No. 0935–0216; approved 10/31/2013). The survey is designed to enable any ASC, regardless of type of procedures it performs, to assess its staff's perceptions about patient safety and quality assurance issues, including what safety-related attitudes and behaviors are supported, rewarded, and expected. It includes 27 items that measure 8 composites of patient safety culture, as well as five individual items on near-miss documentation, overall rating on patient safety and communication in the procedure/surgery room. The pilot test was conducted in early 2014 in ASC facilities: (1) Where patients have surgeries, procedures, and treatments and are not expected to need an inpatient stay, and (2) that have been certified and approved to participate in the CMS ASC program. Twenty-five percent of the pilot sites were affiliated with a hospital and 75% were not hospital-affiliated. Participants included 1,800 staff members from 59 ASCs—or approximately one percent of the total number of ASCs at that time.

AHRQ made the survey publicly available along with a Survey User's Guide, the pilot study results, and related toolkit materials on the *AHRQ Ambulatory Surgery Center Survey on Patient Safety Culture Web page* in April 2015. The AHRQ ASC SOPS Database will consist of data from the AHRQ ASC patient safety culture survey. ASCs in the U.S. will be asked to voluntarily submit data from the survey to AHRQ.

Rationale for the information collection. AHRQ sponsored the development of the ASC SOPS as a new survey in the suite of AHRQ Surveys on Patient Safety Culture. The database will support AHRQ's goals of promoting improvements in the quality and safety of health care in ASC settings. Like the survey and other toolkit materials, the database results will be made publicly available on AHRQ's website. Technical assistance is provided by AHRQ through its contractor at no charge to ASCs to facilitate the use of these materials for ASC patient safety and quality improvement. Technical assistance will also be provided to support ASC data submission.

The goal of this project is to create the ASC SOPS Database. This database will:

(1) Present results from ASCs that voluntarily submit their data;

(2) Present trend data for ASCs that have submitted their data more than once;

(3) Provide data to ASCs to facilitate internal assessment and learning in the patient safety improvement process; and

(4) Provide supplemental information to help ASCs identify their strengths and areas with potential for improvement in patient safety culture.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to health statistics, surveys, and database development. 42 U.S.C. 299a(a)(1) and (8).

Method of Collection

To achieve the goal of this project the following activities and data collections will be implemented:

(1) *Eligibility and Registration Form*—The pointofcontact (POC), often the manager of the ASC, completes a number of data submission steps and forms, beginning with completion of an online Eligibility and Registration Form. The purpose of this form is to collect basic demographic information about the ASC and initiate the registration process.

(2) *ASC Site Information*—The purpose of the site level specifications, completed by the ASC manager, is to collect background characteristics of the ASC. This information will be used to analyze data collected with the ASC SOPS survey.

(3) *Data Use Agreement*—The purpose of the data use agreement, completed by the ASC manager, is to state how data submitted by ASCs will be used and provides privacy assurances.

(4) *Data Files Submission*—POCs upload their data file(s), using ASC survey data file specifications, to ensure that users submit standardized and consistent data in the way variables are named, coded, and formatted. The number of submissions to the database is likely to vary each year because ASCs do not administer the survey and submit data every year. Data submission is typically handled by one POC who is either an ASC administrative manager or a survey vendor who contracts with an ASC to collect and submit its data.

With the approval and addition of the ASC SOPS Database, data from the database will be used to produce three types of products:

(1) An ASC SOPS Database Report that will be made publicly available on the AHRQ website (see, for example, another project in the SOPS suite, the Hospital User Database Report);

(2) Individual ASC Survey Feedback Reports that are customized for each ASC that submits data to the database; and

(3) Research data sets of individual-level and ASC-level data to enable researchers to

conduct analyses. All data released in a data set are de-identified at the individual level and the ASC level.

ASCs will be invited to voluntarily submit their ASC SOPS survey data into the database. AHRQ's contractor, Westat, will then clean and aggregate the data to produce a PDF-formatted Database Report displaying averages, standard deviations, and percentile scores on the survey's 33 items and 8 patient safety culture dimensions. In addition, the report will also display results by respondent characteristics (*e.g.,* staff position, tenure, and hours worked per week).

The Database Report will include a section on data limitations, emphasizing that the report does not reflect a representative sampling of the U.S. ASC population. Because participating ASCs will choose to submit their data voluntarily into the database and therefore are not a random or national sample of ASCs, estimates based on this self-selected group might be biased estimates. These limitations will be noted in the database report. We will recommend that users review the database results with these caveats in mind.

Each ASC that submits its data will receive a customized survey feedback report that presents their results alongside the aggregated results from other participating ASCs. If an ASC submits data more than once, its survey feedback report will also present trend data.

ASC users of the ASCs SOPS Survey, Database Reports, and Individual ASC Survey Feedback Reports can use these documents to:

- Raise staff awareness about patient safety;
- Diagnose and assess the current status of patient safety culture in their own ASC;
- Identify strengths and areas for patient safety culture improvement;
- Examine trends in patient safety culture change over time; and
- Evaluate the cultural impact of patient safety initiatives and intervention.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the database. Given that this will be the first call for voluntary data submission, participation is initially expected to be modest. An estimated 100 ASC managers (*i.e.,* POCs from ASCs) will complete the database submission steps and forms. Each POC will submit the following:

- Eligibility and registration form (completion is estimated to take about 5 minutes).
- Data use agreement (completion is estimated to take about 3 minutes).
- ASC Site Information Form (completion is estimated to take about 5 minutes).
- Survey data submission will take an average of one hour.

The total burden is estimated to be 121 hours.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to submit their data. The cost burden is estimated to be $5,472.83.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents/POCs	Number of responses per POC	Hours per response	Total burden hours
Eligibility and Registration Form	100	1	5/60	8
Data Use Agreement	100	1	3/60	5
ASC Site Information Form	100	1	5/60	8
Data Files Submission	100	1	1	100
Total	NA	NA	NA	121

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents/POCs	Total burden hours	Average hourly wage rate *	Total cost burden
Eligibility and Registration Form	100	8	$45.23	$361.84
Data Use Agreement	100	5	45.23	226.15
ASC Site Information	100	8	45.23	361.84
Data Files Submission	100	100	45.23	4,523.00
Total	NA	121	45.23	5,472.83

* Based on the mean hourly wage for 100 ASC Administrative Services Managers (11–3011; $45.23) obtained from the May 2016 National Industry-Specific Occupational Employment and Wage Estimates: NAICS 621400—Outpatient Care Centers (located at *http://www.bls.gov/oes/current/naics4_621400.htm#11-0000*).

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Karen J. Migdail,
Chief of Staff.

[FR Doc. 2018–05067 Filed 3–13–18; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–18–17AVB]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Leveraging the Emerging Field of Disaster Citizen Science to Enhance Community Resilience and Improve Disaster Response'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on September 19, 2017 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Leveraging the Emerging Field of Disaster Citizen Science to Enhance Community Resilience and Improve Disaster Response—New—Office of Public Health Preparedness and Response (OPHPR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The information collection for which approval is sought is in accordance with OPHPR's mission to safeguard health and save lives by providing a platform for public health preparedness and emergency response. As part of its role, OPHPR is empowered to fund applied research to improve the ability of CDC and its partners, including but not limited to state and local health departments, emergency management organizations, and health care entities, to effectively prepare for and respond to public health emergencies and disasters.

Citizen science is defined as research activities (*e.g.,* data collection, analysis, and reporting) performed by members of the general public without any particular training in science. Citizen science is growing in popularity, fueled in part by growing use of smartphones and other personal devices in the population. Although citizen collection and use of data during disasters has increased exponentially in recent years and there is great policy interest in the phenomenon, there has been no robust research to date on the use of, barriers to, and impact of citizen science in disasters. Local health departments (LHDs) lack tools to respond to and coordinate with citizen science activities within communities. Furthermore, citizen science organizations lack information on how to organize their activities for ultimate impact.

This is an exploratory study and is the first of its kind to explore the growing phenomenon of disaster citizen science. Disaster citizen science is a rapidly growing field that is the focus of policy interest, but currently devoid of research. While interviews will be hypothesis generating and provide rich data on the experiences with citizen science to date across all stakeholders active in this enterprise, the nationally-representative survey data will allow us to generalize findings to the full population of LHDs in the U.S.

CDC requests approval of a new information collection to learn about how the emerging field of disaster citizen science can enhance community resilience for a period of 1 year. This (mixed methods) information collection using interviews and a cross-sectional survey aims to: (1) Explore the potential of disaster citizen science for increasing community resilience, enhancing participation in preparedness and response activities, and improving preparedness efforts; and (2) provide evidence to inform the development of educational and instructional tools for communities and health departments to navigate the emerging field of disaster citizen science and promote collaborations. Insights from this information collection will be used to inform the development of guidance and toolkits for LHDs and community groups so that they can align their efforts and strengthen the benefits and positive impacts of citizen science activities. For interviews, the information collection will target citizen scientists and end users of citizen science data.

This information collection will be implemented in collaboration with a contractor and will target citizen scientists and their partners (*e.g.,* academics who work with citizen scientists on research projects) and LHDs in a position to use citizen science data to inform public health decision-making. For interviews, researchers will sample for maximum variation, seeking to obtain variation on U.S. region, type and sophistication of citizen science project, type of disaster encountered, and previous experience with disaster citizen science.

The project aims to conduct 35–55 facilitated, semi-structured, individual and group interviews, each lasting approximately 60 minutes, to cover topics including benefits and uses of citizen science, barriers to and facilitators of citizen science, and strengths and limitations of citizen science activities and resources.

Researchers will identify potential interview participants through literature reviews and snowball sampling in a phased approach starting with citizen science and LHD organizations.

The project will sample for maximum variation in order to capture the full range of citizen scientist and health department experiences on this topic. For the survey, the project aims to obtain a nationally representative sample of 600 local health officials and will apply survey weights to ensure that

findings have external validity and can be generalized to LHDs in the U.S. The survey, which will take 30 minutes to complete, will include questions on both citizen science as applied to disaster preparedness and response, and citizen science as occurring in other contexts (such as environmental health) to draw lessons for preparedness and response.

CDC anticipates that the knowledge resulting from this research project will contribute significantly to the evidence base for preparedness and response and lead to improved efficiency, effectiveness, and outcomes in several domains.

Participation in this study is completely voluntary. There are no costs to respondents other than their time. A summary of annualized burden hours is below. The total estimated burden hours is 219 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Citizen scientists and their partners; local health officials.	Interview Guide (semi-structured questionnaire).	55	1	75/60
Local health departments	Survey	300	1	30/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–05117 Filed 3–13–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–1696]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by April 13, 2018.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*.
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Appointment of Representative; *Use:* The Appointment of Representative form is completed by beneficiaries, providers and suppliers, and any party seeking to appoint a representative to assist them with their initial determinations and filing appeals. *Form Number:* CMS–1696 (OMB control number: 0938–0950); *Frequency:* Once; *Affected Public:* Individuals and Households, and the Private sector (Business or other for-profits); *Number of Respondents:* 3,472,840; *Total Annual Responses:* 347,284; *Total Annual Hours:* 86,821. (For policy questions regarding this collection contact Katherine Hosna at 410–786–4993.)

Dated: March 9, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–05148 Filed 3–13–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0793]

Sun Pharmaceutical Industries, Ltd., and Sun Pharma Global FZE; Withdrawal of Approval of Four Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of four abbreviated new drug applications (ANDAs) from two applicants. The holders of the applications 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 April 13, 2018.

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 holders of the applications 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 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 075556	Enalapril Maleate Tablets USP, 2.5 milligrams (mg), 5 mg, 10 mg, and 20 mg.	Sun Pharmaceutical Industries, Ltd., c/o Sun Pharmaceutical Industries, Inc., 2 Independence Way, Princeton, NJ 08540.
ANDA 076045	Lorazepam Tablets USP, 0.5 mg, 1 mg, and 2 mg	Do.
ANDA 078055	Zolpidem Tartrate Tablets USP, 5 mg and 10 mg	Do.
ANDA 090018	Zoledronic Acid for Injection, Equivalent to 4 mg base/vial	Sun Pharma Global FZE, c/o Sun Pharmaceutical Industries, Inc., 2 Independence Way, Princeton, NJ 08540.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of April 13, 2018. 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 April 13, 2018 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: March 8, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–05120 Filed 3–13–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0987]

Patient-Focused Drug Development on Opioid Use Disorder; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public meeting entitled ''Patient-Focused Drug Development on Opioid Use Disorder.'' The purpose of the public meeting is to obtain patients' perspectives on the impacts of and treatment approaches for opioid use disorder (OUD). This meeting is a part of FDA's ongoing work aimed at reducing the impact of opioid abuse and addiction.

DATES: The public meeting will be held on April 17, 2018, from 10 a.m. to 4 p.m. Submit either electronic or written comments on this public meeting by June 18, 2018. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before June 18, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of June 18, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–0987 for ''Patient-Focused Drug Development on Opioid Use Disorder; Public Meeting; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Meghana Chalasani, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1146, Silver Spring, MD 20993–0002, 240–402–6525, Fax: 301–847–8443, *Meghana.Chalasani@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This meeting will provide FDA the opportunity to better understand the patient perspective on the impacts of OUD and on treatment approaches for OUD. OUD is the diagnostic term used for a chronic neurobiological disease characterized by a problematic pattern of opioid use leading to significant impairment or distress. OUD includes signs and symptoms that reflect compulsive, prolonged self-administration of opioid substances for no legitimate medical purpose, or, if another medical condition is present that required opioid treatment, the opioid is used in doses far greater than the amount needed for treatment of that medical condition. FDA is interested in learning patients' perspectives on OUD, including the effects on their health and well-being that have the greatest negative effect on daily life, their experience using prescription medical treatments and other treatments or therapies for OUD, and challenges or barriers to accessing or using medical treatments for OUD.

There are three drugs approved by FDA for the treatment of OUD: Buprenorphine, methadone, and naltrexone. FDA is taking steps to facilitate the development of new medications for the treatment of OUD and new formulations of existing drugs that could better suit patient needs. Promoting wider appropriate use of these safe and effective medications is also the focus of FDA's ongoing work to reduce the scope and magnitude of the opioid crisis.

At the meeting, patients and patient representatives will provide patient perspectives on the symptoms and daily impacts of OUD and on treatment approaches for OUD. The questions that will be asked of patients and patient representatives at the meeting are listed in the following section and organized by topic. For each topic, a brief initial patient panel discussion will begin the dialogue. This will be followed by a facilitated discussion inviting comments from other patient and patient representative participants. In addition to input generated through this public meeting, FDA is interested in receiving patient and patient representative input addressing these questions through written comments, which can be submitted to the public docket (see **ADDRESSES**). When submitting comments, if you are commenting on behalf of a patient, please indicate that you are doing so and answer the following questions as much as possible from the patient's perspective.

FDA will post the agenda and other meeting materials approximately 5 days before the meeting at: *https://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm591290.htm.*

II. Topics for Discussion at the Public Meeting

Topic 1: Symptoms and Daily Impacts of OUD That Matter Most to Patients

1. Of all the ways that OUD negatively affects your health and well-being, which effects have the most significant impact on your daily life? Examples of negative effects may include:

• Effects of using opioids, such as confusion, constipation, or other symptoms;

• Effects of opioid withdrawal, such as nausea, diarrhea, or other symptoms;

• Effects of opioid ''cravings;''

• Impacts on ability to function in personal or professional life;

• Emotional or social effects; and

• Other potential effects.

2. How does OUD affect daily life on your best days? On your worst days?

3. How has your OUD changed over time?

4. What worries you most about your condition?

Topic 2: Patients' Perspectives on Current Approaches to Treatment of OUD

1. Are you currently using, or have you used in the past, any prescription medical treatments to treat your OUD? Such treatments may include buprenorphine, methadone, naltrexone, and others that your health care provider has prescribed. If so, please describe your experiences with these treatments.

• How well have these treatments worked for you? How well have they helped address the effects of OUD that are most bothersome to you?

• What are the biggest problems you have faced in using these treatments? Examples may include bothersome side effects, challenges getting the medicines, concern about stigma, and other possible problems.

2. Besides prescription medical treatments, are there other treatments or therapies that you currently use to address your OUD? If so, please describe. How well do these treatments or therapies help address the effects of OUD that are most bothersome to you?

3. Of all treatments, therapies, or other steps that you have taken to address your OUD, what have you found to be most effective in helping you manage your OUD?

4. What are the biggest factors that you take into account when making decisions about seeking out or using treatments for OUD?

5. What specific things would you look for in an ideal treatment for OUD?

6. If you had the opportunity to consider participating in a clinical trial studying experimental treatments for OUD, what factors would you consider when deciding whether or not to participate?

III. Participating in the Public Meeting

Registration: To register for the public meeting, visit *https://www.eventbrite.com/e/public-meeting-for-patient-focused-drug-development-on-opioid-use-disorder-oud-registration-42531194949.* Please register by April 11, 2018. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone. Persons without access to the internet can call 240–402–6525 to register. If you are unable to attend the meeting in person, you can register to view a live webcast of the meeting. You will be asked to indicate in your registration if you plan to attend in person or via the webcast.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public meeting must register by April 11, 2018. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted. If time and space permit, onsite registration on the day of the public meeting will be provided beginning at 9 a.m.

If you need special accommodations because of a disability, please contact Meghana Chalasani (see **FOR FURTHER INFORMATION CONTACT**) no later than April 11, 2018.

Panelist Selection: Patients or patient representatives who are interested in presenting comments as part of the initial panel discussions will be asked to indicate in their registration which topic(s) they wish to address. These patients or patient representatives also will be asked to send *PatientFocused@fda.hhs.gov* a brief summary of responses to the topic questions by April 2, 2018. Panelists will be notified of their selection approximately 7 days before the public meeting. We will try to accommodate all patients and patient stakeholders who wish to speak, either through the panel discussion or audience participation; however, the duration of comments may be limited by time constraints.

Open Public Comment: There will be time allotted during the meeting for open public comment. Sign-up for this session will be on a first-come, first-serve basis on the day of the workshop. Individuals and organizations with common interests are urged to consolidate or coordinate and request time for a joint presentation. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Streaming Webcast of the Public Meeting: This public meeting will also be webcast. Please register for the webcast by visiting *https://www.eventbrite.com/e/public-meeting-for-patient-focused-drug-development-on-opioid-use-disorder-oud-registration-42531194949.*

If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at *https://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm591290.htm.*

Dated: March 8, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–05119 Filed 3–13–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–0740]

M7(R1): Assessment and Control of Deoxyribonucleic Acid Reactive (Mutagenic) Impurities in Pharmaceuticals To Limit Potential Carcinogenic Risk; 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 guidance entitled ''M7(R1): Assessment and Control of Deoxyribonucleic Acid (DNA) Reactive (Mutagenic) Impurities in Pharmaceuticals to Limit Potential Carcinogenic Risk.'' This guidance updates and replaces the May 2015 guidance for industry ''M7 Assessment and Control of DNA Reactive (Mutagenic) Impurities in Pharmaceuticals to Limit Potential Carcinogenic Risk.'' This guidance finalizes the draft guidance ''M7(R1) Addendum to ICH M7: Assessment and Control of DNA Reactive (Mutagenic) Impurities in Pharmaceuticals to Limit Potential Carcinogenic Risk,'' issued September 28, 2015 (80 FR 58261).

The guidance was prepared under the auspices of the International Council for Harmonisation (ICH), formerly the International Conference on Harmonisation. This M7(R1) document provides guidance on acceptable intakes (AIs), or permissible daily exposures (PDEs), derived for some chemicals that are considered to be mutagens and carcinogens and, are also commonly used in the synthesis of pharmaceuticals or are, useful examples to illustrate the principles for deriving compound-specific intakes described in ICH M7. This document is intended to provide guidance for new drug substances and new drug products during their clinical development and subsequent applications for marketing.

DATES: The announcement of the guidance is published in the **Federal Register** on March 14, 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–0740 for ''M7(R1) Assessment and Control of DNA Reactive (Mutagenic) Impurities in Pharmaceuticals To Limit Potential Carcinogenic Risk.'' 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 office 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.

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, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Aisar Atrakchi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4118, Silver Spring, MD 20993–0002, 301–796–1036; or Anne Pilaro, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 4025, Silver Spring, MD 20993–0002, 240–402–8341.

Regarding the ICH: Amanda Roache, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1176, Silver Spring, MD 20993–0002, 301–796–4548.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, regulatory authorities and industry associations from around the world have participated in many important initiatives to promote international harmonization of regulatory requirements under the ICH. FDA has participated in several ICH meetings designed to enhance harmonization and FDA is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was established to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products for human use among regulators around the world. The six founding members of the ICH are the European Commission; the European Federation of Pharmaceutical Industries Associations; the FDA; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; and the Pharmaceutical Research and Manufacturers of America. The Standing Members of the ICH Association include Health Canada and Swissmedic. Any party eligible as a Member in accordance with the ICH Articles of Association can apply for membership in writing to the ICH Secretariat. The ICH Secretariat, which coordinates the preparation of documentation, operates as an international nonprofit organization and is funded by the Members of the ICH Association.

The ICH Assembly is the overarching body of the Association and includes representatives from each of the ICH members and observers. The Assembly is responsible for the endorsement of draft guidelines and adoption of final guidelines. FDA publishes ICH guidelines as FDA guidance.

In the **Federal Register** of September 28, 2015 (80 FR 58261), FDA published a notice announcing the availability of a draft guidance entitled ''M7(R1)

Addendum to ICH M7; Assessment and Control of DNA Reactive (Mutagenic) Impurities in Pharmaceuticals to Limit Potential Carcinogenic Risk,'' available at *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*. The notice gave interested persons an opportunity to submit comments by November 27, 2015.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Assembly and endorsed by the regulatory Agencies in June 2017.

This final guidance provides guidance on acceptable intake limits derived for some chemicals that are considered to be mutagenic carcinogens and are also commonly used in the synthesis of pharmaceuticals or are useful examples to illustrate the principles for deriving compound-specific intakes described in the ICH M7 guidance. This guidance is intended to provide guidance for new drug substances and new drug products during their clinical development and subsequent applications for marketing. The default method from ICH M7 of linear extrapolation from the cancer potency estimate, TD_{50} is used as the primary method to derive the acceptable intakes for carcinogens with likely mutagenic mode of action. After consideration of the comments received, hydroxylamine monograph was deleted from the final guidance. Relevant editorial changes were also made to improve clarity and to incorporate the ICH M7(R1) Addendum guidance.

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 ''M7: Assessment and Control of DNA Reactive (Mutagenic) Impurities in Pharmaceuticals to Limit Potential Carcinogenic Risk.'' 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. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.regulations.gov, https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*.

Dated: March 8, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–05118 Filed 3–13–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Proposed Changes to the Graduate Psychology Education Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Request for Public Comment on the Graduate Psychology Education Program.

SUMMARY: The Graduate Psychology Education (GPE) Program is authorized by section 756 of the Public Health Service Act and administered by HRSA. The program provides financial support to organizations and institutions that train doctoral-level psychologists. This notice seeks public comment to inform and guide policy and planning associated with the GPE Program.

DATES: Individuals and organizations interested in providing information must submit written comments no later than April 13, 2018. To receive consideration, comments must be received no later than 11:59 p.m. Eastern Time on that date.

ADDRESSES: Interested parties should submit their comments to Cynthia Harne, Public Health Analyst and Project Officer for the GPE Program, Division of Nursing and Public Health, Behavioral and Public Health Branch, Bureau of Health Workforce, HRSA, 5600 Fishers Lane, Room 11N–90C, Rockville, Maryland 20857; phone (301) 443–7661; fax (301) 443–0791; or email *charne@hrsa.gov*. Please include the title of this notice, ''Request for Comment: GPE Program'' in the subject line of the email. Response to this request is voluntary. Responders are free to address any or all of the questions listed below. This request is for information and planning purposes only and should not be construed as a solicitation or as an obligation on the part of the federal government. All submitted comments will be available to the public by request in their entirety.

FOR FURTHER INFORMATION CONTACT: Cynthia Harne, Public Health Analyst, Division of Nursing and Public Health, Behavioral and Public Health Branch, Bureau of Health Workforce, Health Resources and Services Administration, at the contact information listed above.

SUPPLEMENTARY INFORMATION: The GPE Program was established in 2002 to assist American Psychological Association (APA) accredited doctoral programs and internships in meeting the costs to plan, develop, operate, or maintain graduate psychology education programs to train health service psychologists to work with vulnerable populations. The purpose of the current program (Funding Opportunity Announcement HRSA–16–059) is to prepare doctoral-level psychologists to provide behavioral health care, including mental health and substance use disorder prevention and treatment services, in settings that provide integrated primary and behavioral health services to underserved and/or rural populations. The program is designed to foster an integrated and interprofessional approach to address access to behavioral health care for underserved and/or rural populations.

Given the value of feedback from stakeholders, HRSA is seeking comments from interested parties including current and former grant recipients, former applicants to the program, doctoral psychology schools and programs, and health care delivery sites that provide behavioral health experiential training to students. The purpose is to identify doctoral-level health service psychologist training needs, salient issues and challenges in the delivery of behavioral health services, including substance use, and to provide individual recommendations to maximize the reach, capacity and success of the GPE Program in addressing Opioid Use Disorder and other behavioral health concerns. This information may be used by HRSA will consider the input as it develops future technical assistance and funding opportunities, and strategic planning to meet the training demands of the behavioral health workforce.

Graduate Psychology Program in FY 2019—Proposal for Public Comment

HRSA seeks comments on how the GPE program (and the students it supports) can help address the opioid epidemic. In your comments, please address one or more of the following:

1. What do you see as the most prevalent behavioral health and public health trends or concerns that should be addressed in developing the psychologist workforce?
2. What do you see as the role for doctoral-level health psychologists in addressing the opioid epidemic?
3. What are the didactic and experiential training needs in preparing

doctoral-level health psychologists to effectively address substance use disorder (SUD) including opioid use?

4. If your institution has received in the past, is currently receiving, or applied for but did not receive GPE funding, what features or requirements of the GPE Program were easy to incorporate and/or beneficial in the development and implementation of your program, and which ones posed challenges? Please provide specific examples. If your institution did not apply for GPE funding, what features or requirements of the GPE Program posed challenges to the development of your program or dissuaded your institution from applying to the program?

5. What health workforce training strategies within the experiential training sites could the GPE Program address to increase access to integrated behavioral health/primary care services in underserved and/or rural populations? Please provide a description of practice.

6. Type and site including geographic locations (*e.g.,* large health system, private practices, group practices, Federally Qualified Health Center, etc.).

Dated: March 8, 2018.

George Sigounas,

Administrator.

[FR Doc. 2018–05064 Filed 3–13–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary (OS), Department of Health and Human Services (HHS).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, HHS is altering an existing department-wide system of records, ''Records About Restricted Dataset Requesters,'' System Number 09–90–1401. This system of records covers records about individuals within and outside HHS who request restricted datasets and software products from HHS (*e.g.,* for health-related scientific research and study purposes), when HHS maintains the requester records in a system from which they are retrieved directly by an individual requester's name or other personal identifier. The system of records currently covers records maintained by three HHS Operating Divisions. It is being altered to include records maintained by a fourth Operating Division, the National Institutes of Health (NIH), and to include three revised and five new routine uses, some of which will apply to all records in the system and some of which will apply to only NIH's records. The alterations affect the System Locations, Legal Authorities, Purposes, Retention, System Manager, and Routine Uses sections of the System of Records Notice (SORN).

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is applicable March 14, 2018, subject to a 30-day period in which to comment on the new and revised routine uses, described below. Please submit any comments by April 13, 2018.

ADDRESSES: The public should submit written comments, by mail or email, to Beth Kramer, HHS Privacy Act Officer, 200 Independence Avenue SW, Suite 729H, Washington, DC 20201, or *beth.kramer@hhs.gov.* Comments received will be available for review at this location without redaction, unless otherwise advised by the commenter. To review comments in person, please contact Beth Kramer at *beth.kramer@hhs.gov* or (202) 690–6941.

FOR FURTHER INFORMATION CONTACT: General questions about the system of records should be submitted by mail, email, or phone to Beth Kramer, HHS Privacy Act Officer, at 200 Independence Avenue SW, Suite 729H, Washington, DC 20201; *beth.kramer@hhs.gov* or (202) 690–6941.

SUPPLEMENTARY INFORMATION: This department-wide system of records was established April 2015 (see 80 FR 17447) and has not been previously revised. It covers records about individuals within and outside HHS who request restricted datasets and software products from HHS, when HHS maintains the requester records in a system from which they are retrieved directly by an individual requester's name or other personal identifier. It currently includes records maintained by three HHS Operating Divisions. It is being revised to add records maintained by a fourth Operating Division, the National Institutes of Health (NIH), which NIH plans to begin retrieving directly by personal identifier, and to include three revised and five new routine uses, some of which will apply to all records in the system and some of which will apply to only NIH's records.

The alterations made to add NIH's records affect the System Location, Legal Authorities, Purposes, Retention, System Manager, and Routine Uses sections of the System of Records Notice (SORN). One new purpose was added to the ''Purposes'' section, which will apply to all records, not just NIH records, stating that records may be used to evaluate accomplishment of HHS functions related to the purposes of this system of records and to evaluate performance of contractors utilized by HHS to accomplish those functions. Minor wording and formatting changes have been made throughout the SORN to conform to the SORN template prescribed in OMB Circular A–108. The new and revised routine uses are as follows:

- Routine use 1 has been revised to add ''including ancillary functions, such as compiling reports and evaluating program effectiveness and contractor performance.''
- Routine use 2 has been revised to add ''including ancillary functions'' and to add a last sentence stating: ''For example, disclosure may be made to qualified experts not within the definition of HHS employees as prescribed in HHS regulations, for opinions as a part of the controlled data access process.''
- Routine use 10 has been revised to use wording prescribed in OMB Memorandum M–17–12 issued January 3, 2017.
- Routine uses 11 through 15 are new. Routine use 11 is a new routine use prescribed by OMB Memorandum M–17–12.

''Restricted'' datasets and software products are those that HHS makes affirmatively available to qualified members of the public but provides subject to restrictions, because they contain identifiable data and/or anonymized data that has the potential, when combined with other data, to identify the particular individuals, such as patients or providers, whose information is represented in the data. The datasets and products are made available through an on-line or paper-based ordering and delivery system that provides them to qualified requesters electronically or by mail.

The restrictions are necessary to protect the privacy of individuals whose information is represented in the datasets or software products. The restrictions typically limit the data requester to using the data for research, analysis, study, and aggregate statistical reporting; prohibit any attempt to identify any individual or establishment represented in the data; and require specific security measures to safeguard the data from unauthorized access. HHS is required by law to impose, monitor, and enforce the restrictions (see, for example, provisions in the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), 44 U.S.C. 3501 at note). To impose and

enforce the restrictions, it is necessary to collect information about the data requesters.

The altered system of records will cover requester records retrieved by requesters' personal identifiers in the following four systems or any successor systems, but only to the extent that the records pertain to requesters seeking *restricted* datasets:

• *Agency for Healthcare Research and Quality (AHRQ) ''Online Application Ordering for Products from the Healthcare Cost and Utilization Project (HCUP).''* HCUP is an online system established in 2013; it makes restricted databases and software available for qualified applicants to purchase for scientific research and public health use. Applicants may be researchers, patients, consumers, practitioners, providers, policy makers, or educators. The HCUP databases are annual files containing anonymous information from hospital discharge records for inpatient care and certain components of outpatient care. The HCUP software tools enhance the use of the data. The online system supports AHRQ's mission of promoting improvements in health care quality.

• *Centers for Medicare & Medicaid Services (CMS) DUA tracking system.* A new data use agreement (DUA) tracking system went into production in 2015 and replaced the previous system, ''Data Agreement & Data Shipping Tracking System (DADSS).'' The DUA system tracks authorization, payment status, shipping status, and ownership of restricted and unrestricted data extracts between CMS, its contractors, and other authorized entities.

• *National Institutes of Health (NIH) ''Controlled Data Access Systems.''* NIH supports ''NIH-designated data repositories,'' which archive and distribute controlled-access de-identified human data and results from scientific studies under the NIH Genomic Data Sharing Policy. Controlled-access data in NIH-designated data repositories are made available for secondary research only after investigators have obtained approval from NIH to use the requested data for a particular project. The National Center for Biotechnology Information database of Genotypes and Phenotypes (dbGaP) serves as a central portal to submit, locate, and request access to controlled-access human genomic (*e.g.,* GWAS, sequencing, expression, epigenomic) data. The dbGaP's capacity and functionality are extended by repositories managed by public or private organizations through structured partnerships (''trusted partnerships'') established by NIH through a contract mechanism. Information about investigators, Institutional Signing Officials, and other users of NIH-designated controlled access repositories may be located and viewed by approved staff using the dbGaP or trusted partner-managed systems. Sharing research data supports the mission of the NIH and is essential to facilitate the translation of research results into knowledge, products, and procedures that improve human health.

• *Substance Abuse and Mental Health Services Administration (SAMHSA) ''Online Application for the Data Portal (SAMHDA).''* This online data portal was established in 2013 to more efficiently make restricted datasets from SAMHSA available to designated, approved researchers. The Data Portal and all applications are maintained through the Substance Abuse and Mental Health Data Archive (SAMHDA). Currently, data from the Drug Abuse Warning Network (DAWN), DAWN Medical Examiner/Coroner component, National Survey on Drug Use and Health (NSDUH), and NSDUH Adult Clinical Interview data are available through the portal. Data recipients must complete a web-based application process and receive project approval from SAMHSA's Center for Behavioral Health and Statistics and Quality (CBHSQ), and can use the datasets for statistical purposes only. No fees are charged for the datasets. The online portal supports SAMHSA' s mission to make substance use and mental disorder information and research more accessible.

Note that this system of records does *not* include:

• *Records about requesters who seek unrestricted datasets, publications, or other information products from an HHS on-line or paper-based ordering and delivery system.* Unrestricted materials are also proactively made available to the public by HHS, but are released without restrictions (though some may be subject to terms or conditions of use and require registration for an account and payment of a fee). Because the requests or order forms collect minimal information about the requester (*i.e.,* the requester's name, mailing address or email address, telephone number, or other contact or delivery information, and payment information if a fee is imposed) they would be adequately covered by other SORNs (for example, ''Correspondence Tracking Management System (CTMS)'' SORN #09–70–3005; ''Consumer Mailing List'' SORN #09–90–0041; and ''HHS Financial Management System Records'' SORN #09–90–0024 if a fee is involved), if a SORN is required (*i.e.,* if the records are retrieved directly by an individual requester's name or other personal identifier). Examples include records about requesters who order materials online from AHRQ's Publications Online Store & Clearinghouse or by mail from AHRQ's Publications Clearinghouse, which provide only unrestricted publications and other information products; and records about requesters ordering unrestricted datasets from CMS's DUA tracking system, which processes orders for both restricted and unrestricted datasets.

• *Records about data requesters that are not retrieved directly by an individual requester's name or other personal identifier.* These records are not subject to the Privacy Act and are not required to be covered in a SORN, even when they are associated with a restricted dataset and include additional information about the requester (such as, the requester's intended research purpose, qualifications, signed Data Use Agreement, and confidentiality training certificate). An example would be requester records that are retrieved first by a dataset identifier and/or a requesting entity's name, and then by an individual researcher's or record custodian's name.

A report on the altered system of records has been sent to OMB and Congress in accordance with 5 U.S.C. 552a(r).

Dated: March 8, 2018.

Alfred C. Johnson,

Deputy Director for Management, National Institutes of Health.

SYSTEM NAME AND NUMBER:

Records About Restricted Dataset Requesters, 09–90–1401

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

The address of each agency component responsible for the system of records is:

• *AHRQ:* HCUP Project Officer, Center for Delivery, Organization, and Markets, 540 Gaither Road, Rockville, MD 20850.

• *CMS:* DUA tracking system, Division of Data and Information Dissemination, Data Development and Services Group, Office of Enterprise Data and Analytics, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop: B2–29–04, Office Location: B2–03–37, Baltimore, MD 21244–1870.

• *NIH:* Office of the Director, Office of Science Policy, Division of Scientific

Data Sharing Policy, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20817.

• *SAMHSA:* SAMHDA Project Officer, CBHSQ, 5600 Fisher's Lane, Rockville, MD 20857.

SYSTEM MANAGER(S):

• *AHRQ:* HCUP Project Officer, Center for Delivery, Organization, and Markets, 540 Gaither Road, Rockville, MD 20850; Telephone: 301–427–1410; *HCUP@AHRQ.GOV.*

• *CMS:* DUA tracking system, Division of Data and Information Dissemination, Data Development and Services Group, Office of Enterprise Data and Analytics, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop: B2–29–04, Office Location: B2–03–37, Baltimore, MD 21244–1870.

• *NIH:* Office of the Director, Office of Science Policy, Division of Scientific Data Sharing Policy, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20817.

• *SAMHSA:* SAMHDA Project Officer, CBHSQ, 5600 Fisher's Lane, Rockville, MD 20857. (''SAMHDA'' refers to Substance Abuse and Mental Health Data Archive.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The following legal authorities authorize the collection and maintenance of these records:

• *AHRQ:* 42 U.S.C. 299–299a; 42 U.S.C. 299c–2.

• *CMS:* 5 U.S.C. 552a(e)(10); 45 CFR 164.514(e); 44 U.S.C. 3544; 42 U.S.C. 1306.

• *NIH:* 42 U.S.C. 217a, 241, 281, 282, 284; 48 CFR Subpart 15.3; E.O. 13478.

• *SAMHDA:* 42 U.S.C. 290aa(d)(l); 44 U.S.C. 3501(8)

See also: CIPSEA, codified at 44 U.S.C. 3501 note.

PURPOSE(S) OF THE SYSTEM:

The purposes of this system of records are to provide restricted datasets and software products to qualified data requesters in a timely and efficient manner and consistent with applicable laws, and to enable HHS to enforce data requesters' compliance with use and security restrictions that apply to the data. Relevant HHS personnel use the records on a need-to-know basis for those purposes; specifically:

• *Contact and user registration information* is used to communicate with the requester, enable the requester to access requested data electronically (for example, the requester's email address would be used to register the requester to use a public access web portal or link, and to notify the requester when data has been delivered electronically to his registered account), locate the requester (*e.g.,* for on-site inspections or to otherwise check compliance with the data use agreement), and deliver and track data provided by mail (*e.g.,* to document receipt for enforcement purposes and report lost shipments to security personnel).

• *Qualifications, planned use of the data, confidentiality training information, signed data use agreement, data receipt information, on-site inspection information, and information about data breaches or contract violations* is used to grant the request (consistent with data use restrictions) or deny the request, bind the requester to the applicable data use restrictions and other security requirements, conduct on-site inspections or otherwise check the requester's compliance with the data use agreement, enforce the agreement if breached, and share information about data breaches and contract violations with other HHS components administering restricted dataset requests involving the same requesters.

• *Payment information* is used to collect any applicable fee. Any payment information shared with HHS accounting and debt collection systems is also covered under the accounting and debt collection systems' SORNs and is subject to the routine uses published in those SORNs (see, *e.g.,* HHS Financial Management System Records, SORN #09–90–0024; and Debt Management and Collection System, SORN #09–40–0012).

• *Any of the above records* could be used to evaluate accomplishment of HHS functions related to the purposes of this system of records and to evaluate performance of contractors utilized by HHS to accomplish those functions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals within and outside HHS who request restricted datasets and software products that HHS makes proactively available to qualified members of the public, usually for health-related scientific research and study purposes. Examples include individual researchers and records custodians, project officers, or other representatives of entities such as universities, government agencies, and research organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records include:

• *Request records,* containing the requester's name and contact information (telephone number, mailing address, email address), affiliated entity (*e.g.,* if making the request as a records custodian or other employee), and a description of the dataset requested.

• *Order fulfillment records,* containing user registration information such as email address and IP address (if the requester is provided access to the dataset electronically through a public access web portal or link) or mailing information (if the dataset is mailed to the requester on a disk or other media), and tracking information (providing proof of delivery).

• *Data use restriction records,* containing the requester's identification, contact, and affiliated entity information, qualifications, intended use of the data (*e.g.,* study name, contract number), confidentiality training documentation (*e.g.,* a coded number indicating the individual completed required confidentiality training), signed and notarized data use agreement documents (*e.g.,* Affidavit of Nondisclosure; Declaration of Nondisclosure; Confidential Data Use and Nondisclosure Agreement (CDUNA); Individual Designations of Agent; DUA number and expiration date), tracking information, and any on-site inspection information.

• *Payment records (if a fee is charged),* consisting of the requester's credit card account name, number, and billing address, or bank routing number and checking account name, address, and number.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained directly from the individual data requester to whom it applies, or is derived from information supplied by the individual or provided by HHS officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information about an individual data requester may be disclosed to parties outside HHS, without the individual's prior, written consent, as provided in these routine uses:

1. Disclosures may be made to federal agencies and Department contractors that have been engaged by HHS to assist in accomplishment of an HHS function relating to the purposes of this system of records (including ancillary functions, such as compiling reports and evaluating program effectiveness and contractor performance) and that have a need to have access to the records in order to assist HHS in performing the activity. Any contractor will be required to comply with the requirements of the Privacy Act.

2. Records may be disclosed to student volunteers, individuals working

under a personal services contract, and other individuals performing functions (including ancillary functions) relating to the purposes of this system of records for the Department but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions. For example, disclosure may be made to qualified experts not within the definition of HHS employees as prescribed in HHS regulations, for opinions as a part of the controlled data access process.

3. CMS records may be disclosed to a CMS contractor (including but not limited to Medicare Administrative Contractors, fiscal intermediaries, and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such program.

4. Records may be disclosed to another federal agency or an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency) that administers federally funded programs, or that has the authority to investigate, potential fraud, waste or abuse in federally funded programs, when disclosure is deemed reasonably necessary by HHS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy or otherwise combat fraud, waste or abuse in such programs.

5. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate public authority, whether federal, foreign, state, local, tribal, or otherwise, responsible for enforcing, investigating or prosecuting the violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to the enforcement, regulatory, investigative, or prosecutorial responsibility of the receiving entity.

6. Information may be disclosed to the U.S. Department of Justice (DOJ) or to a court or other tribunal, when:

a. the agency or any component thereof, or

b. any employee of the agency in his or her official capacity, or

c. any employee of the agency in his or her individual capacity where DOJ has agreed to represent the employee, or

d. the United States Government,

is a party to litigation or has an interest in such litigation and, by careful review, HHS determines that the records are both relevant and necessary to the litigation and that, therefore, the use of such records by the DOJ, court or other tribunal is deemed by HHS to be compatible with the purpose for which the agency collected the records.

7. Records may be disclosed to a federal, foreign, state, local, tribal, or other public authority of the fact that this system of records contains information relevant to the hiring or retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for further information if it so chooses. HHS will not make an initial disclosure unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another federal agency for criminal, civil, administrative, personnel, or regulatory action.

8. Information may be disclosed to a Member of Congress or Congressional staff member in response to a written inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained. The Congressional office does not have any greater authority to obtain records than the individual would have if requesting the records directly.

9. Records may be disclosed to the U.S. Department of Homeland Security (DHS) if captured in an intrusion detection system used by HHS and DHS pursuant to a DHS cybersecurity program that monitors internet traffic to and from federal government computer networks to prevent a variety of types of cybersecurity incidents.

10. Disclosures may be made to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records; (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

11. Disclosure may be made to another Federal agency or Federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

12. Disclosure of past performance information pertaining to contractors engaged by HHS to assist in accomplishment of an HHS function relating to the purposes of this system of records may be made to a federal agency upon request and may include information about dataset requesters.

13. NIH dataset requester records may be included in records disclosed to governmental or authorized non-governmental entities with a signed data access agreement for system data that includes records about individuals requesting and receiving restricted datasets, to use in compiling reports (such as, on the composition of biomedical and/or research workforce; authors of publications attributable to federally-funded research; information made available through third-party systems as permitted by applicants or awardees for agency grants or contracts; or grant payment information reported to federal databases).

14. When records about a requester of an NIH restricted dataset are related to an award or application for award under an NIH award program, the dataset requester records may be disclosed to the award applicant, principal investigator(s), institutional officials, trainees or others named in the application, or institutional service providers for purposes of application preparation, review, or award management, and to the public consistent with reporting and transparency standards and to the extent disclosure to the public would not cause an unwarranted invasion of personal privacy.

15. HHS may disclose records from this system of records to the National Archives and Records Administration (NARA), General Services Administration (GSA), or other relevant

Federal Government agencies in connection with records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Information about a dataset requester may also be disclosed from this system of records to parties outside HHS without the individual's consent for any of the uses authorized directly in the Privacy Act at 5 U.S.C. 552a(b)(2) and (b)(4)–(11).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in electronic databases and hard-copy files. CMS's DUA tracking system records may also be stored on portable media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the data requester's name, registrant/user name, User ID Number, email address, or data use agreement (DUA) number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records needed to enforce data use restrictions are retained for 20 years by AHRQ (see DAA–0510–2013–0003–0001), 5 years by CMS (see Nl–440–10–04), and 3 years by NIH (see DAA–0443–2013–0004–0004) after the agreement is closed, and may be kept longer if necessary for enforcement, audit, legal, or other purposes. The equivalent SAMHSA records will be retained indefinitely until a disposition schedule is approved by the National Archives and Records Administration (NARA). SAMHSA anticipates proposing a 5 year retention period to NARA. Records of payments made electronically are transmitted securely to a Payment Card Industry-compliant payment gateway for processing and are not stored. Records of payments made by check, purchase order, or wire transfer are disposed of once the funds have been received. Records are disposed of using destruction methods prescribed by NIST SP 800–88.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are safeguarded in accordance with applicable laws, rules and policies, including the HHS Information Technology Security Program Handbook, all pertinent National Institutes of Standards and Technology (NIST) publications, and OMB Circular A–130, Managing Information as a Strategic Resource. Records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. Safeguards conform to the HHS Information Security and Privacy Program, *http://www.hhs.gov/ocio/securityprivacy/.*

The safeguards include protecting the facilities where records are stored or accessed with security guards, badges and cameras, securing hard-copy records in locked file cabinets, file rooms or offices during off-duty hours, limiting access to electronic databases to authorized users based on roles and the principle of least privilege, and two-factor authentication (user ID and password), using a secured operating system protected by encryption, firewalls, and intrusion detection systems, using an SSL connection for secure encrypted transmissions, requiring encryption for records stored on removable media, and training personnel in Privacy Act and information security requirements.

RECORD ACCESS PROCEDURES:

An individual who wishes to know if this system of records contains records about him or her should submit a written request to the relevant System Manager at the address indicated above. The individual must verify his or her identity by providing either a notarized request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act, subject to a five thousand dollar fine.

CONTESTING RECORD PROCEDURES:

An individual seeking to amend the content of information about him or her in this system should contact the relevant System Manager and reasonably identify the record, specify the information contested, state the corrective action sought, and provide the reasons for the amendment, with supporting justification.

NOTIFICATION PROCEDURES:

An individual who wishes to know if this system of records contains records about him or her should submit a written request to the relevant System Manager at the address indicated above. The individual must verify his or her identity by providing either a notarized request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act, subject to a five thousand dollar fine.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

80 FR 17447 (April 1, 2015).

[FR Doc. 2018–05176 Filed 3–13–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974; System of Records Notice

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act, HHS is establishing a new system of records to be maintained by HRSA System No. 09–15–0092 ''HRSA Trainee Information Portal (TRIP).'' The new system of records will cover data about health professionals/trainees receiving health care training supported by Bureau of Health Workforce (BHW) Federal awards (including, grants, cooperative agreements, contracts, scholarships and loans) (collectively referred to as awards), which BHW will use in evaluating the success of its programs. The new system of records is explained in the ''Supplementary Information'' section of this notice and fully described in the System of Records Notice (SORN) published in this notice.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is effective upon publication, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by April 13, 2018.

ADDRESSES: The public should address written comments on the new system of records to Director, National Center for Health Workforce Analysis (NCHWA), BHW, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: General questions about the system of records may be submitted to Director, National Center for Health Workforce Analysis (NCHWA), BHW, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: Pursuant to the Government Performance and Results Act (GPRA) of 1993 and the GPRA Modernization Act of 2010, BHW requires all recipients of Health Professions awards to report annual performance data to BHW to enable BHW to determine the success of its programs. The performance data must include information about health

professionals who directly or indirectly benefit from a BHW award.

Currently, HRSA awardees submit performance data into the Electronic Handbooks (EHBs), an enterprise grants management system at HRSA. To reduce the reporting burden on awardees, BHW is developing a data collection portal that will allow awardees to collect individual-level trainee data (consisting of the trainee's name, training program, demographic information, aspects of their training, and employment information upon completion of training) directly from trainees via online surveys. For awardees that decide to communicate with trainees for this data collection, trainee email addresses may also be included. The survey responses will be collected, monitored, and managed in the portal, and awardees will be able to transmit and submit the data electronically into EHBs. Awardees will be able to send reminders or notifications to the trainees for initial surveys or any follow-up reminders. Awardees will also have the ability to directly upload bulk individual-level data rather than key in every required data field.

Data elements collected in the portal about individual trainees will be the same as those already being collected in the EHBs; only the source and retrieval method are changing. Enabling awardees to collect individual level trainee data directly from trainees may result in more accurate annual reports to BHW. Retrieving information about individual trainees directly by trainee name or other personal identifier will improve BHW's ability to follow the trainees even after the completion of their training to find out if they are employed in health care and/or work in underserved areas, as required to evaluate the effectiveness and success of BHW health professions programs.

SYSTEM NAME AND NUMBER:

HRSA Trainee Data Collection Portal System, 09–15–0092.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The address of the agency component responsible for the system of records is National Center for Health Workforce Analysis (NCHWA), BHW, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857.

SYSTEM MANAGER(S):

Director, National Center for Health Workforce Analysis (NCHWA), BHW, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 761 of the Public Health Service Act (42 U.S.C. 294n), Health Professions Workforce Information and Analysis; Section 792 of the Public Health Service Act (42 U.S.C. 295k), Health Professions Data.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to provide the agency with training data about individual health professionals benefitted by health care training funded by BHW programs, so that BHW can follow the trainees even after the completion of their training to find out if they are employed in health care and/or work in underserved areas, in order to evaluate the effectiveness and success of BHW health professions programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records pertain to health care professionals who are reported by awardees as benefitting from health care training supported by BHW awards.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will collect and store demographic, training and general employment related information about the trainees at awardee and other funding recipient locations supported by BHW awards. Records about a particular trainee will be grouped by program and will contain data elements such as those listed below:

Name; email address; HRSA unique ID; health professions training program; length of training program; National Provider Identifier (NPI) number (where applicable); enrollment status; sex; age; race; ethnicity; rural residential background status; disadvantaged background status; veteran status; BHW award received; academic years receiving BHW awards; % Full-Time Equivalent (FTE) paid; primary discipline; whether the individual received training in a primary care setting, medically underserved community, or rural area; number of hours of training received in a primary care setting, medically underserved community, or rural area; graduation/completion status; program attrition status; employment data city, state, and ZIP code; type of employment, training/employment status 1-year after graduation; employment status.

RECORD SOURCE CATEGORIES:

The sources of the trainee data reported to BHW will be Health Professions awardees and their trainees. Sources of the data BHW subsequently obtains to determine if trainees are employed in health care and/or work in underserved areas will include the trainees and their employers. NPI Number will be obtained from records maintained by HHS' Centers for Medicare & Medicaid Services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information about an individual trainee may be disclosed from this system of records to parties outside the agency without the individual's prior, written consent pursuant to these routine uses:

1. Any trainee data that a BHW awardee reports for its awards will be disclosed to that awardee organization, to use for its own award administrative purposes.

2. Records may be disclosed to agency contractors who have been engaged by the agency to assist in accomplishment of an HHS function relating to the purposes of this system of records and who need to have access to the records in order to assist HHS. Any contractor will be required to comply with the requirements of the Privacy Act.

3. Information may be disclosed to the U.S. Department of Justice (DOJ) or to a court or other tribunal, when:

a. The agency or any component thereof, or

b. any employee of the agency in his or her official capacity, or

c. any employee of the agency in his or her individual capacity where DOJ has agreed to represent the employee, or

d. the United States Government,

is a party to litigation or has an interest in such litigation and, by careful review, HHS determines that the records are both relevant and necessary to the litigation and that, therefore, the use of such records by the DOJ, court or other tribunal is deemed by HHS to be compatible with the purpose for which the agency collected the records.

4. Records may be disclosed to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records, (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the federal government, or national security, and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

5. Records may be disclosed to another federal agency or federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

6. Records may be disclosed to the U.S. Department of Homeland Security (DHS) if captured in an intrusion detection system used by HHS and DHS pursuant to a DHS cybersecurity program that monitors internet traffic to and from federal government computer networks to prevent a variety of types of cybersecurity incidents.

The disclosures authorized by publication of the above routine uses pursuant to 5 U.S.C. 552a(b)(3) are in addition to other disclosures authorized directly in the Privacy Act at 5 U.S.C. 552a(b)(4)–(11).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The agency will maintain the records on database servers with disk storage and backup tapes.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The agency will retrieve records about an individual trainee by the trainee's name or other personal identifier, such as unique ID or email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

BHW is developing a record retention policy and disposition schedule for Training Information Portal (TRIP) records. Until a disposition schedule has been approved by the National Archives and Records Administration (NARA), the records will be retained indefinitely.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Authorized users include awardees and internal users such as government and contractor personnel who will provide support. Other than awardees, users are required to obtain favorable adjudication for a Level 5 Position of Public Trust. Government and contractor personnel who support the system must attend security training, sign a Non-Disclosure Agreement, and sign the Rules of Behavior, which is renewed annually. Users are given role-based access to the system on a limited need-to-know basis. All physical and logical access to the system is removed upon termination of employment. The system leverages the current HRSA EHBs process for authentication and authorization of all external awardee users.

Records are safeguarded in accordance with applicable laws, rules and policies, including the HHS Information Technology Security Program Handbook, all pertinent National Institutes of Standards and Technology (NIST) publications, and OMB Circular A–130, Managing Information as a Strategic Resource. Records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. Safeguards conform to the HHS Information Security and Privacy Program, *http://www.hhs.gov/ocio/securityprivacy/.*

The safeguards include protecting the facilities where records are stored or accessed with security guards, badges and cameras, securing hard-copy records in locked file cabinets, file rooms or offices during off-duty hours, limiting access to electronic databases to authorized users based on roles and the principle of least privilege, and two-factor authentication (user ID and password), using a secured operating system protected by encryption, firewalls, and intrusion detection systems, using an SSL connection for secure encrypted transmissions, requiring encryption for records stored on removable media, and training personnel in Privacy Act and information security requirements. Records that are eligible for destruction will be disposed of using secure destruction methods prescribed by NIST SP 800–88.

RECORD ACCESS PROCEDURES:

An individual seeking access to records about himself or herself in this system of records must submit a written request to the System Manager (see above ''System Manager'' section). An access request must contain the name and address of the requester, email address or other identifying information, and his/her signature. To verify the requester's identity, the signature must be notarized or the request must include the requester's written certification that he/she is the person he/she claims to be and that he/she understands that the knowing and willful request for or acquisition of records pertaining to an individual under false pretenses is a criminal offense subject to a $5,000 fine. Requesters may also ask for an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

An individual seeking to amend a record about him or her in this system of records must submit a written request to the System Manager (see above ''System Manager'' section). An amendment request must include verification of the requester's identity in the same manner required for an access request, and must reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

NOTIFICATION PROCEDURES:

An individual who wishes to know if this system of records contains records about himself or herself must submit a written request to the System Manager (see above ''System Manager'' section) and verify his or her identity in the same manner required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Dated: March 8, 2018.

George Sigounas,

Administrator.

[FR Doc. 2018–05062 Filed 3–13–18; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (NIH)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Tawanda Abdelmouti, Assistant Project Officer, Office of Policy for Extramural Research Administration, 6705 Rockledge Drive, Suite 350, Bethesda, MD 20892, or call non-toll-free number (301) 435–0978 or Email your request, including your address to: *abdelmot@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on December 22, 2017, page 60754 (82 FR 60754) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Generic Clearance for the collection of Qualitative Feedback on Agency Service Delivery—0925–0648 EXTENSION—National Institutes of Health (NIH).

Need and Use of Information Collection: There are no changes being requested for this submission. The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. This generic will provide information about the NIH Institutes and Centers customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. It will also allow feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 49,333.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of collection	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Customer Satisfaction Surveys	1,000	1	30/60	500
In-Depth Interviews (IDIs) or Small Discussion Groups	1,000	1	90/60	1,500
Focus Groups	1,000	1	90/60	1,500
Usability and Pilot Testing	150,000	1	5/60	12,500
Conference/Training—Pre- and Post-Surveys	100,000	2	10/60	33,333
Total		353,000		49,333

Dated: March 8, 2018.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2018–05172 Filed 3–13–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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 of the National Human Genome Research Institute 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 Human Genome Research Institute Special Emphasis Panel; AnVIL.

Date: April 3, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda Downtown, 7355 Wisconsin Avenue, Conference Room Calvert I & II, Bethesda, MD 20814.

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; H3Africa ELSI.

Date: April 9, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Rd., Forest Glen Conference Room, Rockville, MD 20852.

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 7, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–05083 Filed 3–13–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Laboratory Animal Welfare: Coordination and Harmonization of Regulations and Policies

AGENCY: National Institutes of Health, HHS.

ACTION: Notice; request for comments.

SUMMARY: The National Institutes of Health (NIH) is seeking information to improve the coordination of regulations and policies with respect to research with laboratory animals as required by the 21st Century Cures Act, Section 2034(d). The request for information is a coordinated effort of the Director of the National Institutes of Health in collaboration with the Secretary of Agriculture and the Commissioner of Food and Drugs to reduce administrative burden on investigators while maintaining the integrity and credibility of research findings and protection of research animals.

DATES: The Request for Information regarding the proposed actions that the agencies have identified to improve coordination and harmonization of regulations and policies is open for public comment for a period of 90 days. Comments must be submitted electronically at *https://grants.nih.gov/grants/rfi/rfi.cfm?ID=71* and must be received by June 12, 2018 to ensure consideration.

FOR FURTHER INFORMATION CONTACT: Patricia Brown, Office of Laboratory Animal Welfare (OLAW), Office of Extramural Research, National Institutes of Health, Suite 360, 6705 Rockledge Drive, Bethesda, MD 20892–7982, phone: 301–496–7163, email: *olaw@od.nih.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This request for information is a coordinated effort of the Director of the National Institutes of Health in collaboration with the Secretary of Agriculture and the Commissioner of Food and Drugs to reduce administrative burden on investigators while maintaining the integrity and credibility of research findings and protection of research animals.

Section 2034(d) of the 21st Century Cures Act (Pub. L. 114–255) was enacted December 13, 2016 and requires that the NIH in collaboration with the United States Department of Agriculture (USDA) and the Food and Drug Administration (FDA) complete a review of applicable regulations and policies for the care and use of laboratory animals and make revisions to reduce administrative burden on investigators. In carrying out this effort, the law requests that NIH seek put to identify ways to ensure regulations and policies are not inconsistent, overlapping, or unnecessarily duplicative.

In carrying out the review, NIH OLAW, USDA, and FDA are currently reviewing the following reports and surveys:

- Reforming Animal Research Regulations: Workshop Recommendations to Reduce Regulatory Burden, 2017, Report of an April 17, 2017 workshop organized by Federation of American Societies for Experimental Biology (FASEB), the Association of American Medical Colleges, and the Council on Governmental Relations, with support from the National Association for Biomedical Research, *http://www.faseb.org/Portals/2/PDFs/opa/2017/FASEB-Animal-Regulatory-Report-October2017.pdf.*
- Optimizing the Nation's Investment in Academic Research: A New Regulatory Framework for the 21st Century, 2016, National Academies, *https://www.nap.edu/catalog/21824/optimizing-the-nations-investment-in-academic-research-a-new-regulatory.*
- Reducing Investigators' Administrative Workload for Federally Funded Research, 2014, National Science Board, National Science Foundation, *https://www.nsf.gov/pubs/2014/nsb1418/nsb1418.pdf.*
- 2012 Faculty Workload Survey Research Report, 2014, Federal Demonstration Partnership (FDP), *https://sites.nationalacademies.org/cs/groups/pgasite/documents/webpage/pga_087667.pdf.*
- Findings of the FASEB Survey on Administrative Burden, 2013, FASEB, *http://www.faseb.org/portals/2/pdfs/opa/6.7.13%20FASEB%20NSB%20Survey%20findings.pdf.*

We are seeking the input of interested stakeholders concerning proposed actions that the agencies have identified to improve coordination and harmonization of regulations and policies. The responses received will provide critical information for final recommendations and implementation.

II. Information Requested

Input is sought on each of the following proposed actions that the agencies are considering:

1. Allow investigators to submit protocols for continuing review using a risk-based methodology.
2. Allow annual reporting to OLAW and USDA on the same reporting schedule and as a single report through a shared portal.
3. Harmonize the guidance from NIH and USDA to reduce duplicative considerations of alternatives to painful and distressful procedures.
4. Provide a minimum 60-day comment period for new OLAW policy guidance.
5. Other approaches not previously mentioned.

Feedback is sought on whether the following tools and resources are or would be helpful for reducing burden on investigators:

1. Encourage the use of sections of the AAALAC International program description in applicable parts of the OLAW Animal Welfare Assurance, for institutions accredited by AAALAC International.
2. Encourage the use of the FDP Compliance Unit Standard Procedures as a repository of best practices for standard procedures used for research with animals.
3. Encourage the use of the IACUC Administrators Association repository of best practices by IACUCs.
4. Encourage the use of new or existing tools to streamline protocol review through use of designated member review (DMR), DMR subsequent to full committee review, and/or Veterinary Verification and Consultation.
5. Expanded IACUC training activities that focus on reducing burden on investigators.

Dated: March 8, 2018.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2018–05173 Filed 3–13–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; AMSC Members Conflict Review Meeting.

Date: March 15–16, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, Conference Room 803, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Xincheng Zheng, MD, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 820, Bethesda, MD 20892, 301–451–4838, *xincheng.zheng@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 7, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–05084 Filed 3–13–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Myalgic Encephalomyelitis/Chronic Fatigue Syndrome.

Date: April 4, 2018.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jana Drgonova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–827–2549, *jdrgonova@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pediatric Immunotherapy Discovery and Development Network (PI–DDN) U54 Review.

Date: April 5, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lawrence Ka-Yun Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–435–1719, *ngkl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Myocardial Ischemia and Heart Failure Member Conflicts.

Date: April 5, 2018.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *margaret.chandler@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Chemistry.

Date: April 5, 2018.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mike Radtke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Genetics.

Date: April 5, 2018.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ronald Adkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301–435–4511, *ronald.adkins@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Studies in Genetics.

Date: April 5, 2018.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Baishali Maskeri, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2022, Bethesda, MD 20892, 301–827–2864, *maskerib@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biophysics.

Date: April 5, 2018.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard D Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, 301–694–7084, *crosland@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology and Cellular Signaling, Interactions, and Migration.

Date: April 5, 2018.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Thomas Beres, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 5201, MSC 7840, Bethesda, MD 20892, 301–435–1175, *berestm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 8, 2018.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–05082 Filed 3–13–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2018–0016; OMB No. 1660–0139]

Agency Information Collection Activities: Proposed Collection; Comment Request; Ready PSA Campaign Creative Testing Research

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Ready campaign, which is a national public service advertising (PSA) campaign in support of FEMA's mission and is designed to educate and empower Americans to prepare for and respond to emergencies including natural and man-made disasters.

DATES: Comments must be submitted on or before May 14, 2018.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2018–0016. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Aretha Carter, External Affairs Specialist, Federal Emergency Management Agency, (202) 288–6783, *Aretha.Carter@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This collection is in accordance with Executive Orders 12862 and 13571 requiring all Federal agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The Government Performance and Results Act (GPRA) requires Federal agencies to set missions and goals and to measure agency performance against them. The GPRA Modernization Act of 2010 requires quarterly performance assessments of government programs for the purposes of assessing agency performance and improvement. The Federal Emergency Management Agency is collecting information through focus groups to improve its public service advertising campaign on disaster preparedness.

Collection of Information

Title: Ready PSA Campaign Creative Testing Research.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0139.

FEMA Forms: FEMA Form 008–0–21, Recruitment Screener; FEMA Form 008–0–22, Focus Group Discussion Guide.

Abstract: FEMA proposes conducting qualitative research in the form of focus groups in order to test creative concepts developed for FEMA's national Ready public service advertising campaign, which aims to educate and empower Americans to prepare for and respond to emergencies. The research will help determine the clarity, relevance, and motivating appeal of the concepts prior to final production of the advertising.

Affected Public: Individuals or households.

Estimated Number of Respondents: 90.

Estimated Number of Responses: 90.

Estimated Total Annual Burden Hours: 58.

Estimated Total Annual Respondent Cost: $2,060.16.

Estimated Respondents' Operation and Maintenance Costs: There are no annual costs to respondents' operations and maintenance costs for technical services.

Estimated Respondents' Capital and Start-Up Costs: There are no annual start-up or capital costs.

Estimated Total Annual Cost to the Federal Government: $52,834.81.

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.

Dated: March 1, 2018.

William H. Holzerland,

Senior Director for Information Management, Office of the Chief Administrative Officer Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2018–05080 Filed 3–13–18; 8:45 am]

BILLING CODE 9111–69–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a 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 Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of April 4, 2018 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map

Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

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 Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes 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.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: March 1, 2018.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Los Angeles County, California and Incorporated Areas Docket No.: FEMA–B–1650	
City of Agoura Hills	30001 Ladyface Court, Agoura Hills, CA 91301.
City of Westlake Village	31200 Oak Crest Drive, Westlake Village, CA 91361.
Unincorporated Areas of Los Angeles County	Public Works Headquarters, Water Management Division, 900 South Freemont Avenue, Alhambra, CA 91803.
Ventura County, California and Incorporated Areas Docket No.: FEMA–B–1650	
City of Thousand Oaks	City Hall, 2100 East Thousand Oaks Boulevard, Thousand Oaks, CA 91362.
Unincorporated Areas of Ventura County	Ventura County Public Works Agency, 800 South Victoria Avenue, Ventura, CA 93009.
Morgan County, Colorado and Incorporated Areas Docket No.: FEMA–B–1658	
City of Brush	City Hall, 600 Edison Street, Brush, CO 80723.
City of Fort Morgan	City Hall, 110 Main Street, Fort Morgan, CO 80701.
Town of Wiggins	Town Hall, 304 Central Avenue, Wiggins, CO 80654.
Unincorporated Areas of Morgan County	Morgan County Planning and Zoning Department, 231 Ensign Street, Fort Morgan, CO 80701.
Dawson County, Georgia and Incorporated Areas Docket No.: FEMA–B–1655	
City of Dawsonville	City Hall, 415 Highway 53 East, Suite 100, Dawsonville, GA 30534.
Unincorporated Areas of Dawson County	Dawson County Planning and Development Department, 25 Justice Way, Suite 2322, Dawsonville, GA 30534.
Hall County, Georgia and Incorporated Areas Docket No.: FEMA–B–1655	
City of Buford	City Hall, 2300 Buford Highway, Buford, GA 30518.
City of Flowery Branch	City Hall, 5517 Main Street, Flowery Branch, GA 30542.
City of Gainesville	Department of Water Resources Administration Building, 757 Queen City Parkway, Southwest, Gainesville, GA 30501.
City of Lula	City Hall, 6055 Main Street, Lula, GA 30554.
City of Oakwood	City Hall, 4035 Walnut Circle, Oakwood, GA 30566.
Town of Clermont	Town Hall, 109 King Street, Clermont, GA 30527.
Unincorporated Areas of Hall County	Hall County Government Center, Engineering Division, 2875 Browns Bridge Road, 3rd Floor, Gainesville, GA 30504.
Lumpkin County, Georgia and Incorporated Areas Docket No.: FEMA–B–1655	
City of Dahlonega	City Hall, 465 Riley Road, Dahlonega, GA 30533.
Unincorporated Areas of Lumpkin County	Lumpkin County Planning and Public Works Department, 25 Short Street, Suite 10, Dahlonega, GA 30533.

Community	Community map repository address
Davis County, Iowa and Incorporated Areas Docket No.: FEMA–B–1657	
City of Bloomfield	City Hall, 111 West Franklin Street, Bloomfield, IA 52537.
City of Floris	City Hall, 103 Monroe Street, Floris, IA 52560.
Unincorporated Areas of Davis County	Davis County Highway Department, 21585 Lilac Avenue, Bloomfield, IA 52537.
Hancock County, Iowa and Incorporated Areas Docket No.: FEMA–B–1657	
City of Britt	City Hall, 170 Main Avenue South, Britt, IA 50423.
City of Corwith	City Hall, 108 Northwest Elm Street, Corwith, IA 50430.
City of Crystal Lake	City Hall, 225 State Avenue South, Crystal Lake, IA 50432.
City of Forest City	City Hall, 305 North Clark Street, Forest City, IA 50436.
City of Garner	City Hall, 135 West 5th Street, Garner, IA 50438.
City of Kanawha	City Hall, 121 North Main Street, Kanawha, IA 50477.
City of Woden	City Hall, 302 Main Avenue, Woden, IA 50484.
Unincorporated Areas of Hancock County	Hancock County Courthouse, 855 State Street, Garner, IA 50438.

[FR Doc. 2018–05188 Filed 3–13–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1811]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. 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). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before June 12, 2018.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables 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.

You may submit comments, identified by Docket No. FEMA–B–1811, to 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.*

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: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed 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. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found

online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. 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.'')

Dated: February 23, 2018.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
City and Borough of Juneau, Alaska Project: 15–10–0411S Preliminary Date: August 25, 2017	
City and Borough of Juneau	Marine View Building, 230 South Franklin Street, Juneau, AK 99801.
Carroll County, Indiana and Incorporated Areas Project: 14–05–9589S Preliminary Dates: February 19, 2016 and September 15, 2017	
Unincorporated Areas of Carroll County	Carroll County Area Plan Commission, Carroll County Courthouse, 101 West Main Street, Delphi, IN 46923.

[FR Doc. 2018–05179 Filed 3–13–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a 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 Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of July 19, 2018 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

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 Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes 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.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: March 8, 2018.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Sacramento County, California and Incorporated Areas Docket No.: FEMA–B–1627	
Unincorporated Areas of Sacramento County	Municipal Services Agency, Department of Water Resources, 827 7th Street, Suite 301, Sacramento, CA 95814.
Marion County, Kansas and Incorporated Areas Docket No.: FEMA–B–1723	
City of Marion	City Hall, 203 North 3rd Street, Marion, KS 66861.
Unincorporated Areas of Marion County	Marion County Planning and Zoning, 230 East Main Street, Marion, KS 66861.
Fairfield County, Ohio and Incorporated Areas Docket No.: FEMA–B–1610	
City of Lancaster	City Building Department, 121 East Chestnut Street, Lancaster, OH 43130.
City of Pickerington	City Hall, 51 East Columbus Street, Pickerington, OH 43147.
Unincorporated Areas of Fairfield County	Fairfield County Administrative Courthouse, 210 East Main Street, Lancaster, OH 43130.

[FR Doc. 2018–05181 Filed 3–13–18; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a 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 Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of June 20, 2018 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

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 *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes 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.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.* The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: February 23, 2018.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Monmouth County, New Jersey (All Jurisdictions) Docket No.: FEMA–B–1471	
Borough of Highlands	Municipal Office, 42 Shore Drive, Highlands, NJ 07732.
Borough of Little Silver	Borough Hall, Clerk's Office, 480 Prospect Avenue, Little Silver, NJ 07739.
Borough of Matawan	Borough Hall, 201 Broad Street, Matawan, NJ 07747.

Community	Community map repository address
Borough of Monmouth Beach	Borough Hall, 18 Willow Avenue, Monmouth Beach, NJ 07750.
Ocean County, New Jersey (All Jurisdictions) Docket No.: FEMA–B–1471	
Borough of Point Pleasant Beach	Municipal Building, 416 New Jersey Avenue, Point Pleasant Beach, NJ 08742.
Putnam County, Ohio and Incorporated Areas Docket Nos.: FEMA–B–1436 and FEMA–B–1704	
Unincorporated Areas of Putnam County	Putnam County Courthouse, 245 East Main Street, Ottawa, OH 45875.
Village of Cloverdale	Village Office, 210 Mahoning Street, Cloverdale, OH 45827.
Village of Columbus Grove	Village Office, 113 East Sycamore Street, Columbus Grove, OH 45830.
Village of Dupont	Community Center and Village Hall, 101 Liberty Street, Dupont, OH 45837.
Village of Fort Jennings	Village Office, 440 4th Street, Fort Jennings, OH 45844.
Village of Gilboa	Municipal Building, 206 Main Street, Gilboa, OH 45875.
Village of Glandorf	Village Hall, 201 North Main Street, Glandorf, OH 45848.
Village of Kalida	Municipal Building, 110 South Broad Street, Kalida, OH 45853.
Village of Leipsic	Village Hall, 142 East Main Street, Leipsic, OH 45856.
Village of Ottawa	Village Hall, 136 North Oak Street, Ottawa, OH 45875.
Village of Ottoville	Municipal Center, 150 Park Drive, Ottoville, OH 45876.
Village of Pandora	Municipal Building, 102 South Jefferson Street, Pandora, OH 45877.
Clatsop County, Oregon and Incorporated Areas Docket No.: FEMA–B–1703	
City of Cannon Beach	City Hall, Community Development, 163 East Gower Street, Cannon Beach, OR 97110.
City of Gearhart	City Hall, 698 Pacific Way, Gearhart, OR 97138.
City of Seaside	Community Development, 1387 Avenue U, Seaside, OR 97138.
City of Warrenton	City Hall, 225 South Main, Warrenton, OR 97146.
Unincorporated Areas of Clatsop County	Community Development, 800 Exchange Street, Suite 100, Astoria, OR 97103.
San Juan County, Washington and Incorporated Areas Docket No.: FEMA–B–1670	
Town of Friday Harbor	San Juan Office of Community Development, 135 Rhone Street, Friday Harbor, WA 98250.
Unincorporated Areas of San Juan County	San Juan Office of Community Development, 135 Rhone Street, Friday Harbor, WA 98250.

[FR Doc. 2018–05190 Filed 3–13–18; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1810]

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). 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.'')

Dated: February 23, 2018.

Roy E. Wright,

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.
Arkansas: Benton ..	City of Rogers (17–06–4054P).	The Honorable Greg Hines, Mayor, City of Rogers, 301 West Chestnut Street, Rogers, AR 72756.	City Hall, 301 West Chestnut Street, Rogers, AR 72756.	*https://msc.fema.gov/portal/advanceSearch.*	May 14, 2018	050013
Colorado:						
Boulder	City of Boulder, (17–08–0797P).	Ms. Jane S. Brautigam, Manager, City of Boulder, P.O. Box 791, Boulder, CO 80306.	City Hall, 1739 Broadway, 3rd Floor, Boulder, CO 80306.	*https://msc.fema.gov/portal/advanceSearch.*	May 31, 2018	080024
Broomfield	City and County of Broomfield, (17–08–0870P).	The Honorable Randy Ahrens, Mayor, City and County of Broomfield, 1 DesCombes Drive, Broomfield, CO 80020.	Community Development Department, 1 DesCombes Drive, Broomfield, CO 80020.	*https://msc.fema.gov/portal/advanceSearch.*	May 4, 2018	085073
Douglas	Town of Parker, (17–08–1041P).	The Honorable Mike Waid, Mayor, Town of Parker, 20120 East Main Street, Parker, CO 80138.	Town Hall, 20120 East Main Street, Parker, CO 80138.	*https://msc.fema.gov/portal/advanceSearch.*	May 18, 2018	080310
Douglas	Unincorporated areas of Douglas County, (17–08–1041P).	The Honorable Roger Partridge, Chairman, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Douglas County Planning Division, 100 3rd Street, Castle Rock, CO 80104.	*https://msc.fema.gov/portal/advanceSearch.*	May 18, 2018	080049
El Paso	City of Colorado Springs, (17–08–1081P).	The Honorable John Suthers, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Suite 601, Colorado Springs, CO 80903.	City Hall, 30 South Nevada Avenue, Colorado Springs, CO 80903.	*https://msc.fema.gov/portal/advanceSearch.*	May 17, 2018	080060
Jefferson	City of Westminster, (17–08–0870P).	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.*	May 4, 2018	080008
Teller	City of Woodland Park, (17–08–0477P).	The Honorable Neil Levy, Mayor, City of Woodland Park, P.O. Box 9007, Woodland Park, CO 80866.	City Hall, 220 West South Avenue, Woodland Park, CO 80866.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2018	080175
Teller	Unincorporated areas of Teller County, (17–08–0477P).	The Honorable Dave Paul, Chairman, Teller County, Board of Commissioners, P.O. Box 959, Cripple Creek, CO 80813.	Teller County Planning Department, 800 Research Drive, Woodland Park, CO 80866.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2018	080173

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.
Delaware: Kent	City of Dover, (17–03–0901P).	The Honorable Robin R. Christiansen, Mayor, City of Dover, P.O. Box 475, Dover, DE 19903.	Department of Planning and Inspection, 15 Lookerman Plaza, Dover, DE 19901.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 4, 2018	100006
Florida:						
Charlotte	Unincorporated areas of Charlotte County, (17–04–7978P).	The Honorable Bill Truex, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 26, 2018	120061
Hillsborough	Unincorporated areas of Hillsborough County, (17–04–5216P).	The Honorable Sandra Murman, Chair, Hillsborough County Board of Commissioners, 601 East Kennedy Boulevard, Tampa, FL 33602.	Hillsborough County Building Services Division, 601 East Kennedy Boulevard, Tampa, FL 33602.	*https://msc.fema.gov/portal/advanceSearch.*	May 21, 2018	120112
Lee	City of Sanibel, (17–04–6485P).	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.*	May 10, 2018	120402
Orange	City of Orlando, (17–04–3609P).	The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32802.	City Hall, 400 South Orange Avenue, Orlando, FL 32801.	*https://msc.fema.gov/portal/advanceSearch.*	May 16, 2018	120186
Palm Beach	City of Riviera Beach, (17–04–6959P).	The Honorable Thomas A. Masters, Mayor, City of Riviera Beach, 600 West Blue Heron Boulevard, Riviera Beach, FL 33404.	Department of Community Development, 600 West Blue Heron Boulevard, Riviera Beach, FL 33404.	*https://msc.fema.gov/portal/advanceSearch.*	May 4, 2018	125142
Palm Beach	Unincorporated areas of Palm Beach County, (17–04–6959P).	The Honorable Melissa McKinlay, Mayor, Palm Beach County, 301 North Olive Avenue, Suite 1201, West Palm Beach, FL 33401.	Palm Beach County Building Department, 2300 North Jog Road, West Palm Beach, FL 33411.	*https://msc.fema.gov/portal/advanceSearch.*	May 4, 2018	120192
Polk	City of Lakeland, (17–04–7441P).	The Honorable William Mutz, Mayor, City of Lakeland, 228 South Massachusetts Avenue, Lakeland, FL 33801.	Public Works Department, 407 Fairway Avenue, Lakeland, FL 33801.	*https://msc.fema.gov/portal/advanceSearch.*	May 31, 2018	120267
Georgia:						
Floyd	City of Cave Spring, (17–04–3382P).	The Honorable Dennis Shoaf, Mayor, City of Cave Spring, 10 Georgia Avenue, Cave Spring, GA 30124.	City Hall, 10 Georgia Avenue, Cave Spring, GA 30124.	*https://msc.fema.gov/portal/advanceSearch.*	May 11, 2018	130080
Floyd	Unincorporated areas of Floyd County, (17–04–3382P).	The Honorable Rhonda Wallace, Chair, Floyd County Board of Commissioners, 12 East 4th Avenue, Rome, GA 30161.	Floyd County Building Inspections Department, 12 East 4th Avenue, Rome, GA 30161.	*https://msc.fema.gov/portal/advanceSearch.*	May 11, 2018	130079
Gwinnett	Unincorporated areas of Gwinnett County, (17–04–5175P).	The Honorable Charlotte E. Nash, Chair, Gwinnett County Board of Commissioners, 75 Langley Drive, Lawrenceville, GA 30046.	Gwinnett County Planning and Development Department, 446 West Crogan Street, Lawrenceville, GA 30046.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 19, 2018	130322
Gwinnett	Unincorporated areas of Gwinnett County, (17–04–7249P).	The Honorable Charlotte E. Nash, Chair, Gwinnett County Board of Commissioners, 75 Langley Drive, Lawrenceville, GA 30046.	Gwinnett County Planning and Development Department, 446 West Crogan Street Lawrenceville, GA 30046.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 22, 2018	130322
Kentucky: Fayette	Lexington-Fayette Urban County Government, (17–04–5322P).	The Honorable Jim Gray, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507.	Planning Division, 101 East Vine Street, Lexington, KY 40507.	*https://msc.fema.gov/portal/advanceSearch.*	May 16, 2018	210067
Louisiana: Tangipahoa.	Unincorporated areas of Tangipahoa Parish, (17–06–1567P).	The Honorable Robby Miller, President, Tangipahoa Parish, P.O. Box 215, Amite, LA 70422.	Tangipahoa Parish Department of Public Works, 44512 West Pleasant Ridge Road, Hammond, LA 70401.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 15, 2018	220206

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.
Maine:						
Knox	Town of Isle au Haut, (17–01–1368P).	The Honorable Peggi Stevens, Chair, Town of Isle au Haut Board of Selectmen, P.O. Box 71, Isle au Haut, ME 04645.	Town Hall, 1 Main Street, Isle au Haut, ME 04645.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 6, 2018	230227
Oxford	Town of Hartford, (18–01–0057P).	The Honorable Lee Holman, Chair, Town of Hartford Board of Selectmen, 1196 Main Street, Hartford, ME 04220.	Town Hall, 1196 Main Street, Hartford, ME 04220.	*https://msc.fema.gov/portal/advanceSearch.*	May 10, 2018	230334
Massachusetts: Plymouth.	Town of Wareham, (17–01–0909P).	Mr. Derek Sullivan, Administrator, Town of Wareham, 54 Marion Road, Wareham, MA 02571.	Town Hall, 54 Marion Road, Wareham, MA 02571.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 23, 2018	255223
Montana:						
Big Horn	Unincorporated areas of Big Horn County, (17–08–0336P).	The Honorable Chad Fenner, Chairman, Big Horn County Board of Commissioners, P.O. Box 908, Hardin, MT 59034.	Big Horn County Health Department, 809 North Custer Avenue, Hardin, MT 59034.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 1, 2018	300143
Ravalli	Unincorporated areas of Ravalli County, (17–08–0795P).	The Honorable Greg Chilcott, Chairman, Ravalli County Board of Commissioners, 215 South 4th Street, Suite A, Hamilton, MT 59840.	Ravalli County Planning Department, 215 S 4th Street, Suite F, Hamilton, MT 59840.	*https://msc.fema.gov/portal/advanceSearch.*	May 14, 2018	300061
North Carolina:						
Mecklenburg	Town of Huntersville, (17–04–6263P).	The Honorable John Aneralla, Mayor, Town of Huntersville, P.O. Box 664, Huntersville, NC 28070.	Planning Department, 105 Gilead Road, 3rd Floor, Huntersville, NC 28078.	*https://msc.fema.gov/portal/advanceSearch.*	May 4, 2018	370478
Mecklenburg	Town of Huntersville, (17–04–6264P).	The Honorable John Aneralla, Mayor, Town of Huntersville, P.O. Box 664, Huntersville, NC 28070.	Planning Department, 105 Gilead Road, 3rd Floor, Huntersville, NC 28078.	*https://msc.fema.gov/portal/advanceSearch.*	May 18, 2018	370478
Rhode Island: Providence	City of Providence, (17–01–1322P).	The Honorable Jorge O. Elorza, Mayor, City of Providence, 25 Dorrance Street, Providence, RI 02903.	Department of Inspection and Standards, 444 Westminster Street, Providence, RI 02903.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 16, 2018	445406
Tennessee:						
Wilson	City of Lebanon, (17–04–4038P).	The Honorable Bernie Ash, Mayor, City of Lebanon, 200 North Castle Heights Avenue, Suite 100, Lebanon, TN 37087.	Engineering Department, 200 North Castle Heights Avenue, Suite 300, Lebanon, TN 37087.	*https://msc.fema.gov/portal/advanceSearch.*	May 4, 2018	470208
Wilson	Unincorporated areas of Wilson County, (17–04–4038P).	The Honorable Randall Hutto, Mayor, Wilson County, 228 East Main Street Lebanon, TN 37087.	Wilson County Planning Department, 228 East Main Street Lebanon, TN 37087.	*https://msc.fema.gov/portal/advanceSearch.*	May 4, 2018	470207
Texas:						
Collin	City of Anna, (17–06–1736P).	The Honorable Nate Pike, Mayor, City of Anna, P.O. Box 776, Anna, TX 75409.	City Hall, 120 West 4th Street, Anna, TX 75409.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 16, 2018	480132
Collin	City of Murphy, (17–06–1778P).	Mr. Mike Castro, Ph.D., Manager, City of Murphy, 206 North Murphy Road, Murphy, TX 75094.	City Hall, 206 North Murphy Road, Murphy, TX 75094.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 6, 2018	480137
Collin	Unincorporated areas of Collin County, (17–06–1736P).	The Honorable Keith Self, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 16, 2018	480130
Dallas	City of Dallas, (17–06–2978P).	The Honorable Michael S. Rawlings, Mayor, City of Dallas, 1500 Marilla Street, Suite 5EN, Dallas, TX 75201.	Engineering Department, 320 East Jefferson Boulevard, Room 200, Dallas, TX 75203.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 26, 2018	480171

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.
Denton	City of Carrollton, (17–06–2506P).	The Honorable Kevin Falconer, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, TX 75011.	City Hall, 1945 East Jackson Street, Carrollton, TX 75006.	*https://msc.fema.gov/portal/advanceSearch.*	May 10, 2018	480167
Denton	City of The Colony, (17–06–2506P).	The Honorable Joe McCourry, Mayor, City of The Colony, 6800 Main Street, The Colony, TX 75056.	City Hall, 6800 Main Street, The Colony, TX 75056.	*https://msc.fema.gov/portal/advanceSearch.*	May 10, 2018	481581
Harris and Montgomery.	City of Houston, (17–06–2680P).	The Honorable Sylvester Turner, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Department of Public Works and Engineering, 1002 Washington Avenue, 3rd Floor, Houston, TX 77002.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 9, 2018	480296
Montgomery	City of Conroe, (17–06–2100P).	The Honorable Toby Powell, Mayor, City of Conroe, 300 West Davis Street, Conroe, TX 77301.	Engineering Department, 300 West Davis Street, Conroe, TX 77301.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 9, 2018	480484
Montgomery	City of Panorama Village, (17–06–2100P).	The Honorable Lynn Scott, Mayor, City of Panorama Village, 99 Hiwon Drive, Panorama Village, TX 77304.	City Hall, 99 Hiwon Drive, Panorama Village, TX 77304.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 9, 2018	481263
Montgomery	Unincorporated areas of Montgomery County, (17–06–2680P).	The Honorable Craig B. Doyal, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301.	Montgomery County, Permit Department, 501 North Thompson Street, Suite 100, Conroe, TX 77301.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 9, 2018	480483
Rockwall	City of Rockwall, (17–06–3552P).	The Honorable Jim Pruitt, Mayor, City of Rockwall, 385 South Goliad Street, Rockwall, TX 75087.	Public Works Department, 385 South Goliad Street, Rockwall, TX 75087.	*https://msc.fema.gov/portal/advanceSearch.*	May 14, 2018	480547
Smith	City of Tyler, (17–06–1762P).	The Honorable Martin Heines, Mayor, City of Tyler, P.O. Box 2039, Tyler, TX 75710.	Development Services Department, 423 West Ferguson Street, Tyler, TX 75702.	*https://msc.fema.gov/portal/advanceSearch.*	May 10, 2018	480571
Tarrant	City of Fort Worth, (17–06–2261P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	May 17, 2018	480596
Tarrant	City of Fort Worth, (17–06–4076P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	May 24, 2018	480596
Tarrant	City of Fort Worth, (17–06–4079P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	May 24, 2018	480596
Tarrant	City of Haltom City, (17–06–4081P).	The Honorable David Averitt, Mayor, City of Haltom City, 5024 Broadway Avenue, Haltom City, TX 76117.	Public Works Services Department, 4200 Hollis Street, Haltom City, TX 76111.	*https://msc.fema.gov/portal/advanceSearch.*	May 14, 2018	480599
Utah: Washington	City of St. George, (17–08–0793P).	The Honorable Jon Pike, Mayor, City of St. George, 175 East 200 North, St. George, UT 84770.	City Hall, 175 East 200 North, St. George, UT 84770.	*https://msc.fema.gov/portal/advanceSearch.*	May 25, 2018	490177
Virginia: Stafford	Unincorporated areas of Stafford County, (17–03–2308P).	Mr. Thomas C. Foley, Stafford County Administrator, P.O. Box 339, Stafford, VA 22555.	Stafford County Department of Planning and Zoning, 1300 Courthouse Road, Stafford, VA 22554.	*https://msc.fema.gov/portal/advanceSearch.*	May 31, 2018	510154

[FR Doc. 2018–05180 Filed 3–13–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0022; OMB No. 1660–0004]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Application for Participation in the National Flood Insurance Program (NFIP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a reinstatement, without change, of a previously approved information collection for which approval has expired. 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 April 13, 2018.

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, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Adrienne L. Sheldon, Supervisory Emergency Management Specialist, Floodplain Management Division, (202) 212–3966.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), codified at 42 U.S.C 4001, *et seq.,* requires all flood prone communities throughout the country to apply for participation in the NFIP one year after their flood prone status is identified or submit to the prohibition of certain types of federal and federally-related financial assistance for use in their floodplains. Title 44 Code of Federal Regulations (CFR) section 59.2 authorizes previously unavailable flood insurance protection to property owners in flood-prone areas, and 44 CFR 59.22 identifies the information that communities are required to submit to FEMA for application into the NFIP. 44 CFR 59.22 and 59.24 identify the information a community is required to submit to FEMA for continued participation in the program.

This proposed information collection previously published in the **Federal Register** on December 13, 2017 at 82 FR 58631 with a 60 day public comment period. No comments were received. This information collection expired on September 30, 2017. FEMA is requesting a reinstatement, without change, of a previously approved information collection for which approval has expired. 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: Application for Participation in the National Flood Insurance Program (NFIP).

Type of information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

OMB Number: 1660–0004.

Form Titles and Numbers: FEMA Form 086–0–30, Application for Participation in the National Flood Insurance Program.

Abstract: The National Flood Insurance Program (NFIP) provides flood insurance to the communities that apply for participation and make a commitment to protect against future flood damages. The application form and supporting documentation will enable FEMA to continue to rapidly process new community applications and to thereby more quickly provide flood insurance protection to the residents in communities.

To qualify for the NFIP, a participating community must adopt certain minimum standards in accordance with FEMA's regulations at 44 CFR 60.3, 60.4, and 60.5. In order to verify whether communities maintain such standards, the NFIP requires participating communities to retain documentation on development taking place in the flood hazard areas within the community. 44 CFR 59.22. Such information will be made available to FEMA upon request. This information assists FEMA in evaluating the effectiveness of a community's floodplain management program and participating property owners' eligibility for flood insurance.

This reinstatement does not propose any change in the information solicited from respondents through this information collection; however, the number of burden hours has been updated to reflect changing number of respondents and responses received through this collection over time. These changes have occurred naturally, and do not result from specific action taken by FEMA.

The ''Application for Participation in the NFIP'' and the ''NFIP and the Community Development Permit Process'' are separate actions documented under the same collection.

Affected Public: State, local or Tribal government.

Estimated Number of Respondents: 22,367.

Estimated Number of Responses: 97,724.

Estimated Total Annual Burden Hours: 244,418.

Estimated Total Annual Respondent Cost: $20,946,623.

Estimated Respondents' Operation and Maintenance Costs: N/A.

Estimated Respondents' Capital and Start-Up Costs: N/A.

Estimated Total Annual Cost to the Federal Government: $ 83,041.

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.

Dated: March 7, 2018.

William H. Holzerland,

Senior Director for Information Management, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2018–05178 Filed 3–13–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a 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 Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of August 2, 2018 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

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 Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes 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.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: March 8, 2018.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Gladwin County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1610	
City of Beaverton	124 West Brown Street, Beaverton, MI 48612.
City of Gladwin	1000 West Cedar Avenue, Gladwin, MI 48624.
Township of Beaverton	4496 Dale Road, Beaverton, MI 48612.
Township of Billings	1050 Estey Road, Beaverton, MI 48612.
Township of Bourret	2749 School Road, Alger, MI 48610.
Township of Buckeye	1498 South Hockaday Road, Beaverton, MI 48624.
Township of Butman	5005 North Hockaday Road, Gladwin, MI 48624.
Township of Clement	1497 E M–30, Alger, MI 48610.
Township of Gladwin	2001 Wagarville Road, Gladwin, MI 48624.
Township of Grout	1490 South Grout Road, Gladwin, MI 48624.
Township of Hay	1220 East Highwood Road, Beaverton, MI 48612.
Township of Sage	1831 North Pratt Lake Road, Gladwin, MI 48624.
Township of Secord	1507 Secord Dam Road, Gladwin, MI 48624.
Township of Sherman	4013 Oberlin Road, Gladwin, MI 48624.
Township of Tobacco	1826 Dale Road, Beaverton, MI 48612.

[FR Doc. 2018–05187 Filed 3–13–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a 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 Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of July 5, 2018 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

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 Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes 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.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: February 23, 2018.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Adams County, Illinois and Incorporated Areas Docket No.: FEMA–B–1664	
Unincorporated Areas of Adams County	Adams County Highway Department, 101 North 54th Street, Quincy, IL 62305.
Adams County, Nebraska and Incorporated Areas Docket No.: FEMA–B–1710	
City of Hastings	220 North Hastings Avenue, Hastings, NE 68901.
Unincorporated Areas of Adams County	415 North Adams Central Avenue, Juniata, NE 68955.
Village of Ayr	4075 West Lincoln Street, Ayr, NE 68925.
Village of Holstein	9710 South Main Avenue, Holstein, NE 68950.
Village of Juniata	911 North Juniata Avenue, Juniata, NE 68955.
Village of Kenesaw	109 North Smith Avenue, Kenesaw, NE 68956.
Village of Roseland	9230 South Lincoln Avenue, Roseland, NE 68973.
Village of Trumbull	131 Main Street, Trumbull, NE 68980.
Clay County, Nebraska and Incorporated Areas Docket No.: FEMA–B–1710	
City of Clay Center	City Office, 219 West Fairfield Street, Clay Center, NE 68933.
City of Edgar	City Office, 508 3rd Street, Edgar, NE 68935.
City of Fairfield	City Office, 302 D Street, Fairfield, NE 68938.
City of Sutton	City Office, 107 West Grove Street, Sutton, NE 68979.
Unincorporated Areas of Clay County	Clay County Courthouse, 111 West Fairfield Street, Clay Center, NE 68933.
Village of Deweese	Village Office, 101 Lena Street, Deweese, NE 68934.
Village of Trumbull	Village Office, 131 Main Street, Trumbull, NE 68980.

[FR Doc. 2018–05189 Filed 3–13–18; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Screening Partnership Program (SPP)

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0064, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves an application completed by airports to initiate a request to participate in TSA's Screening Partnership Program.

DATES: Send your comments by April 13, 2018. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on December 13, 2017, 82 FR 58650.

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

Title: Screening Partnership Program Application.

Type of Request: Renewal.

OMB Control Number: 1652–0064.

Form(s): TSA Form 424 Screening Partnership Program Application.

Affected Public: Airport Operators.

Abstract: Under 49 U.S.C. 44920, an airport may submit an application to TSA to have the screening of passengers and property required by 49 U.S.C. 44901 conducted by non-Federal personnel. TSA must approve the application if the approval ''would not compromise security or detrimentally affect the cost-efficiency or the effectiveness of the screening of passengers or property at the airport.'' TSA implements this requirement through the Screening Partnership Program (SPP). Participation in the SPP is initiated with the application covered by this information collection.

Number of Respondents: 2.

Estimated Annual Burden Hours: An estimated 0.50 hours annually.

Dated: March 7, 2018.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2018–05090 Filed 3–13–18; 8:45 am]
BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2009–0024]

Enforcement Actions Summary

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of availability.

SUMMARY: The Transportation Security Administration (TSA) is providing notice that it has issued an annual summary of all enforcement actions taken by TSA under the authority granted in the Implementing Recommendations of the 9/11 Commission Act of 2007.

FOR FURTHER INFORMATION CONTACT: Nikki Harding, Assistant Chief Counsel, Civil Enforcement, Office of the Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6002; telephone (571) 227–4777; facsimile (571) 227–1378; email *nikki.harding@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2007, section 1302(a) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (the 9/11 Act), Public Law 110–53, 121 Stat. 392, gave TSA new authority to assess civil penalties for violations of any surface transportation requirements under title 49 of the U.S. Code (U.S.C.) and for any violations of chapter 701 of title 46 of the U.S.C., which governs transportation worker identification credentials (TWICs).

Section 1302(a) of the 9/11 Act, codified at 49 U.S.C. 114(v), authorizes the Secretary of the Department of Homeland Security (DHS) to impose civil penalties of up to $10,000 per violation of any surface transportation requirement under 49 U.S.C. or any requirement related to TWICs under 46 U.S.C. chapter 701. TSA exercises this function under delegated authority from the Secretary. *See* DHS Delegation No. 7060–2.

Under 49 U.S.C. 114(v)(7)(A), TSA is required to provide the public with an annual summary of all enforcement actions taken by TSA under this subsection; and include in each such summary the identifying information of each enforcement action, the type of alleged violation, the penalty or penalties proposed, and the final assessment amount of each penalty. This summary is for calendar year 2017. TSA will publish a summary of all

enforcement actions taken under the statute in the beginning of the new calendar year to cover the previous calendar year.

Document Availability

You can get an electronic copy of both this notice and the enforcement actions summary on the internet by—

(1) Searching the electronic Federal Docket Management System (FDMS) web page at *http://www.regulations.gov,* Docket No. TSA–2009–0024; or

(2) Accessing the Government Printing Office's web page at *http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR* to view the daily published **Federal Register** edition; or accessing the ''Search the **Federal Register** by Citation'' in the ''Related Resources'' column on the left, if you need to do a Simple or Advanced search for information, such as a type of document that crosses multiple agencies or dates.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this action.

Dated: March 8, 2018.

Kelly D. Wheaton,

Deputy Chief Counsel, Enforcement and Incident Management.

March 8, 2018

Annual Summary of Enforcement Actions Taken Under 49 U.S.C. 114(v)

Annual Report

Pursuant to 49 U.S.C. 114(v)(7)(A), TSA provides the following summary of enforcement actions taken by TSA in calendar year 2017 under section 114(v).[1]

Background

Section 114(v) of 49 U.S.C. gave the Transportation Security Administration (TSA) new authority to assess civil penalties for violations of any surface transportation requirements under 49 U.S.C. and for any violations of chapter 701 of 46 U.S.C., which governs TWICs. Specifically, section 114(v) authorizes the Secretary of the Department of Homeland Security (DHS) to impose civil penalties of up to $10,000 per violation [2] for violations of any surface transportation requirement under 49 U.S.C. or any requirement related to TWIC under 46 U.S.C. chapter 701.[3]

ENFORCEMENT ACTIONS TAKEN BY TSA IN CALENDAR YEAR 2017

TSA case No.	Type of violation	Penalty proposed/assessed
2016BTR0005	TWIC Access Control (49 CFR 1570.7(d))	$1,000/None (Warning Notice).
2016HOU0435	TWIC Fraudulent Use (49 CFR 1570.7(b))	$1,000/$1,000.
2016MSY0093	TWIC Access Control (49 CFR 1570.7(d))	$1,000/None (Warning Notice).
2016OAK0128	TWIC Access Control (49 CFR 1570.7(d))	$4,000/Pending.
2016OAK0152	TWIC Access Control (49 CFR 1570.7(d))	$2,000/Pending.
2016SEA0520	TWIC Fraudulent Use (49 CFR 1570.7 (a) and (c))	$1,000/$1,000.
2017BOS0260	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017BOS0362	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017BOS0377	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017BWI0179	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017CLE0252	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017CLT0431	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017EWR0041	TWIC Access Control (49 CFR 1570.7(c) and (d))	None (Warning Notice).
2017EWR0067	TWIC Access Control (49 CFR 1570.7(c) and (d))	None (Warning Notice).
2017HOU0171	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017HOU0190	TWIC Fraudulent Use (49 CFR 1570.7(b) and (c))	$1500/$500.
2017HOU0243	TWIC Fraudulent Use (49 CFR 1570.7(b) and (c))	$1,000/Pending.
2017HOU0325	TWIC Fraudulent Use (49 CFR 1570.7(a) and (c))	None (Warning Notice).
2017HOU0326	TWIC Access Control (49 CFR 1570.7 (d))	None (Warning Notice).
2017HOU0327	TWIC Access Control (49 CFR 1570.7 (d))	None (Warning Notice).
2017HOU0390	TWIC Fraudulent Use (49 CFR 1570.5(b), 1570.7(c))	$2,000/Pending.
2017HOU0392	TWIC Fraudulent Use (49 CFR 1570.7(a))	$2,000/Pending.
2017HOU0393	TWIC Access Control (49 CFR 1570.7(d))	$3,000/Pending.
2017HOU0433	TWIC Access Control (49 CFR 1570.7(c) and (d))	$1,000/Pending.
2017JAX0057	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0058	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0059	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0100	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0101	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0134	TWIC Access Control (49 CFR 1570.7(d))	None (Warning Notice).
2017JAX0135	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0138	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0215	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0220	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0231	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0232	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0261	TWIC Access Control (49 CFR 1570.7(c) and (d))	None (Warning Notice).
2017JAX0262	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0266	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0279	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).

[1] 49 U.S.C. 114(v)(7)(A) states: In general. Not later than December 31, 2008, and annually thereafter, the Secretary shall—(i) provide an annual summary to the public of all enforcement actions taken by the Secretary under this subsection; and (ii) include in each such summary the docket number of each enforcement action, the type of alleged violation, the penalty or penalties proposed, and the final assessment amount of each penalty.

[2] Pursuant to title VII, sec. 701 of Public Law 114–74 (129 Stat. 583, 599; Nov. 2, 2015), the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015–part of the Bipartisan Budget Act of 2015, this $10,000 civil penalty maximum is adjusted for inflation annually. *See* 49 CFR 1503.401(b).

[3] TSA exercises this function under delegated authority from the Secretary. *See* DHS Delegation No. 7060–2.

ENFORCEMENT ACTIONS TAKEN BY TSA IN CALENDAR YEAR 2017—Continued

TSA case No.	Type of violation	Penalty proposed/assessed
2017JAX0290	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0291	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0293	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0294	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0315	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0316	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0317	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JAX0352	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JFK0043	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JFK0048	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JFK0060	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JFK0070	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JFK0097	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JFK0124	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JFK0125	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JFK0229	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JFK0230	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JFK0231	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JFK0232	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JFK0275	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017JFK0303	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017MDW0083	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017MIA0149	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017MIA0329	TWIC Fraudulent Use (49 CFR 1570.7(a) and (c))	None (Warning Notice).
2017MIA0674	TWIC Fraudulent Use (49 CFR 1570.7(a) and (c))	None (Warning Notice).
2017MSY0170	TWIC Access Control (49 CFR 1570.7(c) and (d))	None (Warning Notice).
2017MSY0171	TWIC Fraudulent Use (49 CFR 1570.7 (a) and (c))	None (Warning Notice).
2017MSY0184	TWIC Access Control (49 CFR 1570.7(c))	$1,000/Pending.
2017MSY0247	TWIC Inspection of Credential (49 CFR 1570.9(a)	None (Warning Notice).
2017MSY0261	TWIC Access Control (49 CFR 1570.7 (d))	$1,000/Pending.
2017MSY0262	TWIC Access Control (49 CFR 1570.7(c))	$1,000/Pending.
2017MSY0263	TWIC Access Control (49 CFR 1570.7(c))	$1,000/Pending.
2017OAK0168	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017OAK0185	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017OAK0201	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017OAK0216	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017OAK0240	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017OAK0316	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017OAK0359	TWIC Fraudulent Use (49 CFR 1570.7(a) and (c))	$6,000/Pending.
2017PDX0621	TWIC Access Control (49 CFR 1570.7(d))	None (Warning Notice).
2017PDX0668	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017PDX0669	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017PDX0723	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017PHL0022	TWIC Access Control (49 CFR 1570.7(c))	$1,000/Pending.
2017PHL0023	TWIC Fraudulent Use (49 CFR 1570.7 (a) and (c))	$1,500/Pending.
2017PHL0131	TWIC Access Control (49 CFR 1570.7(c))	$1,500/Pending.
2017PHL0132	TWIC Access Control (49 CFR 1570.7(c) and (d))	$3,000/Pending.
2017PHL0133	TWIC Access Control (49 CFR 1570.7(c))	$1,000/Pending.
2017PHL0136	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017PHL0140	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017PHL0141	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017PHL0142	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017PHL0154	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017PHL0166	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017RIC0004	TWIC Fraudulent Use (49 CFR1570.5(b) and 1570.7(c))	$3000/$1,500.
2017RIC0006	TWIC Access Control (49 CFR 1570.7(d))	$1,000/$100.
2017RIC0035	TWIC Access Control (49 CFR 1570.7(c) and (d))	$3,000/$1,500.
2017RIC0036	TWIC Access Control (49 CFR 1570.7(c))	$1000/$1,000.
2017RIC0040	TWIC Access Control (49 CFR 1570.7(c))	$1,000/$50.
2017RIC0041	TWIC Access Control (49 CFR 1570.7(c) and (d))	$2000/$50.
2017RIC0042	TWIC Access Control (49 CFR 1570.7(c))	$3,000/$50.
2017RIC0048	TWIC Access Control (49 CFR 1570.7(c) and (d))	None (Warning Notice).
2017RIC0049	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017RIC0053	TWIC Access Control (49 CFR 1570.7(c))	$1,000/$1,000.
2017RIC0059	TWIC Access Control (49 CFR 1570.7(c))	$1,000/$1,000.
2017RIC0060	TWIC Access Control (49 CFR 1570.7(c))	$3,000/$2,000.
2017RIC0061	TWIC Access Control (49 CFR 1570.7(c))	$500/$500.
2017RIC0087	TWIC Access Control (49 CFR 1570.7(c))	$1,000/Pending.
2017RIC0088	TWIC Access Control (49 CFR 1570.7(c) and (d))	$2,000/$500.
2017RIC0093	TWIC Access Control (49 CFR 1570.7(c))	$1,000/$500.
2017RIC0099	TWIC Access Control (49 CFR 1570.7(c))	$1,000/$1,000.
2017RIC0100	TWIC Access Control (49 CFR 1570.7(c) and (d))	$1,000/$750.

ENFORCEMENT ACTIONS TAKEN BY TSA IN CALENDAR YEAR 2017—Continued

TSA case No.	Type of violation	Penalty proposed/assessed
2017RIC0116	TWIC Access Control (49 CFR 1570.7(c) and (d))	None (Warning Notice).
2017RIC0124	TWIC Access Control (49 CFR 1570.7(c))	$2,000/Pending.
2017RIC0128	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017RIC0129	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017RIC0130	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017RIC0146	TWIC Access Control (49 CFR 1570.7(c))	$2,000/Pending.
2017RIC0147	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017SAN0438	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017SAT0005	TWIC Fraudulent Use (49 CFR 1570.7(b))	$6,000/$1,500.
2017SAT0041	TWIC Access Control (49 CFR 1570.7(c))	$1,000/None (Warning Notice).
2017SAT0156	TWIC Access Control (49 CFR 1570.7(c) and (d))	$1,000/$1,000.
2017SAT0199	TWIC Access Control (49 CFR 1570.7(c))	$1,000/None (Warning Notice).
2017SAT0281	TWIC Access Control (49 CFR 1570.7(c))	$1,000/$1,000.
2017SEA0150	TWIC Fraudulent Use (49 CFR 1570.7(a))	$500/$500.
2017SEA0151	TWIC Fraudulent Use (49 CFR 1570.5(b) and 1570.7(a))	$2,000/$2,000.
2017SEA0320	TWIC Access Control (49 CFR 1570.7(d))	$500/$500.
2017SEA0321	TWIC Fraudulent Use (49 CFR 1570.7(a))	$500/$500.
2017SEA0322	TWIC Access Control (49 CFR 1570.7(c) and (d))	$500/$500.
2017SEA0175	TWIC Access Control (49 CFR 1570.7(c))	$1,000/$1,000.
2017SEA0183	TWIC Access Control (49 CFR 1570.7(c))	$1,500/$1,500.
2017SEA0323	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017SEA0324	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017SEA0343	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017SEA0449	TWIC Access Control (49 CFR 1570.7(c))	$2,000/Pending.
2017SEA0451	TWIC Access Control (49 CFR 1570.7(c))	$1,000/None (Warning Notice).
2017SEA0452	TWIC Fraudulent Use (49 CFR 1570.7(b))	$250/$250.
2017SEA0527	TWIC Inspection of Credential (49 CFR 1570.9 (a))	$500/Pending.
2017SEA0543	TWIC Access Control (49 CFR 1570.7(d))	None (Warning Notice).
2017SEA0542	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017SEA0660	TWIC Access Control (49 CFR 1570.7(c))	$1,250/$1,250.
2017SEA0667	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017SEA0668	TWIC Access Control (49 CFR 1570.7(d))	$500/Pending.
2017SEA0860	TWIC Access Control (49 CFR 1570.7(c))	$1,250/Pending.
2017SEA0946	TWIC Access Control (49 CFR 1570.7(c))	$2,500 Pending.
2017SEA1013	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017SMF0090	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2017SMF0141	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018BOS0003	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018BOS0004	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018BOS0059	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018HOU0015	TWIC Access Control (49 CFR 1570.7(c) and (d))	$1,120/Pending.
2018HOU0016	TWIC Access Control (49 CFR 1570.7(c))	$1,120/Pending.
2018JAX0004	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018JAX0005	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018JAX0006	TWIC Fraudulent Use (49 CFR 1570.7(b))	None (Warning Notice).
2018JAX0008	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018JAX0013	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018JAX0022	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018JAX0023	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018JAX0026	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018LAX0054	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018LAX0055	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018LAX0057	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018MSY0001	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018MSY0002	TWIC Fraudulent Use (49 CFR 1570.7(a))	None (Warning Notice).
2018OAK0006	TWIC Fraudulent Use (49 CFR 1570.7(a))	None (Warning Notice).
2018OAK0007	TWIC Access Control (49 CFR 1570.7(d))	None (Warning Notice).
2018OAK0020	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018OAK0024	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018OAK0025	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018OAK0028	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018OAK0027	TWIC Access Control (49 CFR 1570.7(c))	None (Warning Notice).
2018RIC0004	TWIC Access Control (49 CFR 1570.7(c) and (d))	$2,240/Pending.
2018RIC0005	TWIC Access Control (49 CFR 1570.7(c) and (d))	$2,240/Pending.
2018RIC0006	TWIC Access Control (49 CFR 1570.7(c))	$1,120/Pending.
2018SEA0010	TWIC Fraudulent Use (49 CFR 1570.7(a))	None (Warning Notice).
2018SEA0023	TWIC Access Control (49 CFR 1570.7(c))	$1,000/Pending.
2018SEA0029	TWIC Fraudulent Use (49 CFR 1570.7(a) and (d))	$4,000/Pending.

[FR Doc. 2018–05089 Filed 3–13–18; 8:45 am]
BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Law Enforcement Officer (LEO) Reimbursement Request

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 1652–0063, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the reimbursement of expenses incurred by airport operators for the provision of law enforcement officers to support airport checkpoint screening.

DATES: Send your comments by May 14, 2018.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), 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 1652–0063; Law Enforcement Officer (LEO) Reimbursement Request. Pursuant to 49 U.S.C. 114(m), and secs. 106(l) and (m), TSA has authority to enter into agreements with participants to reimburse expenses incurred by airport operators for the provision of LEOs in support of screening at airport checkpoints. Consistent with this authority, TSA created the LEO Reimbursement Program, which is run by the Office of Law Enforcement/Federal Air Marshal Service (OLE/FAMS).

TSA OLE/FAMS requires that participants in the LEO Reimbursement Program record the details of all reimbursements sought. In order to provide for the orderly tracking of reimbursements, the LEO Reimbursement Program uses TSA Form 3503, LEO Reimbursement Request, which captures and tracks reimbursement information.

The LEO Reimbursement Request form is available at *www.tsa.gov.* Upon completion, participants submit the LEO Reimbursement Request form directly to the OLE/FAMS LEO Reimbursement Program via fax, electronic upload (via scanning the document), mail, or in person. The OLE/FAMS LEO Reimbursement Program reviews all request for reimbursement forms received. Based on the prior year participation, TSA estimates that there will be 294 participant responses monthly or 3,528 yearly, which is a decrease from the 2015 submission of 326 monthly participants.

TSA estimates each respondent will spend approximately one hour to complete the request for reimbursement form, for a total annual hour burden of 3,528 hours.

Dated: March 7, 2018.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2018–05091 Filed 3–13–18; 8:45 am]
BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7009–N–04]

A75–HUD Central Accounting and Program System (HUDCAPS) Privacy Act of 1974; System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of a modified system of records.

SUMMARY: A75 HUDCAPS is an Office of the Chief Financial Officer (OCFO) system that serves as a sub-ledger financial system for HUD. As of October 1, 2015, HUDCAPS is no longer HUD's core financial system/system of record due to the implementation of New Core Project Phase 1 Release 3. HUDCAPS is now a sub-ledger financial system for HUD and the Department of Treasury, Administrative Resource Center (ARC) Oracle Federal Financials serves as HUD's system of record and core financial system.

DATES: April 13, 2018.

ADDRESSES: You may submit comments, identified by docket number and title, by one of the following methods:

Email: privacy@hud.gov.

Mail: John Bravacos, Senior Agency Official for Privacy, Privacy Office, Department of Housing and Urban Development, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: The Privacy Office, 451 Seventh Street SW, Room 10139, Washington, DC 20410, telephone number 202–708–3054. Individuals who are hearing- or speech-impaired may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: This notice of revision of the System of Records Notice for A75 HUDCAPS reflects the change of HUDCAPS from a core financial system to a sub-ledger financial system for HUD. The Department of Treasury, Administrative Resource Center (ARC) Oracle Federal Financials now serves as HUD's system of record and core financial system.

The following transactions remain in HUDCAPS:

- Public and Indian Housing (PIH) Section 8 programmatic transaction,

including payments of PIH Section 8 programmatic invoices.

• Program Accounting System (PAS) will continue to transmit current transactional activity to HUDCAPS for posting to the HUDCAPS sub ledger, which is transmitted through NCIS to the Oracle Federal Financials G/L.

• HUD legacy subsidiary systems such as Line of Credit Control System (LOCCS), Northridge Loan System (NLS), Program Accounting System (PAS), and others continue to support program fund transactions related to grant and loan activities and continue to interface nightly with HUDCAPS.

The following routine uses have been removed from the HUDCAPS SORN completed in 2014 because HUDCAPS is no longer HUD's core financial system/system of record. HUDCAPS is now a sub-ledger financial system for HUD, and the Department of Treasury, Administrative Resource Center (ARC) Oracle Federal Financials serves as HUD's system of record and core financial system.

• The Internal Revenue Service (IRS)—for reporting payments for goods and services and for reporting of discharge indebtedness;

• The General Service Administration's Federal Procurement Data System, a central repository for statistical information on Government contracting, for purposes of providing public access to Government-wide data about agency contract actions;

• The consumer reporting agencies: Disclosure pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from the system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3)). The disclosure is limited to information necessary to establish the identity of the individual, including name, social security number, and address; the amount, status, and history of the claim, and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a credit report.

SYSTEM NAME AND NUMBER

HUD Central Accounting and Program System (HUDCAPS, A75).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

HUD Headquarters, 451 7th Street SW, Washington, DC 20410 and NCCIPS, Stennis Space Center, MS 29529. The backup data center is at Mid-Atlantic Data Center in Clarksville, VA 23927.

SYSTEM MANAGER(S):

Assistant Chief Financial Officer for Systems, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street SW, Room 3100, Washington, DC 20410.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 113 of the Budget and Accounting Act of 1950, 31 U.S.C. 66a. (Pub. L. 81–784); The Chief Financial Officers Act of 1990; Executive Order 9397, as amended by Executive Order 13478; The Housing and Community Development Act of 1987, 42 U.S.C. 3543.

PURPOSE(S) OF THE SYSTEM:

A75 HUDCAPS is an Office of the Chief Financial Officer (OCFO) system that serves as a sub-ledger financial system for HUD. The sub-ledger contains Public and Indian Housing (PIH) Section 8 programmatic transaction, including payments of PIH Section 8 programmatic invoices, and HUD legacy subsidiary systems such as LOCCS, NLS, PAS, and others, which will continue to support program fund transactions related to grant and loan activities and continue to interface nightly with HUDCAPS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Grant, subsidy, project, and loan recipients; HUD personnel; vendors; brokers; bidders; managers; individuals within Disaster Assistance Programs: builders, developers, contractors, and appraisers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the following employee/vendor information: Vendor/employee name, Vendor Number (EIN—Employer Identification Number, SSN—Social Security Number, and/or TIN—Tax Identification Number), address, Data Universal Numbering System (DUNS), Banking Account/Routing numbers, and financial data.

Note: Vendor and social security numbers are no longer being entered in HUDCAPS, with the exception of programs handled by the PIH Financial Management Center (FMC).

For historical purposes, HUDCAPS stores vendor records for previous travel records, which includes social security numbers, bank account numbers, and routing numbers.

RECORD SOURCE CATEGORIES:

These records contain information obtained from the individual who is the subject of the records, HUD personnel, financial institutions, private corporations or business partners, and Federal agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. To the U.S. Treasury—for transactions such as disbursements of funds and related adjustments;

2. To other Federal Agencies—for the purpose of debt collection to comply with statutory reporting requirements;

3. To HUD contractors when necessary to perform a function or service related to this system of records. Such recipients are required to comply with the Privacy Act of 1974, as amended U.S.C. 552a.

In addition to the routine uses described above and the disclosures generally permitted under 5 U.S.C. § 552a(b) of the Privacy Act, additional discretionary disclosures that may be applicable to this system of records notice can be found in the Department's Privacy website under Appendix 1: HUD's Routine use Inventory Notice, 80 FR 81837 (December 31, 2015).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic files are stored on electronic media. There are no paper records that are maintained for this system.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, social security number, schedule number, receipt number, voucher number, and contract number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Retention and disposal is in accordance with Records Disposition Schedule 21, HUD Handbook 2225.6. Records are destroyed or deleted when no longer necessary for agency business in accord with applicable federal standards or in no less than seven years after last action in accord with limitations on civil actions by or against the U.S. Government (28 U.S.C. 2401 and 2415). Data records are purged or deleted from the system when eligible to be destroyed using one of the methods described by the NIST SP 800–88 Rev 1 ''Guidelines for Media Sanitization'' (December 17, 2014).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All HUD employees have undergone background investigations. HUD buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures. Access is restricted to authorized personnel or contractors whose responsibilities require access. System users must take the mandatory security

awareness training annually as mandated by the Federal Information Security Management Act (FISMA). Users must also sign a Rules of Behavior form certifying that they agree to comply with the requirements before they are granted access to the system.

RECORD ACCESS PROCEDURES:

For information, assistance, or inquiry about records, contact John Bravacos, Senior Agency Official for Privacy, 451 Seventh Street SW, Room 10139, Washington, DC 20410, telephone number (202) 708–3054. When seeking records about yourself from this system of records or any other Housing and Urban Development (HUD) system of records, your request must conform with the Privacy Act regulations set forth in 24 CFR part 16. You must first verify your identity, meaning that you must provide your full name, address, and date and place of birth.

You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In addition, your request should:

a. Explain why you believe HUD would have information on you.

b. Identify which Office of HUD you believe has the records about you.

c. Specify when you believe the records would have been created.

d. Provide any other information that will help the Freedom of Information Act (FOIA), staff determine which HUD office may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying their agreement for you to access their records. Without the above information, the HUD FOIA Office may not conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with regulations.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting contents of records and appealing initial denials appear in 24 CFR part 16, Procedures for Inquiries. Additional assistance may be obtained by contacting John Bravacos, Senior Agency Official for Privacy, 451 Seventh Street SW, Room 10139, Washington, DC 20410, or the HUD Departmental Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410.

NOTIFICATION PROCEDURES:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to HUD's Privacy Office at the addresses provided above or the component's FOIA Officer, whose contact information can be found at *http://www.hud.gov/foia.*

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Docket No. FR–5763–N–03.

Dated: February 16, 2018.

John Bravacos,

Senior Agency Official for Privacy.

[FR Doc. 2018–05070 Filed 3–13–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–FAC–2018–N024; FF09F42300–FVWF97920900000–XXX]

Sport Fishing and Boating Partnership Council Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a public meeting of the Sport Fishing and Boating Partnership Council (Council). A Federal advisory committee, the Council was created in part to foster partnerships to enhance public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating in the United States. This meeting is open to the public, and anyone interested may make oral statements to the Council or file written statements for consideration.

DATES: The meeting will take place April 4, 2018, from 9 a.m. to 4:30 p.m. (Eastern Time) and April 5, 2018, from 9 a.m. to 4 p.m. For deadlines and directions on registering to attend the meeting, submitting written material, and/or giving an oral presentation, please see Public Input under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Department of the Interior, 1849 C Street NW, Room 5160, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Linda Friar, Designated Federal Officer, Sport Fishing and Boating Partnership Council, 5275 Leesburg Pike, Mailstop FAC, Falls Church, VA 22041; telephone (703) 358–2056; fax (703) 358–2487; or email *linda_friar@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Sport Fishing and Boating Partnership Council will hold a meeting April 4 and 5, 2018.

Background

The Council was formed in January 1993 under the provisions of 41 CFR 101–6.1007 to advise the Secretary of the Interior, through the Director of the U.S. Fish and Wildlife Service, on aquatic conservation endeavors that benefit recreational fishery resources and recreational boating and that encourage partnerships among industry, the public, and government. The Council represents the interests of the public and private sectors of the recreational fishing, boating, and conservation communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes, as ex officio members, the Service Director and the president of the Association of Fish and Wildlife Agencies. Other Council members are directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, Native American tribes, aquatic resource outreach and education organizations, and tourism. Additional background information on the Council is available at *http://www.fws.gov/sfbpc.*

Meeting Agenda

An abbreviated list of planned agenda items for the meeting includes:

- Review the Report to the Assistant Secretary for Fish and Wildlife and Parks, Subject: Response to Secretary's Order 3347—Conservation Stewardship and Outdoor Recreation which was prepared by the Assistant Secretaries for Fish and Wildlife and Parks and Land and Minerals Management; this report provides recommendations to enhance and expand recreational fishing access;
- Based on the report, develop consensus-based Council recommendations to enhance and expand recreational fishing access;
- Hear and discuss updates on several U.S. Fish and Wildlife Service programs and other Council business.

The final agenda will be posted on the internet at *http://www.fws.gov/sfbpc.*

PUBLIC INPUT

If you want to . . .	Then you must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than . . .
Attend the meeting	March 30, 2018.
Submit written information or questions before the meeting for the Council to consider during the meeting	March 30, 2018.
Give an oral presentation during the meeting	March 30, 2018.

Attendance

The Council meeting will be held at the Department of the Interior, 1849 C Street NW, Room 5160, Washington, DC 20240. Signs will be posted to direct attendees to the specific conference room. Individuals who plan to attend must bring a form of identification and pass through a security checkpoint.

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Council to consider during the meeting. Written statements must be received by the date listed above in Public Input, so that the information may be made available to the Council for their consideration prior to the meeting. Written statements must be supplied to the Council Coordinator in one of the following formats: One hard copy with original signature, or one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

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.

Giving an Oral Presentation

Individuals or groups who request to make an oral presentation during the meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to register and be placed on the public speaker list for the meeting. Registered speakers who wish to expand upon their oral statements, or those who had wanted to speak but could not be accommodated on the agenda, may submit written statements to the Council Coordinator up to 30 days after the meeting.

Meeting Minutes

The Council's Designated Federal Officer will maintain meeting minutes (see **FOR FURTHER INFORMATION CONTACT**). Minutes will be available for public inspection within 90 days after the meeting and will be posted on the Council's website at *http://www.fws.gov/sfbpc.*

Gregory J. Sheehan,

Principal Deputy Director.

[FR Doc. 2018–05199 Filed 3–13–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX18EE000101100]

Public Meeting of the National Geospatial Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the U.S. Geological Survey (USGS) is publishing this notice to announce that a Federal Advisory Committee meeting of the National Geospatial Advisory Committee (NGAC) will take place.

DATES: The meeting will be held on Tuesday, April 3, 2018 from 8:30 a.m. to 4:30 p.m., and on Wednesday, April 4, 2018 from 8:30 a.m. to 4:00 p.m. (Eastern Standard Time).

ADDRESSES: The meeting will be held at the Department of the Interior building, 1849 C Street NW, Washington, DC 20240 in the South Penthouse Conference Room. Send your comments to Group Federal Officer by email to *gs-faca-mail@usgs.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Mahoney, Federal Geographic Data Committee (FGDC), U.S. Geological Survey (USGS), 909 First Avenue, Suite 800, Seattle, WA 98104; by email at *jmahoney@usgs.gov;* or by telephone at (206) 220–4621.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552B, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The National Geospatial Advisory Committee (NGAC) provides advice and recommendations related to management of Federal and national geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of Office of Management and Budget Circular A–16. The NGAC reviews and comments on geospatial policy and management issues and provides a forum to convey views representative of non-federal stakeholders in the geospatial community. The NGAC meeting is one of the primary ways that the FGDC collaborates with its broad network of partners. Additional information about the NGAC meeting is available at: *www.fgdc.gov/ngac.*

Agenda Topics:

—FGDC Update
—Landsat Advisory Group
—Geospatial Data as Services
—Cultural and Historical Geospatial Resources
—Geospatial Platform
—NSDI Strategic Plan Framework

Meeting Accessibility/Special Accommodations: The meeting is open to the public from 8:30 a.m. to 5:00 p.m. on April 3 and from 8:30 a.m. to 4:00 p.m. on April 4. Members of the public wishing to attend the meeting and receive webinar and call-in information should contact Ms. Lucia Foulkes by email at *lfoulkes@usgs.gov* to register no later than five (5) business days prior to the meeting. Seating may be limited due to room capacity. Individuals requiring

special accommodations to access the public meeting should contact Ms. Lucia Foulkes at the email stated above or by telephone at 703–648–4142 at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Public Disclosure of Comments: Time will be allowed at the meeting for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by the committee members, written notice must be provided to Ms. Lucia Foulkes, Federal Geographic Data Committee (FGDC), U.S. Geological Survey, 12201 Sunrise Valley Drive, MS–590, Reston, VA 20192; by email at *lfoulkes@usgs.gov;* or by telephone at 703–648–4142, at least five (5) business days prior to the meeting. Any written comments received will be provided to the committee members.

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.

Kenneth Shaffer,

Deputy Executive Director, Federal Geographic Data Committee.

[FR Doc. 2018–05193 Filed 3–13–18; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–25117; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before February 24, 2018, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by March 29, 2018.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before February 24, 2018. Pursuant to § 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State Historic Preservation Officers:

CALIFORNIA

San Francisco County

San Francisco Central YMCA, 220 Golden Gate Ave., San Francisco, SG100002287

Santa Clara County

Messina Orchard, 721–781 N. Capitol Ave., San Jose, SG100002288

DISTRICT OF COLUMBIA

District of Columbia

Lafayette Elementary School, (Public School Buildings of Washington, DC MPS), 5701 Broad Branch Rd. NW, Washington, MP100002290

FLORIDA

Dade County

Giller Building, 975 W 41st St., Miami Beach, SG100002291

Lincoln Memorial Park Cemetery, 3001 NW 46th St, Miami, SG100002292

Miami Marine Stadium, 3501 Rickenbacker Causeway, Miami, SG100002293

Publix Store No. 91, 1045 Dade Blvd., Miami Beach, SG100002294

NEW HAMPSHIRE

Grafton County

Boulderwood, (Squam MPS), Address Restricted, Holderness, MP100002300

NEW MEXICO

Rio Arriba County

Haynes Trading Post Site, (Historical-Period Rural Landscape of Upper Largo Canyon, Rio Arriba County, New Mexico 1829–1943 MPS), Address Restricted, Counselor vicinity, MP100002301

A request for removal has been made for the following resource:

PENNSYLVANIA

Greene County

Red, Neils, Covered Bridge, (Covered Bridges of Washington and Greene Counties TR), E of Garards Fort crossing Whiteley Creek, Greene Township, Garads Fort vicinity, OT79003817

A request to move has been received for the following resource:

SOUTH DAKOTA

Codington County

Olive Place, N of Watertown off U.S. 81, Watertown vicinity, MV78002547

Nominations submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the properties in the National Register of Historic Places.

CALIFORNIA

Marin County

Olema Valley Dairy Ranches Historic District, Point Reyes NS & Golden Gate NRA, Olema vicinity, SG100002286

COLORADO

Gilpin County

Bain Cabin, 501 Shoshoni Camp Rd., Rollinsville vicinity, SG100002289

IDAHO

Idaho County

Gardiner Peak Lookout, (L–4 Fire Lookouts in the USFS Northern Region (Region 1), 1932–1967 MPS), Gardiner Peak, West Fork District, Bitterroot NF,Darby (MT) vicinity, MP100002295

Salmon Mountain Lookout, (L–4 Fire Lookouts in the USFS Northern Region (Region 1), 1932–1967 MPS), Salmon Mtn., West Fork District, Bitterroot NF, Darby (MT) vicinity, MP100002296

MONTANA

Ravalli County

Gird Point Lookout, (L–4 Fire Lookouts in the USFS Northern Region (Region 1), 1932–1967 MPS), Gird Pt., Sapphire Mts., Bitterroot NF, Hamilton vicinity, MP100002297

Medicine Point Lookout (L–4 Fire Lookouts in the USFS Northern Region (Region 1), 1932–1967 MPS), Medicine Pt., Sula Ranger Dist., Bitterroot NF, Darby vicinity, MP100002298

St. Mary Peak Lookout, (L–4 Fire Lookouts in the USFS Northern Region (Region 1), 1932–1967 MPS), St. Mary Peak, Stevensville Ranger Dist., Bitterroot NF, Stevensville vicinity, MP100002299

Authority: Section 60.13 of 36 CFR part 60

Dated: February 26, 2018.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program and Keeper, National Register of Historic Places.

[FR Doc. 2018–05132 Filed 3–13–18; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1012]

Certain Magnetic Data Storage Tapes and Cartridges Containing the Same; Notice of Commission Final Determination of Violation of Section 337; Termination of Investigation; Issuance of Limited Exclusion Order and Cease and Desist Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation in the above-captioned investigation. The Commission has determined to issue a limited exclusion order and cease and desist orders. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or 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 *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.* 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 instituted this investigation on July 1, 2016, based on a Complaint filed by Fujifilm Corporation of Tokyo, Japan, and Fujifilm Recording Media U.S.A., Inc. of Bedford, Massachusetts (collectively, ''Fujifilm''). 81 FR 43243–44 (July 1, 2016). The Complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), in the sale for importation, importation, and sale within the United States after importation of certain magnetic data storage tapes and cartridges containing the same by reason of infringement of certain claims of U.S. patent Nos. 6,641,891 (''the '891 patent''); 6,703,106 (''the '106 patent''); 6,703,101 (''the '101 patent''); 6,767,612 (''the '612 patent''); 8,236,434 (''the '434 patent''); and 7,355,805 (''the '805 patent''). The Complaint further alleges the existence of a domestic industry. The Commission's Notice of Investigation named as respondents Sony Corporation of Tokyo, Japan, Sony Corporation of America of New York, New York, and Sony Electronics Inc. of San Diego, California (collectively, ''Sony''). The Office of Unfair Import Investigations (''OUII'') was also named as a party to the investigation. The Commission later terminated the investigation as to the '101 patent. Order No. 24 (Jan. 18, 2017); Notice (Feb. 15, 2017).

On September 1, 2017, the ALJ issued his final ID finding a violation of section 337 with respect to claims 1, 4–9, 11, and 14 of the '891 patent and asserted claims 1, 2, 4, 5, 7, and 8 of the '612 patent. The ALJ found no violation of section 337 with respect to asserted claims 9–11 of the '612 patent; asserted claim 2, 5, and 6 of the '106 patent; asserted claim 1 of the '434 patent; and asserted claims 3 and 10 of the '805 patent.

In particular, the Final ID finds that Sony's accused products infringe claims 1, 4–9, 11, and 14 of the '891 patent and claims 1, 2, 4, 5, 7, and 8 of the '612 patent under 35 U.S.C. 271(a). The Final ID also finds that Sony's accused products do not infringe claims 2, 5, and 6 of the '106 patent, claim 1 of the '434 patent, and claims 3 and 10 of the '805 patent. The Final ID also finds that Sony has not shown that the asserted claims of the '891 patent, the '612 patent, the '434 patent, or the '805 patent are invalid under 35 U.S.C. 102, 103, or 112. The Final ID further finds, however that, while, Sony has not shown that the asserted claims of the '106 patent are invalid under 35 U.S.C. 102 or 103, Sony has shown that the asserted claims of the '106 patent are indefinite under 35 U.S.C. 112. The Final ID also finds that Fujifilm has satisfied the technical prong of the domestic industry requirement with respect to the '891 patent and the '612 patent, but has not satisfied the technical prong with respect to the '106 patent, the '434 patent, and the '805 patent. The Final ID further finds that Fujifilm has satisfied the economic prong of the domestic industry requirement with respect to the '891, '612, and '106 patent pursuant to 19 U.S.C. 1337(a)(3)(A) and (B) for the asserted LTO–6 DI products. The Final ID finds that Fujifilm has not satisfied the economic prong requirement for the asserted LTO–7 DI products.

The Final ID finds Sony has not shown that the '891, '106, and '805 patents are essential to the LTO–7 Standard. The Final ID also finds that Fujifilm has not breached any provisions of the Fujifilm AP–75 agreement, in particular sections 8.2 or 11.11. The Final ID further finds that Sony has not shown that the AP–75 agreement warrants barring Fujifilm's claims or terminating the investigation. The Final ID also finds that patent misuse does apply to bar Fujifilm's claims and that Fujifilm has not waived its rights to enforce the patents-in-suit. The Final ID also finds that Sony does not have an implied license to the patents-in-suit. The Final ID further finds that Sony has not shown that patent exhaustion applies.

On September 12, 2017, the ALJ issued his recommended determination on remedy and bonding. As instructed by the Commission, the ALJ also made findings concerning the public interest factors set forth in 19 U.S.C. 1337(d)(1) and (f)(1). See 81 FR 43243; 19 CFR 210.10(b). The ALJ recommended that the appropriate remedy is a limited exclusion order and a cease and desist order against Sony. The ALJ recommended that the Commission require no bond during the period of Presidential review. The ALJ further found that public interest factors do not bar or require tailoring the recommended exclusion order. The ALJ also found that even if the asserted claims are essential, the public interest does not favor tailoring or curbing and exclusion order because Fujifilm did not breach its obligations under the AP–75 Agreement.

On September 18, 2017, Sony and OUII each filed petitions for review of various aspects of the Final ID. Also on September 18, 2017, Fujifilm filed a contingent petition for review of various aspects of the Final ID. On September 26, 2017, Fujifilm, Sony, and OUII filed responses to the various petitions for review.

On October 6, 2017, Fujifilm filed a post-RD statement on the public interest pursuant to Commission Rule 210.50(a)(4). Sony filed its statement on October 13, 2017. No responses were filed by the public in response to the post-RD Commission Notice issued on September 13, 2017. *See* Notice of Request for Statements on the Public Interest (Sept. 13, 2017); 82 FR 43567–68 (Sept. 18, 2017).

On December 12, 2017, the Commission determined to review the Final ID in part. Notice (Dec. 12, 2017); 82 FR 60038–41 (Dec. 18, 2017).

Specifically, the Commission determined to review-in-part the Final ID's finding of violation with respect to the '891 patent. In particular, the Commission determined to review the

Final ID's findings with respect to anticipation and obviousness. The Commission further determined to review the Final ID's findings concerning secondary considerations.

The Commission also determined to review-in-part the Final ID's finding of violation with respect to the '612 patent. Specifically, the Commission determined to review the Final ID's finding that the asserted claims of the '612 patent are not obvious. Accordingly, the Commission also determined to review the Final ID's finding that Fujifilm has satisfied the technical prong of the domestic industry requirement with respect to the '612 patent.

The Commission further determined to review-in-part the Final ID's findings with respect to the '106 patent. Specifically, the Commission determined not to review the Final ID's finding that the asserted claims of the '106 patent are invalid as indefinite. Accordingly, the Commission determined to review the Final ID's findings with respect to the remaining issues with respect to the '106 Patent.

The Commission also determined to review-in-part the Final ID's findings with respect to the '434 patent. Specifically the Commission determined to review the Final ID's finding that Sony's accused LTO–7 products do not infringe claim 1 of the '434 patent. The Commission also determined to review the Final ID's finding that Fujifilm's LTO–7 DI products do not practice claim 1. The Commission further determined to review the Final ID's finding that claim 1 is not obvious.

The Commission further determined to review-in-part the Final ID's findings with respect to the '805 patent. Specifically, the Commission determined to review the Final ID's finding that Sony's accused LTO–7 products do not infringe asserted claims 3 and 10 of the '805 patent. The Commission also determined to review the Final ID's finding that U.S. patent No. 6,710,967 (''Hennecken'') does not anticipate claims 3 and 10.

The Commission also determined to review the Final ID's findings that the asserted claims of the '612, '106, and '805 patents are not essential to the LTO–7 Standard.

The Commission further determined to review the Final ID's findings concerning the economic prong of the domestic industry.

The Commission determined not to review the remaining issues decided in the Final ID.

In its notice of review, the Commission posed several briefing questions to the parties, and requested briefing on remedy, the public interest, and bonding. 82 FR at 60040. On January 3, 2018, the parties submitted their initial responses to the Commission's briefing questions. On January 12, 2018, the parties filed their reply submissions.

On December 26, 2017, Quantum Corporation filed a submission in response to the Commission's notice. On January 2, 2018, Hewlett Packard Enterprise Company filed a submission in response to the Commission's notice. On January 3, 2018, International Business Machines Corporation filed a submission in response to the Commission's notice.

Having examined the record of this investigation, including the Final ID, the petitions for review, the responses thereto, and the parties' submissions on review, the Commission has determined to find that a violation of section 337 has occurred with respect to the asserted claims of the '891 patent. The Commission has found no violation with respect to the '612, '106, '434, and '805 patents.

The Commission affirms with modification the Final ID's findings that the asserted claims of the '891 patent are not invalid as anticipated or obvious.

The Commission finds that Sony has shown by clear and convincing evidence that the asserted claims of the '612 patent are prima facie obvious over the asserted prior art and that there are no secondary considerations that overcome this finding. Accordingly, the Commission finds that Fujifilm has failed to satisfy the technical prong of the domestic industry requirement by failing to show that its domestic industry products practice a valid claim of the '612 patent. The Commission has further determined not to reach the Final ID's findings concerning the technical prong with respect to the '612 Patent.

The Commission determined not to review the Final ID's finding that the asserted claims of the '106 patent are invalid as indefinite. Accordingly, the Commission has determined not to reach the Final ID's findings on the remaining issues with respect to the '106 patent.

With respect to the '434 patent, the Commission has determined to construe the limitations ''a power spectrum density at a pitch of 10 micrometers ranges from 800 to 10,000 nm^3 on the magnetic layer surface'' and ''a power spectrum density at a pitch of 10 micrometers ranges from 20,000 to 80,000 nm^3 on the backcoat layer surface'' recited in claim 1 of the '434 patent to require that the entire surface of each layer must have power spectrum density measurements within the claimed range. The Commission has further determined to find that Fujifilm has failed to show by a preponderance of the evidence that the accused LTO–7 tapes infringe claim 1 of the '434 patent. The Commission has also determined to find that Fujifilm has failed to satisfy the technical prong of the domestic industry requirement with respect to the '434 patent. The Commission has determined to affirm with modification the Final ID's finding that Sony has failed to show by clear and convincing evidence that the asserted prior art renders obvious asserted claim 1 of the '434 patent. Specifically, the Commission has determined not to reach the question of whether the asserted prior art discloses the limitation ''the magnetic layer has a center surface average surface roughness Ra, as measured by an atomic force microscope, ranging from 0.5 to 2.5 nm.''

The Commission has determined to affirm with modification the Final ID's finding that Fujifilm has failed to show by a preponderance of the evidence that the accused LTO–7 tapes infringe claims 3 and 10 of the '805 patent. The Commission has also determined to affirm with modification the Final ID's finding that the asserted prior art does not anticipate the asserted claims of the '805 patent. The Commission also corrects the misstatement in the Final ID's ''Conclusions of Fact and Law'' that Fujifilm failed to satisfy the technical prong with respect to the '805 patent. *See* Final ID at 385.

The Commission has determined to affirm with modification the Final ID's finding that the asserted claims of the '612, '106, and '805 patents are not essential to the LTO–7 Standard. In particular, with respect to the '106 patent, the Commission has determined not to reach the issue of whether the LTO–7 Standard requires a tape having a magnetic layer that contains an abrasive. The Commission has determined to otherwise adopt the Final ID's findings that the LTO–7 Standard does not require practice of the asserted claims of the '612, '106, and '805 Patents. The Commission has determined not to reach any other issues concerning Sony's essentiality defenses.

The Commission has determined to find that Fujifilm's plant and equipment and labor and capital investments in its LTO–6 domestic industry products are significant under section 337(a)(3)(A) and (B), thus satisfying the economic prong of the domestic industry requirement with respect to the '891 patent. The Commission has determined

not to reach the issue of whether Fujifilm has satisfied the economic prong with respect to its domestic investments in its LTO–7 DI products.

Accordingly, the Commission has determined the appropriate remedy is a limited exclusion order against Sony's products that infringe claims 1, 4–9, 11, and 14 of the '891 patent, and a cease and desist order against each of the Sony respondents. The Commission has also determined that the public interest factors enumerated in subsections 337(d)(l) and (f)(1) (19 U.S.C. 1337(d)(l), (f)(1)) do not preclude issuance of the limited exclusion order and cease and desist order. The Commission has, however, determined to exempt Sony's magnetic data storage tapes and cartridges containing the same that are imported or used for the purpose of supporting Sony's warranty, service, repair, and compliance verification obligations. The Commission has further determined to set a bond at zero (0) percent of entered value during the Presidential review period (19 U.S.C. 1337(j)).

The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 8, 2018.

Katherine M. Hiner,

Supervisory Attorney.

[FR Doc. 2018–05093 Filed 3–13–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On March 8, 2018, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Colorado in the lawsuit entitled *United States* v. *El Paso County Retirement Plan,* Civil Action No. 1:18–cv–00552.

The proposed Consent Decree resolves the United States' claim under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607, against the El Paso County Retirement Plan for recovery of past response costs incurred at the Widefield PCE Superfund Site (''Site'') in El Paso County, Colorado. The Site comprises a former dry cleaners at 3217 South Academy Boulevard in Colorado Springs and related contamination of soil and groundwater, including of the Widefield Aquifer. The El Paso County Retirement Plan was the owner of the 3217 South Academy Boulevard property at the time of disposal of hazardous substances. The proposed Consent Decree requires the El Paso County Retirement Plan to pay $420,000 in reimbursement of past response costs incurred by the United States with respect to the Site. The proposed Consent Decree provides the El Paso County Retirement Plan with a covenant not to sue for past response costs incurred by the United States in connection with the Site and contribution protection under CERCLA.

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, and should refer to *United States* v. *El Paso County Retirement Plan,* D.J. Ref. No. 90–11–3–11721/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed 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 proposed 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 $3.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–05182 Filed 3–13–18; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On February 27, 2018, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Ohio in the lawsuit entitled *United States* v. *Bridgestone Americas Tire Operations et al.,* Case No. 3:18–cv–00054 (S.D. Ohio).

The proposed consent decree resolves claims of the United States Environmental Protection Agency (''EPA'') against seven defendants—Bridgestone Americas Tire Operations, LLC; Cargill, Inc.; Flowserve Corporation; Kelsey-Hayes Company; NCR Corporation; Northrop Grumman Systems Corporation, and Waste Management of Ohio (collectively ''Defendants)—for response costs and injunctive relief with respect to the North Sanitary (aka ''Valleycrest'') Landfill Superfund Site in Dayton, Ohio (''Site''). A complaint, which was filed simultaneously with the proposed consent decree, alleges that the Defendants are liable under Sections 106, 107(a), and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606, 9607(a), and 9613(g)(2). Under the proposed consent decree, the defendants will perform the remedy selected by EPA to address contamination at the Site by, among other things, designing and constructing a landfill ''cap'' that will cover approximately 70 acres of the Site. Other significant remedial actions will include the design and construction of a system to address landfill gas, as well as a system to prevent leachate from contaminating groundwater. Additionally, the Defendants will reimburse EPA for its future response costs, but they will not reimburse EPA for its future oversight costs unless and until such costs, together with past response costs and interim costs incurred before entry of the consent decree, exceed $8.37 million. The proposed consent decree will provide

covenants not to sue to the Defendants, as well as to numerous other potentially responsible parties (''Other Settling Parties'') who have previously entered into settlement agreements with one or more of the Defendants and, in most instances, received indemnifications from them, provided that such Other Settling Parties (listed in Appendix E of the consent decree) submit signature pages agreeing to be bound by the consent decree and, if they own property likely affected by the remedial action, cooperate in the implementation of the consent decree.

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, and should refer *United States* v. *Bridgestone Americas Tire Operations et al.,* Case No. 3:18–cv–00054 (S.D. Ohio), D.J. Ref. No. 90–11–3–11076. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department website: *https://www.usdoj.gov/enrd/consent-decrees.html.* We will also provide a paper copy of the proposed 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 $84.50 (338 pages at 25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the Appendices and signature pages, the cost is $20.75.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–05140 Filed 3–13–18; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modification to Consent Decree Under The Clean Air Act

On March 6, 2018, the Department of Justice lodged with the United States District Court for the District of Kansas a proposed modification to the consent decree entered by the Court on March 26, 2010 in the lawsuit entitled *United States of America, et al.* v. *Westar Energy, Inc.,* Civil Action No. 2:09–cv–02059–JAR.

The consent decree resolved claims asserted by the United States against Westar Energy, Inc. (''Westar'') under various provisions of the Clean Air Act (''Act''). Those claims related to Westar's operation of the Jeffrey Energy Center (''JEC''), a coal-fired power plant in St. Marys, Kansas with three electric generating units, numbered 1 through 3. The United States alleged in primary part that Westar made major modifications to JEC without obtaining a permit under the Prevention of Significant Deterioration program.

The Consent Decree requires Westar, among other things, to install and operate Selective Catalytic Reduction (''SCR'') on one of the JEC units and, at Westar's election, either install a second SCR or meet a plant-wide 30-day rolling average emission rate of 0.100 lb/mmBTU NO_X. Westar installed the SCR on JEC Unit 1 and elected to meet a plant-wide 30-day rolling average emission rate of 0.100 lb/mmBTU NO_X. To meet this limit, Westar must operate JEC Unit 1 (the unit with the SCR) at all times when it is available, even when it would not otherwise be dispatched by the Regional Transmission Organization. This results in unnecessary emissions of NO_X, sulfur dioxide, particulate matter and other pollutants from JEC.

The proposed modification to the Consent Decree would require Westar to meet a 30-Day Rolling Average Unit Emission Rate for NO_X of 0.150 lb/mmBTU, on an individual unit basis, when JEC Unit 1 is not operating. Overall emissions from JEC, including emissions of NO_X, are expected to decrease as a result of the change because JEC Unit 1 would no longer be forced to operate to meet the Consent Decree NO_X Plant-Wide Operating Day emission limitation. To help ensure that NO_X emissions do not increase, the modification would also require Westar to comply with a new NO_X 12-Month Rolling Tonnage Limitation for JEC Units 2 and 3.

The publication of this notice opens a period for public comment on the modification to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al.* v. *Westar Energy, Inc.,* D.J. Ref. No. 90–5–2–1–08242. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the modification to 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 modification to 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 $4.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–05184 Filed 3–13–18; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Davis-Bacon Certified Payroll

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Wage and Hour Division (WHD) sponsored information collection request (ICR) titled, ''Davis-Bacon Certified Payroll,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 13, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201707-1235-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–WHD, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Davis-Bacon Certified Payroll information collection. The Copeland Act requires contractors and subcontractors performing work on Federally financed or assisted construction contracts to furnish weekly a statement with respect to the wages paid each employee during the preceding week. *See* 40 U.S.C. 3145(a); 29 CFR 3.3(b). Regulations 29 CFR 5.5 (a)(3)(ii)(A) requires contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project if the agency is a party to the contract, accompanied by a signed Statement of Compliance indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. The DOL has developed optional use Form WH–347, Payroll Form, to aide contractors and subcontractors performing work on federally financed or assisted construction contracts in meeting weekly payroll reporting requirements. *See* 29 CFR 5.5(a)(3)(ii)(A); *see also,* 29 CFR 3.3(b). Properly filled out, this form will satisfy the requirements of Regulations 29 CFR parts 3 and 5 as to payrolls submitted in connection with contracts subject to the Davis-Bacon and Related Acts. Copeland Act section 2 authorizes this information collection. *See* 40 U.S.C. 3145(a).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1235–0008. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 7, 2017 (82 FR 31636).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1235–0008. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–WHD.

Title of Collection: Davis-Bacon Certified Payroll.

OMB Control Number: 1235–0008.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 81,404.

Total Estimated Number of Responses: 7,489,168.

Total Estimated Annual Time Burden: 6,989,890 hours.

Total Estimated Annual Other Costs Burden: $988,569.

Authority: 44 U.S.C. 3507(a)(1)(D).

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2018–05158 Filed 3–13–18; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Recordkeeping and Reporting Occupational Injuries and Illnesses

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Recordkeeping and Reporting Occupational Injuries and Illnesses,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 13, 2018.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201712-1218-004* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and

Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Recordkeeping and Reporting Occupational Injuries and Illnesses information collection. The Occupational Safety and Health Act of 1970 (OSHAct) and regulations 29 CFR part 1904 prescribe that certain employers maintain records of job related injuries and illnesses. The OSHA uses the information to carry out enforcement and intervention activities to secure for workers a safe and healthful work environment. The data also provide the Bureau of Labor Statistics information to report on the number and rate of occupational injuries and illnesses in the country. In addition, the data inform employers and workers on the kinds of injuries and illnesses occurring in the workplace and their related hazards. Increased employer awareness should result in the identification and voluntary correction of hazardous workplace conditions. Likewise, workers who receive information on injuries and illnesses will be more likely to follow safe work practices and report workplace hazards. This would generally raise the overall level of safety and health in the workplace. OSH Act sections 8(c)(2) and 24(b)(2) authorize this information collection. *See* 29 U.S.C. 657(c)(2), 673(b)(2).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0176. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 14, 2017 (82 FR 43255).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0176. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Recordkeeping and Reporting Occupational Injuries and Illnesses.

OMB Control Number: 1218–0176.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 1,384,503.

Total Estimated Number of Responses: 6,212,616.

Total Estimated Annual Time Burden: 2,253,550 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2018–05157 Filed 3–13–18; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[18–022]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection—CORRECTION.

Ref: This notice is correcting NASA **Federal Register** Notice [18–015] dated 3/5/2018; **Federal Register**/Vol. 83 No. 9339.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, 300 E Street, SW, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, (202) 358–1351.

SUPPLEMENTARY INFORMATION:

I. Abstract

Supersonic flight over land is currently restricted in the U.S. and many countries because sonic boom noise disturbs people on the ground and can potentially damage private property. NASA is researching the public acceptability of quiet commercial supersonic flight. As sufficient research is assembled, there is potential for a change in federal and international regulations.

The 2018 Quiet Supersonic Flight Community Response Test will correlate human annoyance response with low level supersonic exposure in a community setting. The supersonic exposure will be generated with an F–18 research aircraft performing a specialized maneuver. This effort is designed to evaluate remote aircraft basing and operations, community engagement, sonic boom measurements, and community annoyance surveys. The effort will improve research methods for future community-scale response testing using a purpose-built, low boom flight demonstration aircraft (LBFD).

NASA supported a prior risk reduction field test to evaluate data collection methods for low boom community response at Edwards Air Force Base (EAFB) in November 2011. The annoyance response findings from the study are not readily generalizable to a larger population, as the residents at EAFB are accustomed to hearing full level sonic booms on a routine basis.

II. Methods of Collection

Web-Based/Electronic.

III. Data

Title: 2018 Quiet Supersonic Flight Community Response Test.

OMB Number: 2700-xxxx.

Type of review: New Clearance.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local, or Tribal Government.

Average Expected Annual Number of Activities: Four questionnaires administered with varying frequency over 10 days.

Average number of Respondents per Activity: 500 respondents (maximum).

Annual Responses: 112 responses (maximum) per respondent.

Frequency of Responses: 10 responses (maximum) per day.

Average minutes per Response: Typical response time is 2 minutes.

Burden Hours: Not to exceed 2,000 hours.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden hours of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2018–05121 Filed 3–13–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8030; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On December 4, 2017, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on March 8, 2018 to:

1. Daniel Costa Permit No. 2018–016.

Nadene G. Kennedy,

Polar Coordination Specialist, Office of Polar Programs.

[FR Doc. 2018–05071 Filed 3–13–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Notice of Sunshine Act Meeting Cancellation

The National Transportation Safety Board has cancelled the Sunshine Act meeting previously scheduled for Tuesday, March 13, 2018, at the NTSB Conference Center, 429 L'Enfant Plaza, SW, Washington, DC The matter scheduled to be considered at the Sunshine Act meeting concerned Railroad Accident Brief—Collision of Two Southwestern Railroad Freight Trains, Roswell, New Mexico, April 28, 2015. A rescheduled date has not been determined yet.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403 or by email at *bingc@ntsb.gov.*

Dated: March 12, 2018.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2018–05239 Filed 3–12–18; 11:15 am]

BILLING CODE 7533–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Verification of Who Is Getting Payments, RI 38–107 and RI 38–147, 3206–0197

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on revised information collection requests (ICR), Verification of Who is Getting Payments RI 38–107 and RI 38–147.

DATES: Comments are encouraged and will be accepted until April 13, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0197) was previously published in the **Federal Register** on November 8, 2017, at 82 FR 51883, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 38–107 is designed for use by the Retirement Inspection Branch when OPM, for any reason, must verify that the entitled person is indeed receiving the monies payable. RI 38–147 collects the same information and is used by other groups within Retirement Operations. Failure to collect this information would cause OPM to pay monies absent the assurance of a correct payee.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Verification of Who is Getting Payments.

OMB Number: 3206–0197.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 25,400.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 4,234 hours.

U.S. Office of Personnel Management.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2018–05127 Filed 3–13–18; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Marital Status Certification Survey, RI 25–7

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection (ICR), Marital Status Certification Survey, RI 25–7.

DATES: Comments are encouraged and will be accepted until April 13, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail *to oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0033) was previously published in the **Federal Register** on December 11, 2017, at 82 FR 58226, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 25–7 is used to determine whether widows, widowers, and former spouses receiving survivor annuities from OPM have remarried before reaching age 55 and, thus, are no longer eligible for benefits.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Marital Status Certification Survey.

OMB Number: 3206–0033.

Frequency: Annually.

Affected Public: Individuals or Households.

Number of Respondents: 24,000.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 6,000 hours.

U.S. Office of Personnel Management.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2018–05128 Filed 3–13–18; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82834; File No. SR–CboeBZX–2018–015]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Transaction Fees

March 8, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-Members of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted

Exchange pursuant to BZX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fee schedule applicable to its equities trading platform (''BZX Equities'') to add a second Step-Up Tier under footnote 2. The Exchange currently offers one Step-Up Tier that provides Members with an additional way to qualify for an enhanced rebate where they increase their liquidity each month over a predetermined baseline. Under the current Step-Up Tier, a Member receives a rebate of $0.0030 per share for qualifying orders which yield fee codes B,[6] V,[7] or Y [8] where their: (1) Step-Up Add TCV [9] from April 2016 is equal to or greater than 0.15%; and (2) ADAV [10] as a percentage of TCV [11] is equal to or greater than 0.20%.

The Exchange now proposes to amend footnote 2 to add a second Step-Up Tier under which the volume measured to determine whether a Member qualifies is performed on a Member Participant Identifier (''MPID'') by MPID basis.[12] Under the proposed Tier 2, a Member would receive a rebate of $0.0031 per share for their qualifying orders which yield fee codes B, V, or Y where their individual MPID has: (1) A Step-Up Add TCV from January 2018 equal to or greater than 0.30%; and (2) an ADAV as a percentage of TCV equal to or greater than 0.45%. The Exchange proposes to implement this amendments to its fee schedule on March 1, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[13] in general, and furthers the objectives of Section 6(b)(4),[14] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed tier is equitable and non-discriminatory in it would apply uniformly to all Members.

Volume-based rebates such as that proposed herein have been widely adopted by exchanges, including the Exchange, and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposed tier is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will continue to provide Members with an incentive to reach certain thresholds on the Exchange.

In particular, the Exchange believes the proposed Step-Up Tier is a reasonable means to encourage Members to increase their liquidity on the Exchange based on increasing their volume above a predetermined baseline. The Exchange further believes that the proposed Step-Up Tier represents an equitable allocation of reasonable dues, fees, and other charges because the thresholds necessary to achieve the tier encourages Members to add increased liquidity to the BZX Book [15] each month. The increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that proposed rebate is reasonable based on the difficulty of satisfying the tier's criteria as compared to the existing Step-Up Tier, which provides a lower rebate and less stringent criteria. By applying the tier on a single MPID rather than across a Member's entire trading activity, the Exchange is also allowing more Members to potentially receive the enhanced rebates for their trading activity related to that individual MPID's liquidity provisioning.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe its proposed tier would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed tier represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. The Exchange does not believe that the proposed tier would burden competition, but instead, enhance competition, as it is intended to increase the competitiveness of and draw additional volume to the Exchange. The Exchange does not believe the proposed tier would burden intramarket competition as it would apply to all Members uniformly. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to

to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] Fee code B is appended to displayed orders which add liquidity to Tape B and is provided a rebate of $0.0025 per share.

[7] Fee code V is appended to displayed orders which add liquidity to Tape A and is provided a rebate of $0.0020 per share.

[8] Fee code Y is appended to displayed orders which add liquidity to Tape C and is provided a rebate of $0.0020 per share.

[9] ''Step-Up Add TCV'' means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV. *See* the BZX Equities fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[10] ''ADAV'' means average daily added volume calculated as the number of shares added per day and ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. *Id.*

[11] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. *Id.*

[12] The Exchange proposes to number the existing tier as Tier 1.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

[15] *See* Exchange Rule 1.5(e).

maintain their competitive standing in the financial markets.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and paragraph (f) of Rule 19b–4 thereunder.[17] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR–CboeBZX–2018–015 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 No. SR–CboeBZX–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 filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CboeBZX–2018–XXX and should be submitted on or before April 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05079 Filed 3–13–18; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82846; File No. SR–ISE–2018–16]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Proposed Rule Change To Introduce the ATR Protection for Orders That Are Routed to Away Markets

March 9, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 23, 2018, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the 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 introduce its Acceptable Trade Range protection for orders that are routed to away markets pursuant to the Options Order Protection and Locked/Crossed Markets Plan.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange offers an Acceptable Trade Range (''ATR'') protection that prevents the execution of quotes and orders on the regular order book outside of set thresholds. The purpose of the proposed rule change is to enhance this ATR protection for orders that are routed to away markets pursuant to the Options Order Protection and Locked/Crossed Markets Plan (''Linkage Plan'') instead of being executed immediately on the Exchange or resting on the regular order book.

As codified in Rule 714(b)(1), the Exchange's trading system calculates an Acceptable Trade Range to limit the range of prices at which an order or quote will be allowed to execute.[3] The Acceptable Trade Range is calculated by taking the reference price, plus or minus a value to be determined by the Exchange (*i.e.,* the reference price − (x) for sell orders/quotes and the reference

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ATR protection is not available for Complex Orders that leg in to the regular order book, which are instead subject to the Price Level Protection pursuant to Rule 714(a)(4), or for All-or-None orders.

price + (x) for buy orders or quotes).[4] Upon receipt of a new order or quote, the reference price is the national best bid (''NBB'') for sell orders/quotes and the national best offer (''NBO'') for buy orders/quotes. If an order or quote reaches the outer limit of the Acceptable Trade Range without being fully executed then any unexecuted balance will be cancelled.

Currently, the trading system calculates an appropriate reference price for an incoming order or quote when that order or quote rests or trades on the regular order book but not when orders are routed to an away market pursuant to the Linkage Plan without first trading on the Exchange. The Exchange now proposes to enhance its ATR protection by applying it to orders that are routed to away markets without first trading on the Exchange. As proposed, Rule 714(a)(1) will continue to provide that the reference price for the ATR protection is the NBB for sell orders/quotes and the NBO for buy orders/quotes. For clarity, however, the Exchange proposes to move this language to a separate bullet under proposed Rule 714(a)(1)(ii). In addition, proposed Rule 714(a)(1)(ii) will indicate that the reference price is calculated upon receipt of a new order or quote, provided that if the applicable NBB or NBO price is improved at the time an order is routed to an away market, a new reference price is calculated based on the NBB or NBO at that time.

Although the Exchange will continue to use the NBB or NBO as the reference price for the ATR protection, the Exchange believes that it is appropriate to update the reference price if the applicable NBB or NBO price is improved at the time an order is routed to an away market. Orders that are routed to away markets are eligible for the ''Flash'' auction process described in Supplementary Material .02 to Rule 1901. When a Flash auction is initiated, members are given an opportunity to enter responses to trade with the order for a time period established by the Exchange not to exceed one (1) second.[5] Because the applicable NBB or NBO price may change during the Flash auction, the Exchange believes that it is appropriate to consider the updated NBB or NBO price at the time the order is actually routed to an away market, if doing so would provide additional protection to the order—*i.e.,* if the NBB or NBO price used as the reference price is improved at that time. If the NBB or NBO price is not improved, the ATR protection will continue to use the NBB or NBO price on entry as the reference price, thereby providing the maximum protection to the order. The following examples illustrate how the ATR protection will be applied to orders routed to away markets:

Example 1

1. ATR threshold set to $0.15 for non-penny symbols
2. NBBO is $0.90 (35) × $1.00 (25):
   a. BATS: $0.90 (10) × $1.00 (25)
   b. CBOE: $0.90 (25) × $1.05 (25)
   c. MIAX: $0.85 (25) × $1.15 (25)
   d. ISE: $0.85 (50) × $1.20 (50)
3. Member enters a Limit Order to buy 200 contracts at $1.20
4. Flash auction initiated at a price of $1.00
5. CBOE quote improved establishing a new NBBO of $0.90 (35) × $0.95 (25):
   a. BATS: $0.90 (10) × $1.00 (25)
   b. CBOE: $0.90 (25) × $0.95 (25)
   c. MIAX: $0.85 (25) × $1.15 (25)
   d. ISE: $0.85 (50) × $1.20 (50)
6. No responses entered and Flash auction terminates and routes:
   a. 25 contracts to buy to CBOE at $0.95
   b. 25 contracts to buy to BATS at $1.00
7. Because the NBO is improved at time of routing, the reference price is set to the improved NBO price of $0.95, establishing an Acceptable Trade Range of $1.10
8. The remaining balance of 150 contracts that cannot be executed within the Acceptable Trade Range is cancelled

Example 2

1. ATR threshold set to $0.15 for non-penny symbols
2. NBBO is $0.90 (35) × $1.00 (25):
   a. BATS: $0.90 (10) × $1.00 (25)
   b. CBOE: $0.90 (25) × $1.05 (25)
   c. MIAX: $0.85 (25) × $1.15 (25)
   d. ISE: $0.85 (50) × $1.20 (50)
3. Member enters a Limit Order to buy 200 contracts at $1.20
4. Flash auction initiated at a price of $1.00
5. BATS quote worsened establishing a new NBBO of $0.90 (35) × $1.05 (50):
   a. BATS: $0.90 (10) × $1.05 (25)
   b. CBOE: $0.90 (25) × $1.05 (25)
   c. MIAX: $0.85 (25) × $1.15 (25)
   d. ISE: $0.85 (50) × $1.20 (50)
6. No responses entered and Flash auction terminates and routes:
   a. 25 contracts to buy to BATS at $1.05
   b. 25 contracts to buy to CBOE at $1.05
   c. 25 contracts to buy to MIAX at $1.15
7. Because the NBO is worsened at time of routing, the reference price is set to the initial NBO price of $1.00, establishing an Acceptable Trade Range of $1.15
8. The remaining balance of 125 contracts that cannot be executed within the Acceptable Trade Range is cancelled

Implementation

The Exchange proposes to launch the ATR functionality described in this proposed rule change no later than October 31, 2018. The Exchange will announce the implementation date of this functionality in an Options Trader Alert issued to members prior to the launch date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Specifically, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by enhancing the Exchange's ATR protection. The ATR functionality is designed to ensure that orders and quotes entered on the Exchange are executed at reasonable prices based on the applicable NBBO price on receipt. Currently, the Exchange's ATR protection calculates a reference price at the time an order or quote rests or trades locally but not when an order is routed to an away market pursuant to the Linkage Plan without first trading on the Exchange. To further protect orders that are subject to routing that have not traded on the Exchange, the Exchange is proposing to implement the ATR protection for those orders. The Exchange will continue to use the NBBO as the reference price for the ATR protection but now that the Exchange is protecting orders that are routed away pursuant to the Linkage Plan without trading on the Exchange, the Exchange proposes to use the NBBO price on routing instead of the NBBO on receipt only in those circumstances where the NBBO is improved at the time of routing. As described earlier in this proposed rule change, the Exchange operates a Flash auction that provides an opportunity for Members to match or improve the NBBO price prior to routing eligible orders to away markets. Since the NBBO price may change during the Flash auction's exposure period, the Exchange believes that the ATR protection should take improved NBBO prices into account when determining whether a particular price is a reasonable execution price. The Exchange believes, however, that a worsened NBBO price should not be considered as this would decrease rather than increase the protection

[4] There are three categories of options for ATR: (1) Penny Pilot Options trading in one cent increments for options trading at less than $3.00 and increments of five cents for options trading at $3.00 or more, (2) Penny Pilot Options trading in one-cent increments for all prices, and (3) Non-Penny Pilot Options.

[5] Currently, the exposure period for the Flash auction is set to 150 milliseconds.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

provided to such an order. In sum, the proposed changes to the ATR protection will protect investors and the public interest by providing additional protections designed to ensure that quotes and orders entered on the Exchange are executed at reasonable prices, and thereby perfect the mechanism of a free and open market and a national market system.

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 enhance the Exchange's ATR protection by extending that protection to orders that are routed to away markets that did not first trade on the Exchange. The proposed protection will apply equally to all orders that are routed to away markets pursuant to the Linkage Plan. The Exchange believes that this change is the result of a competitive market where exchanges must continually improve the functionality offered to market participants in order to remain competitive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2018–16 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–ISE–2018–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2018–16 and should be submitted on or before April 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05163 Filed 3–13–18; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82829; File No. SR–FINRA–2018–012]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Eliminate the Fee for an Explained Decision

March 8, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 21, 2018, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rules 12214(e)(1) and 12904(g)(5) of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and FINRA Rules 13214(e)(1) and 13904(g)(5) of the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') (together, ''Codes'') to eliminate the $400 fee for an explained decision.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

12214. Payment of Arbitrators

(a)–(d) No change.

(e) Payment for Explained Decisions

(1) The chairperson who is responsible for writing an explained decision pursuant to Rule 12904(g) will receive an additional honorarium of $400. [The panel will allocate the cost of the honorarium under Rule 12904(g) to the parties.]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

(2) No change.

12904. Awards

(a)–(f) No change.

(g) Explained Decisions

(1)–(4) No change.

(5) The chairperson will receive an additional honorarium of $400 for writing the explained decision, as required by this paragraph (g). [The panel will allocate the cost of the chairperson's honorarium to the parties as part of the final award.]

(6) No change.

(h)–(j) No change.

13214. Payment of Arbitrators

(a)–(d) No change.

(e) Payment for Explained Decisions

(1) The chairperson who is responsible for writing an explained decision pursuant to Rule 13904(g) will receive an additional honorarium of $400. [The panel will allocate the cost of the honorarium under Rule 13904(g) to the parties.]

(2) No change.

13904. Awards

(a)–(f) No change.

(g) Explained Decisions

(1)–(4) No change.

(5) The chairperson will receive an additional honorarium of $400 for writing the explained decision, as required by this paragraph (g). [The panel will allocate the cost of the chairperson's honorarium to the parties as part of the final award.]

(6) No change.

(h)–(j) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2009, the Commission approved amendments to the Codes that required arbitrators to provide an explained decision at the parties' joint request.[5] An explained decision is a fact-based award stating the general reasons for the arbitrators' decision; it is not required to include legal authorities or damage calculations.[6] The chairperson of the panel is responsible for drafting the explained decision and receives an additional $400 honorarium for doing so.[7] Under the Codes, the arbitrators allocate the $400 cost to the parties as part of the award.[8] FINRA began waiving the $400 fee for an explained decision as of January 2017.[9] In order to remove a potential obstacle to parties requesting an explained decision, FINRA is proposing to eliminate the $400 fee for an explained decision. FINRA will continue to pay the $400 honorarium to the chairperson.

The proposed rule change would amend FINRA Rules 12214(e)(1) and 13214(e)(1) (Payment of Arbitrators) and FINRA Rules 12904(g)(5) and 13904(g)(5) (Explained Decisions) to remove the provision that gives arbitrators express authority to allocate the $400 fee to the parties for an explained decision. By proposing to remove this provision, if parties jointly request an explained decision, the chairperson drafting the decision would receive $400 as currently provided in the rules;[10] the fee, however, would not be assessed to the parties. FINRA believes the proposed rule change would remove a potential barrier to parties making joint requests for explained decisions.[11]

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be February 21, 2018.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[12] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the elimination of the fee will decrease its revenue by a *de minimis* amount because currently there are few explained decisions: over the past year, eliminating the fee would have decreased FINRA's program revenues by $800.[13] Moreover, not charging for explained decisions removes a potential obstacle to explained decisions, promoting transparency of decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. A discussion of the economic impacts of the proposed amendments follows.

(a) Need for the Rule

FINRA began waiving the $400 fee for an explained decision as of January 2017. The proposal codifies and thereby makes permanent the elimination of the explained decision fee.

(b) Economic Baseline

The economic baseline for the proposal includes the current rules under the Codes that address the allocation of fees by arbitrators. The economic baseline for the proposal also includes the current practice of FINRA waiving the explained decision fee. The proposal is expected to affect parties to an arbitration including customers, member firms, and associated persons.

Parties must make a joint request for an explained decision prior to the first scheduled hearing. Parties can benefit from an explained decision through a better understanding of the arbitrators' rationale for the award decision. An explained decision, however, could increase the time to resolution by providing parties with an additional basis to file a motion to vacate.[14] An explained decision could also result in the public disclosure of information describing the potential wrongdoing of

[5] *See* Securities Exchange Act Release No. 59358 (Feb. 4, 2009), 74 FR 6,928 (Feb. 11, 2009) (Approval Order for SR–FINRA 2008–51).

[6] *See* FINRA Rules 12904(g)(2) and 13904(g)(2).

[7] *See* FINRA Rules 12904(g)(4) and 12904(g)(5); *see also* FINRA Rules 13904(g)(4) and 13904(g)(5).

[8] *See* FINRA Rules 12214(e)(1) and 12904(g)(5); *see also* FINRA Rules 13214(e)(1) and 13904(g)(5).

[9] Pursuant to FINRA Rules 12408 and 13412 (Director's Discretionary Authority), FINRA began waiving the $400 fee for an explained decision beginning on January 3, 2017. From January 3, 2017 through February 14, 2018, there have been two joint requests for explained decisions.

[10] Since the explained decision amendments went into effect in 2009 until the end of 2016, parties have made 40 joint requests for explained decisions. Of the 40 requests, there have been 32 explained decisions issued; explained decisions were not issued for the remaining eight requests because either the cases settled or closed by other means. Parties also made two joint requests from January 3, 2017 through February 14, 2018.

[11] *See supra* note 10.

[12] 15 U.S.C. 78*o*–3(b)(5).

[13] Since 2009, there have been approximately four joint requests for explained decisions on average per year.

[14] Since 2009, there were seven motions to vacate out of 32 awards that included an explained decision. Three of the motions to vacate relate to industry cases, and four of the motions to vacate relate to cases with customers as claimants.

a member firm or an associated person. This may cause a negative reputational effect and could lead to additional claims against the member firm or the associated person and a loss of business.[15]

In order for parties to agree to a joint request, both parties would need to determine that the benefits of an explained decision are greater than its costs. In general, joint requests for an explained decision have been few. Since the explained decision rule became effective in 2009 until the end of 2016, there have been 40 joint requests for explained decisions with 32 explained decisions issued. There have been two additional joint requests after FINRA began waiving the explained decision fee in January 2017.[16] Together, this evidence suggests that non-monetary costs of an explained decision are more important determinants to making a joint request. Otherwise, the waiving of the fee would have resulted in a relative increase in the number of joint requests.

FINRA began waiving the explained decision fee in January 2017. Parties, however, could again be subject to a fee if FINRA were to decide to no longer waive the fee. The potential that FINRA may no longer waive the explained decision fee could be a constraint and thereby reduce the number of parties that make a joint request.

(c) Economic Impact

The primary benefit of the proposal is the permanent removal of the fee that could be a barrier to jointly requesting an explained decision. To the extent that a potential fee is a constraint, its removal from the Codes could increase the number of joint requests made by parties. The parties that would be more likely to file a joint request are the parties for which the benefits of an explained decision are greater than its costs not including the potential fee. Other than the permanent elimination of the fee, the benefits and costs of an explained decision would remain the same.

Whether the proposed rule change would result in any additional requests for an explained decision could be dependent on whether the fee is a factor in their decision to make a joint request. As noted above, few parties jointly requested an explained decision prior to FINRA waiving the fee, and there have been only two joint requests for an explained decision since the waiver. This evidence suggests that non-monetary costs, other than the $400 fee, are more significant determinants of whether parties make a joint request. The removal of the fee from the Codes, therefore, is likely to have little effect on the frequency of requests made. The benefits and costs of the proposal are therefore also likely to be negligible.

(d) Alternatives Considered

A plausible alternative to the proposed amendments is an explained decision fee that is greater than zero but less than the $400 currently stated in the Codes. Similar to the current proposed amendments, this alternative would permanently establish the fee amount if parties jointly request an explained decision. A fee greater than zero but less than $400, however, would increase the costs to parties relative to the current proposal that seeks to eliminate the fee, thereby potentially reducing their incentives to make a joint request. As discussed above, the evidence suggests that the other potential costs of an explained decision are more significant determinants of whether parties make a joint request. This alternative, therefore, would increase the costs to parties that make a joint request but would have little effect on the frequency of requests made.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and paragraph (f)(2) of Rule 19b–4 thereunder.[18] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2018–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2018–012. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2018–012 and should be submitted on or before April 4, 2018.

[15] Among the 32 cases with an explained decision issued since 2009, approximately two-thirds resulted in a monetary award in favor of the claimants, and therefore could have resulted in additional negative disclosure of wrongdoing by industry parties as respondents. Explained decisions in intra-industry arbitration cases could result in additional negative disclosure of wrongdoing by either industry party.

[16] Over 7,600 cases have been filed and closed by hearing or by papers since the beginning of 2009.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05075 Filed 3–13–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82847; File No. SR–GEMX–2018–09]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing of Proposed Rule Change To Introduce the ATR Protection for Orders That Are Routed to Away Markets

March 9, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2018, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the 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 introduce its Acceptable Trade Range protection for orders that are routed to away markets pursuant to the Options Order Protection and Locked/Crossed Markets Plan.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange offers an Acceptable Trade Range (''ATR'') protection that prevents the execution of quotes and orders on the regular order book outside of set thresholds. The purpose of the proposed rule change is to enhance this ATR protection for orders that are routed to away markets pursuant to the Options Order Protection and Locked/Crossed Markets Plan (''Linkage Plan'') instead of being executed immediately on the Exchange or resting on the regular order book.

As codified in Rule 714(b)(1), the Exchange's trading system calculates an Acceptable Trade Range to limit the range of prices at which an order or quote will be allowed to execute.[3] The Acceptable Trade Range is calculated by taking the reference price, plus or minus a value to be determined by the Exchange (*i.e.,* the reference price − (x) for sell orders/quotes and the reference price + (x) for buy orders or quotes).[4] Upon receipt of a new order or quote, the reference price is the national best bid (''NBB'') for sell orders/quotes and the national best offer (''NBO'') for buy orders/quotes. If an order or quote reaches the outer limit of the Acceptable Trade Range without being fully executed then any unexecuted balance will be cancelled.

Currently, the trading system calculates an appropriate reference price for an incoming order or quote when that order or quote rests or trades on the regular order book but not when orders are routed to an away market pursuant to the Linkage Plan without first trading on the Exchange. The Exchange now proposes to enhance its ATR protection by applying it to orders that are routed to away markets without first trading on the Exchange. As proposed, Rule 714(a)(1) will continue to provide that the reference price for the ATR protection is the NBB for sell orders/quotes and the NBO for buy orders/quotes. For clarity, however, the Exchange proposes to move this language to a separate bullet under proposed Rule 714(a)(1)(ii). In addition, proposed Rule 714(a)(1)(ii) will indicate that the reference price is calculated upon receipt of a new order or quote, provided that if the applicable NBB or NBO price is improved at the time an order is routed to an away market, a new reference price is calculated based on the NBB or NBO at that time.

Although the Exchange will continue to use the NBB or NBO as the reference price for the ATR protection, the Exchange believes that it is appropriate to update the reference price if the applicable NBB or NBO price is improved at the time an order is routed to an away market. Orders that are routed to away markets are eligible for the ''Flash'' auction process described in Supplementary Material .02 to Rule 1901. When a Flash auction is initiated, members are given an opportunity to enter responses to trade with the order for a time period established by the Exchange not to exceed one (1) second.[5] Because the applicable NBB or NBO price may change during the Flash auction, the Exchange believes that it is appropriate to consider the updated NBB or NBO price at the time the order is actually routed to an away market, if doing so would provide additional protection to the order—*i.e.,* if the NBB or NBO price used as the reference price is improved at that time. If the NBB or NBO price is not improved, the ATR protection will continue to use the NBB or NBO price on entry as the reference price, thereby providing the maximum protection to the order. The following examples illustrate how the ATR protection will be applied to orders routed to away markets:

Example 1

1. ATR threshold set to $0.15 for non-penny symbols
2. NBBO is $0.90 (35) × $1.00 (25):
   a. BATS: $0.90 (10) × $1.00 (25)
   b. CBOE: $0.90 (25) × $1.05 (25)
   c. MIAX: $0.85 (25) × $1.15 (25)
   d. GEMX: $0.85 (50) × $1.20 (50)
3. Member enters a Limit Order to buy 200 contracts at $1.20
4. Flash auction initiated at a price of $1.00
5. CBOE quote improved establishing a new NBBO of $0.90 (35) × $0.95 (25):
   a. BATS: $0.90 (10) × $1.00 (25)
   b. CBOE: $0.90 (25) × $0.95 (25)
   c. MIAX: $0.85 (25) × $1.15 (25)
   d. GEMX: $0.85 (50) × $1.20 (50)
6. No responses entered and Flash auction terminates and routes:
   a. 25 contracts to buy to CBOE at $0.95
   b. 25 contracts to buy to BATS at $1.00
7. Because the NBO is improved at time of routing, the reference price is set to the improved NBO price of $0.95,

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ATR protection is not available for All-or-None orders.

[4] There are three categories of options for ATR: (1) Penny Pilot Options trading in one cent increments for options trading at less than $3.00 and increments of five cents for options trading at $3.00 or more, (2) Penny Pilot Options trading in one-cent increments for all prices, and (3) Non-Penny Pilot Options.

[5] Currently, the exposure period for the Flash auction is set to 150 milliseconds.

establishing an Acceptable Trade Range of $1.10
8. The remaining balance of 150 contracts that cannot be executed within the Acceptable Trade Range is cancelled

Example 2

1. ATR threshold set to $0.15 for non-penny symbols
2. NBBO is $0.90 (35) × $1.00 (25):
   a. BATS: $0.90 (10) × $1.00 (25)
   b. CBOE: $0.90 (25) × $1.05 (25)
   c. MIAX: $0.85 (25) × $1.15 (25)
   d. GEMX: $0.85 (50) × $1.20 (50)
3. Member enters a Limit Order to buy 200 contracts at $1.20
4. Flash auction initiated at a price of $1.00
5. BATS quote worsened establishing a new NBBO of $0.90 (35) × $1.05 (50):
   a. BATS: $0.90 (10) × $1.05 (25)
   b. CBOE: $0.90 (25) × $1.05 (25)
   c. MIAX: $0.85 (25) × $1.15 (25)
   d. GEMX: $0.85 (50) × $1.20 (50)
6. No responses entered and Flash auction terminates and routes:
   a. 25 contracts to buy to BATS at $1.05
   b. 25 contracts to buy to CBOE at $1.05
   c. 25 contracts to buy to MIAX at $1.15
7. Because the NBO is worsened at time of routing, the reference price is set to the initial NBO price of $1.00, establishing an Acceptable Trade Range of $1.15
8. The remaining balance of 125 contracts that cannot be executed within the Acceptable Trade Range is cancelled

Implementation

The Exchange proposes to launch the ATR functionality described in this proposed rule change no later than October 31, 2018. The Exchange will announce the implementation date of this functionality in an Options Trader Alert issued to members prior to the launch date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Specifically, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by enhancing the Exchange's ATR protection. The ATR functionality is designed to ensure that orders and quotes entered on the Exchange are executed at reasonable prices based on the applicable NBBO price on receipt. Currently, the Exchange's ATR protection calculates a reference price at the time an order or quote rests or trades locally but not when an order is routed to an away market pursuant to the Linkage Plan without first trading on the Exchange. To further protect orders that are subject to routing that have not traded on the Exchange, the Exchange is proposing to implement the ATR protection for those orders. The Exchange will continue to use the NBBO as the reference price for the ATR protection but now that the Exchange is protecting orders that are routed away pursuant to the Linkage Plan without trading on the Exchange, the Exchange proposes to use the NBBO price on routing instead of the NBBO on receipt only in those circumstances where the NBBO is improved at the time of routing. As described earlier in this proposed rule change, the Exchange operates a Flash auction that provides an opportunity for Members to match or improve the NBBO price prior to routing eligible orders to away markets. Since the NBBO price may change during the Flash auction's exposure period, the Exchange believes that the ATR protection should take improved NBBO prices into account when determining whether a particular price is a reasonable execution price. The Exchange believes, however, that a worsened NBBO price should not be considered as this would decrease rather than increase the protection provided to such an order. In sum, the proposed changes to the ATR protection will protect investors and the public interest by providing additional protections designed to ensure that quotes and orders entered on the Exchange are executed at reasonable prices, and thereby perfect the mechanism of a free and open market and a national market system.

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 enhance the Exchange's ATR protection by extending that protection to orders that are routed to away markets that did not first trade on the Exchange. The proposed protection will apply equally to all orders that are routed to away markets pursuant to the Linkage Plan. The Exchange believes that this change is the result of a competitive market where exchanges must continually improve the functionality offered to market participants in order to remain competitive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–GEMX–2018–09 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–GEMX–2018–09. 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

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2018–09 and should be submitted on or before April 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05164 Filed 3–13–18; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension: Rule 13h–1 and Form 13H
SEC File No. 270–614, OMB Control No. 3235–0682

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.* ''PRA''), the Securities and Exchange Commission (''SEC'' or ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in Rule 13h–1 (17 CFR 240.13h–1) and Form 13H—registration of large traders [1] submitted pursuant to Section 13(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 13h–1 and Form 13H under Section 13(h) of the Exchange Act established a large trader reporting framework.[2] The framework assists the Commission in identifying and obtaining certain baseline information about traders that conduct a substantial amount of trading activity, as measured by volume or market value, in the U.S. securities markets.

The identification, recordkeeping, and reporting framework provides the Commission with a mechanism to identify large traders and obtain additional information on their trading activity. Specifically, the rule requires large traders to identify themselves to the Commission and make certain disclosures to the Commission on Form 13H. Upon receipt of Form 13H, the Commission issues a unique identification number to the large trader, which the large trader then provides to its registered broker-dealers. Certain registered broker-dealers are required to maintain transaction records for each large trader, and are required to report that information to the Commission upon request.[3] In addition, certain registered broker-dealers are required to adopt procedures to monitor their customers for activity that would trigger the identification requirements of the rule.

The respondents to the collection of information are large traders. There are currently approximately 6,300 large traders and 300 registered broker-dealers. Based on its experience collecting initial Forms 13H in previous years, the Commission estimates that approximately 600 new large traders will register each year and thus be subject to quarterly and annual reporting requirements over the next three years.

Each new large trader respondent files one response, which takes approximately 20 hours to complete. The average internal cost of compliance per response is $5,615, calculated as follows: (3 hours of compliance manager time at $307 per hour) + (7 hours of legal time at $362 per hour) + (10 hours of paralegal time at $212 per hour) = $5,615. Additionally, on average, each large trader respondent (including new respondents) files 2 responses per year, which take approximately 6 hours to complete. The average internal cost of compliance per response is $1,770, calculated as follows: (2 hours of compliance manager time at $307 per hour) + (2 hours of legal time at $362 per hour) + (2 hours of paralegal time at $212 per hour) = $1,770.

Each registered broker-dealer's monitoring requirement takes approximately 15 hours per year. The average internal cost of compliance is $5,430, calculated as follows: 15 hours of legal time at $362 per hour = $5,430. The Commission estimates that it may send 100 requests specifically seeking large trader data per year to each registered broker-dealer subject to the rule, and it would take each registered broker-dealer 2 hours to comply with each request. Accordingly, the annual reporting hour burden for a broker-dealer is estimated to be 200 burden hours (100 requests × 2 burden hours/request = 200 burden hours). The average internal cost of compliance per response is $432, calculated as follows: 2 hours of paralegal time at $212 per hour = $432.

Compliance with Rule 13h–1 is mandatory. The information collection under proposed Rule 13h–1 is considered confidential subject to the limited exceptions provided by the Freedom of Information Act.[4]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela C. Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 8, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05168 Filed 3–13–18; 8:45 am]

BILLING CODE 8011–01–P

[1] Rule 13h–1(a)(1) defines ''large trader'' as any person that directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level or voluntarily registers as a large trader by filing electronically with the Commission Form 13H.

[2] *See* Securities Exchange Act Release No. 64976 (July 27, 2011), 76 FR 46959 (August 3, 2011).

[3] The Commission, pursuant to Rule 17a–25 (17 CFR 240.17a–25), currently collects transaction data from registered broker-dealers through the Electronic Blue Sheets (''EBS'') system to support its regulatory and enforcement activities. The large trader framework added two new fields, the time of the trade and the identity of the trader, to the EBS system.

[4] *See* 5 U.S.C. 552 and 15 U.S.C. 78m(h)(7).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 17f–1, SEC File No. 270–236, OMB Control No. 3235–0222

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17f–1 (17 CFR 270.17f–1) under the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a) is entitled: ''Custody of Securities with Members of National Securities Exchanges.'' Rule 17f–1 provides that any registered management investment company (''fund'') that wishes to place its assets in the custody of a national securities exchange member may do so only under a written contract that must be ratified initially and approved annually by a majority of the fund's board of directors. The written contract also must contain certain specified provisions. In addition, the rule requires an independent public accountant to examine the fund's assets in the custody of the exchange member at least three times during the fund's fiscal year. The rule requires the written contract and the certificate of each examination to be transmitted to the Commission. The purpose of the rule is to ensure the safekeeping of fund assets.

Commission staff estimates that each fund makes 1 response and spends an average of 3.5 hours annually in complying with the rule's requirements. Commission staff estimates that on an annual basis it takes: (i) 0.5 hours for the board of directors [1] to review and ratify the custodial contracts; and (ii) 3 hours for the fund's controller to assist the fund's independent public auditors in verifying the fund's assets. Approximately 6 funds rely on the rule annually, with a total of 6 responses.[2] Thus, the total annual hour burden for rule 17f–1 is approximately 21 hours.[3]

Funds that rely on rule 17f–1 generally use outside counsel to prepare the custodial contract for the board's review and to transmit the contract to the Commission. Commission staff estimates the cost of outside counsel to perform these tasks for a fund each year is $800.[4] Funds also must have an independent public accountant verify the fund's assets three times each year and prepare the certificate of examination. Commission staff estimates the annual cost for an independent public accountant to perform this service is $8,500.[5] Therefore, the total annual cost burden for a fund that relies on rule 17f–1 would be approximately $9,300.[6] As noted above, the staff estimates that 4 funds rely on rule 17f–1 each year, for an estimated total annualized cost burden of $55,800.[7]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collections of information required by rule 17f–1 is mandatory for funds that place their assets in the custody of a national securities exchange member. Responses 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 control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 9, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05170 Filed 3–13–18; 8:45 am]

BILLING CODE 8011–01–P

[1] Estimates of the number of hours are based on conversations with representatives of mutual funds that comply with the rule. The actual number of hours may vary significantly depending on individual fund assets. The hour burden for rule 17f–1 does not include preparing the custody contract because that would be part of customary and usual business practice.

[2] Based on a review of Form N–17f–1 filings over the last three years the Commission staff estimates that an average of 4 funds rely on rule 17f–1 each year.

[3] This estimate is based on the following calculation: (6 respondents × 3.5 hours = 21 hours). The annual burden for rule 17f–1 does not include time spent preparing Form N–17f–1. The burden for Form N–17f–1 is included in a separate collection of information.

[4] This estimate is based on the following calculation: (2 hours of outside counsel time × $400 = $800). The staff has estimated the average cost of outside counsel at $400 per hour, based on information received from funds, fund intermediaries, and their counsel.

[5] This estimate is based on information received from fund representatives estimating the aggregate annual cost of an independent public accountant's periodic verification of assets and preparation of the certificate of examination.

[6] This estimate is based on the following calculation: ($800 + $8,500 = $9,300).

[7] This estimate is based on the following calculation: (6 funds × $9,300 = $55,800).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82833; File No. SR–CboeBYX–2018–002]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Transaction Fees

March 8, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2018, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members [5] and non-Members of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

Exchange pursuant to BYX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to amend its fee schedule to adopt a new tier under footnote 1, Add/Remove Volume Tiers. The Exchange currently offers six tiers under footnote 1 that offer reduced fees for displayed orders that add liquidity yielding fee codes B,[6] V [7] and Y,[8] and two tiers [sic] that offer an enhanced rebate for orders that remove liquidity yielding fee codes BB,[9] N,[10] and W.[11]

The Exchange proposes to add a new tier under footnote 1, to be known as Tier 10, under which a Member would receive an enhanced rebate of $0.0017 per share on orders that yield fee codes BB, N and W, where a Member has: (i) A Step-Up Remove TCV [12] from January 2018 equal to or greater than 0.30%; and (ii) a remove ADV [13] equal to or greater than 0.70% of the TCV.[14] The Exchange proposes to implement the above changes to its fee schedule on March 1, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[15] in general, and furthers the objectives of Section 6(b)(4),[16] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed tier is equitable and non-discriminatory in it would apply uniformly to all Members.

In addition, volume-based fees such as that proposed herein have been widely adopted by exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) the introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposed tier is a reasonable, fair and equitable, and not an unfairly discriminatory allocation of fees and rebates, because it will provide Members with an additional incentive to reach certain thresholds on the Exchange.

In particular, the Exchange believes that the proposed Tier 10 to be added to footnote 1 is equitably allocated and reasonable because it will reward a Member's growth pattern on the Exchange and such increased volume will allow the Exchange to continue to provide and potentially expand its incentive programs. The Exchange further believes that the proposed tier is reasonable, fair and equitable because the liquidity from the proposed change would benefit all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes the proposed rebate of $0.0017 per share for Tier 10 is reasonable in that it is equivalent to the top tier rebate to remove liquidity provided by Nasdaq BX.[17] The proposed pricing structure is also not unfairly discriminatory in that it is available to all Members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that this change represents a significant departure from previous pricing offered by the Exchange or from pricing offered by the Exchange's competitors. The proposed rates would apply uniformly to all Members, and Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. Further, excessive fees would serve to impair an exchange's ability to compete for order flow and members rather than burdening competition. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)

[6] Fee code B is appended to displayed orders that add liquidity to BYX (Tape B). *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/byx/.*

[7] Fee code V is appended to displayed orders that add liquidity to BYX (Tape A). *Id.*

[8] Fee code Y is appended to displayed orders that add liquidity to BYX (Tape C). *Id.*

[9] Fee code BB is appended to orders that remove liquidity from BYX (Tape B). *Id.*

[10] Fee code N is appended to orders that remove liquidity from BYX (Tape C). *Id.*

[11] Fee code W is appended to orders that remove liquidity from BYX (Tape A). *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/byx/.*

[12] ''Step-Up Remove TCV'' means remove ADV as a percentage of TCV in the relevant baseline month subtracted from current remove ADV as a percentage of TCV. *Id.*

[13] ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADV are calculated on a monthly basis. *Id.*

[14] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. *Id.*

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4).

[17] *See* the Nasdaq BX fee schedule *available at http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing.*

of the Act [18] and paragraph (f) of Rule 19b–4 thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR–CboeBYX–2018–002 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 No. SR–CboeBYX–2018–002. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CboeBYX–2018–002 and should be submitted on or before April 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05078 Filed 3–13–18; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82843; File No. SR–CboeBZX–2017–006]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of a Series of the Cboe Vest S&P 500 Enhanced Growth Strategy ETF Under the ETF Series Solutions Trust Under Rule 14.11(c)(3), Index Fund Shares

March 9, 2018.

I. Introduction

On November 21, 2017, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade, under BZX Rule 14.11(c)(3), shares (''Shares'') of a series of the Cboe Vest S&P 500® Enhanced Growth Strategy ETF (individually, ''Fund,'' and, collectively, ''Funds'') under the ETF Series Solutions Trust (''Trust''). The proposed rule change was published for comment in the **Federal Register** on December 11, 2017.[3] On January 22, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to March 11, 2018.[4] The Commission has received no comment letters on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to disapprove the proposed rule change.

II. Exchange's Description of the Proposed Rule Change [6]

The Exchange proposes to list and trade the Shares of the Funds under BZX Rule 14.11(c)(3), which governs the listing and trading of Index Fund Shares. In total, the Exchange is proposing to list and trade Shares of twelve monthly series of the Cboe Vest S&P 500® Enhanced Growth Strategy ETF. Each Fund will be an index-based exchange traded fund (''ETF''). The Funds will include the following: Cboe Vest S&P 500® Enhanced Growth Strategy (January) ETF; Cboe Vest S&P 500® Enhanced Growth Strategy (February) ETF; Cboe Vest S&P 500® Enhanced Growth Strategy (March) ETF; Cboe Vest S&P 500® Enhanced Growth Strategy (April) ETF; Cboe Vest S&P 500® Enhanced Growth Strategy (May) ETF; Cboe Vest S&P 500® Enhanced Growth Strategy (June) ETF; Cboe Vest S&P 500® Enhanced Growth Strategy (July) ETF; Cboe Vest S&P 500® Enhanced Growth Strategy (August) ETF; Cboe Vest S&P 500® Enhanced Growth Strategy (September) ETF; Cboe Vest S&P 500® Enhanced Growth Strategy (October) ETF; Cboe Vest S&P 500® Enhanced Growth Strategy (November) ETF; and Cboe Vest S&P 500® Enhanced Growth Strategy (December) ETF. Each Fund will be based on the Cboe S&P 500 Enhanced Growth Index (Month) Series, where ''Month'' is the corresponding month associated with the roll date of the applicable Fund (each an ''Index'' and, collectively, the ''Indexes'').

The Shares will be offered by the Trust, which was established as a Delaware statutory trust on February 9, 2012. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N–1A (''Registration Statement'') with the Commission.[7] The Funds'

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82216 (December 5, 2017), 82 FR 58235 (''Notice'').

[4] *See* Securities Exchange Act Release No. 82552, 83 FR 3819 (January 26, 2018).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] A more detailed description of the Trust, the Funds, and the Shares, as well as the availability of price information and other information regarding the Indexes (as defined herein) and the Funds' portfolio holdings, are included in the Notice and Registration Statement (as defined herein). *See* Notice, *supra* note 3; Registration Statement, *infra* note 7 and accompanying text.

[7] *See* Registration Statement on Form N–1A for the Trust, dated October 27, 2017 (File Nos. 333–179562 and 811–22668). According to the Exchange, the Commission has not yet issued an order granting exemptive relief to the Trust under the Investment Company Act of 1940 applicable to the activities of the Funds, but the Funds will not be listed on the Exchange until such an order is

adviser will be Cboe Vest Financial, LLC (''Adviser''), and the index provider will be Cboe Exchange, Inc. (''Cboe Options'' or ''Index Provider'').

Each Fund's investment objective is to track, before fees and expenses, the performance of its respective Index. The value of each Index is calculated daily by Cboe Options utilizing an option valuation model. The Exchange is submitting this proposed rule change because the Indexes for the Funds do not meet the listing requirements of BZX Rule 14.11(c)(3) applicable to an index that consists of equity securities. Specifically, the Indexes for the Funds do not meet the listing requirements of BZX Rule 14.11(c)(3) because the Indexes consist of options based on an index of U.S. Component Stocks.[8]

Cboe Vest S&P 500® Enhanced Growth Strategy Indexes

Each Index is a rules-based options index that consists exclusively of FLexible EXchange Options on the S&P 500 Index (''FLEX Options'') listed on Cboe Options.[9] The Indexes are designed to provide exposure to the large capitalization U.S. equity market with similar volatility and downside risks to traditional equity indices, but higher upside potential in market environments with modest gains over the course of one year. On a specified day of the applicable month for each Index (the ''Roll Date''),[10] the applicable Index implements a portfolio of put and call FLEX Options with expirations on the next Roll Date that, if held to such Roll Date, seeks to match any decline in the value of the S&P 500 Index, while providing enhanced appreciation of twice the positive return of the S&P 500 Index up to a maximum capped gain in the value of the S&P 500 Index (''Capped Level''). The Capped Level is calculated as of each Roll Date based on the prices of the applicable FLEX Options, such that the value of the portfolio of FLEX Options that comprises each Index is equivalent to the value of a portfolio comprised of the S&P 500 Index constituents. As of the 2017 Roll Date, the Capped Level for the January Index was 18%, meaning that the January Index is designed to provide twice the positive return of the S&P 500 Index up to a maximum 18% gain in the value of the Index (9% gain in the value of the S&P 500 Index) from the 2017 Roll Date to the 2018 Roll Date, but to not provide any participation for gains in the value of the S&P 500 Index in excess of 9% (*i.e.,* no opportunity for gains in the value of the Index in excess of 18%).

Each Index is designed to provide the following outcomes between Roll Dates:

- *If the S&P 500 declines any amount:* the Index declines the same amount as the S&P 500 Index;
- *If the S&P 500 appreciates between 0% and half of the Capped Level:* the Index appreciates twice the amount as the S&P 500 Index (*e.g.,* if the S&P 500 Index returns 7%, the Index is designed to return 14%); and
- *If the S&P 500 appreciates more than half of the Capped Level:* the Index appreciates the same amount as the Capped Level.

Each Index includes a mix of purchased and written (sold) put and call FLEX Options structured to achieve the results described above. Such results are only applicable for each full 12-month period from one Roll Date to the next Roll Date, and the Index may not return such results for shorter or longer periods. The value of each Index is calculated daily by Cboe Options utilizing a rules-based options valuation model.

Holdings of the Funds

Under Normal Market Conditions,[11] each Fund will seek to track the total return performance, before fees and expenses, of its respective Index. Under Normal Market Conditions, each Fund will invest all, or substantially all, of its assets in the FLEX Options that make up each respective underlying Index, standardized U.S. exchange-listed options contracts based on the S&P 500 (''S&P 500 Index Options''), U.S. exchange-listed options based on one or more ETFs[12] that track the performance of the S&P 500 Index and have the same economic characteristics as the FLEX Options that make up each Index (''Comparable ETF Options''),[13] as well as cash and cash equivalents.[14] Under Normal Market Conditions, at least 80% of each Fund's total assets (exclusive of any collateral held from securities lending) will be invested in the FLEX Options that make up the Index. The Funds will hold only FLEX Options, S&P 500 Index Options, Comparable ETF Options, and cash and cash equivalents. The FLEX Options owned by each Fund will have the same terms (*i.e.*, same strike price and expiration) for all investors of that Fund within an outcome period. The Capped Level is determined with respect to the applicable Index on the inception date of the applicable Fund and at the beginning of each outcome period.

III. Proceedings To Determine Whether To Disapprove SR–CboeBZX–2017–006 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[15] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

issued and any conditions contained therein are satisfied.

[8] As defined in Rule 14.11(c)(1)(D), the term ''U.S. Component Stock'' means an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depositary receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

[9] Additional information about the Indexes and methodology is available on the Index Provider's website at *www.cboe.com.*

[10] Each of the twelve Indexes is designed to provide returns over a defined year long period and, thus, there is an Index associated with each month. As such, the Roll Date for a specific Index is dependent on the monthly series for which the Index is associated. For example, the Roll Date for the Cboe® S&P 500® Enhanced Growth Index January Series is in January and the Roll date for the Cboe® S&P 500® Enhanced Growth Index February Series is in February, a pattern which continues through the rest of the calendar year.

[11] The term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[12] For purposes of this proposal, the term ETF means Portfolio Depositary Receipts and Index Fund Shares as defined in BZX Rules 14.11(b) and 14.11(c), respectively, and their equivalents on other national securities exchanges.

[13] The term ''Comparable ETF Options'' will at any time include only the five ETFs based on the S&P 500 Index with the greatest options consolidated average daily exchange trading volume for the previous quarter.

[14] For purposes of this filing, cash equivalents are short-term instruments with maturities of less than three months, including: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

[15] 15 U.S.C. 78s(b)(2)(B).

Pursuant to Section 19(b)(2)(B) of the Act,[16] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act,[17] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

Under the proposal, each Fund's investment objective is to track, before fees and expenses, the performance of its respective Index, each of which consists of a hypothetical portfolio of purchased and written (sold) put and call FLEX Options structured to participate in market gains and losses of the S&P 500 Index within pre-determined ranges that are only applicable for a full 12-month period from one Roll Date to the next Roll Date. Specifically, on each Roll Date, the applicable Index implements a portfolio of put and call FLEX Options with expirations on the next Roll Date that, *if held to such Roll Date,* seeks to match any decline in the value of the S&P 500 Index, while providing enhanced appreciation of twice the positive return of the S&P 500 Index up to a Capped Level. Because of these Index characteristics, the Index outcomes that each Fund seeks to track are best realized if the Shares are bought at the initial Roll Date and sold at the expiration of the next Roll Date. The Commission notes, however, that market participants may buy or sell Shares of the Funds at any time, not only at the initial or expiration of a Roll Date. Consequently, with respect to the pricing of the Shares at any time other than the commencement or the expiration of a Roll Date, the Commission seeks commenters' views on the sufficiency of the information provided in the proposed rule change to support a determination that the listing and trading of the Shares would be consistent with Section 6(b)(5) of the Act.

IV. Procedure: Request for Written Comments

Interested persons are invited to submit written views, data, and arguments concerning the foregoing, including whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act, any request for an opportunity to make an oral presentation.[18]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by April 4, 2018. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 18, 2018.

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–CboeBZX–2017–006 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–CboeBZX–2017–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2017–006 and should be submitted on or before April 4, 2018. Rebuttal comments should be submitted by April 18, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05160 Filed 3–13–18; 8:45 am]

BILLING CODE 8011–01–P

[16] *Id.*

[17] 15 U.S.C. 78f(b)(5).

[18] Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[19] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Form PF, SEC File No. 270–636, OMB Control No. 3235–0679.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 204(b)–1 (17 CFR 275.204(b)–1) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) implements sections 404 and 406 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') by requiring private fund advisers that have at least $150 million in private fund assets under management to report certain information regarding the private funds they advise on Form PF. These advisers are the respondents to the collection of information.

Form PF is designed to facilitate the Financial Stability Oversight Council's (''FSOC'') monitoring of systemic risk in the private fund industry and to assist FSOC in determining whether and how

to deploy its regulatory tools with respect to nonbank financial companies. The Commission and the Commodity Futures Trading Commission may also use information collected on Form PF in their regulatory programs, including examinations, investigations and investor protection efforts relating to private fund advisers.

Form PF divides respondents into two broad groups, Large Private Fund Advisers and smaller private fund advisers. ''Large Private Fund Advisers'' are advisers with at least $1.5 billion in assets under management attributable to hedge funds (''large hedge fund advisers''), advisers that manage ''liquidity funds'' and have at least $1 billion in combined assets under management attributable to liquidity funds and registered money market funds (''large liquidity fund advisers''), and advisers with at least $2 billion in assets under management attributable to private equity funds (''large private equity advisers''). All other respondents are considered smaller private fund advisers.

The Commission estimates that most filers of Form PF have already made their first filing, and so the burden hours applicable to those filers will reflect only ongoing burdens, and not start-up burdens. Accordingly, the Commission estimates the total annual reporting and recordkeeping burden of the collection of information for each respondent is as follows:

(a) For smaller private fund advisers making their first Form PF filing, an estimated amortized average annual burden of 23 hours for each of the first three years;

(b) For smaller private fund advisers that already make Form PF filings, an estimated amortized average annual burden of 15 hours for each of the next three years;

(c) For large hedge fund advisers making their first Form PF filing, an estimated amortized average annual burden of 610 hours for each of the first three years;

(d) For large hedge fund advisers that already make Form PF filings, an estimated amortized average annual burden of 560 hours for each of the next three years;

(e) For large liquidity fund advisers making their first Form PF filing, an estimated amortized average annual burden of 588 hours for each of the first three years;

(f) For large liquidity fund advisers that already make Form PF filings, an estimated amortized average annual burden of 280 hours for each of the next three years;

(g) For large private equity advisers making their first Form PF filing, an estimated amortized average annual burden of 67 hours for each of the first three years; and

(h) For large private equity advisers that already make Form PF filings, an estimated amortized average annual burden of 50 hours for each of the next three years.

With respect to annual internal costs, the Commission estimates the collection of information will result in 92 burden hours per year on average for each respondent. With respect to external cost burdens, the Commission estimates a range from $0 to $50,000 per adviser.

Estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of Form PF is mandatory for advisers that satisfy the criteria described in Instruction 1 to the Form. Responses to the collection of information will be kept confidential to the extent permitted by law. The Commission does not intend to make public information reported on Form PF that is identifiable to any particular adviser or private fund, although the Commission may use Form PF information in an enforcement action. 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 public may view background documentation for this collection at the following website, *www.reginfo.gov.* Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 8, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05171 Filed 3–13–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82831; File No. SR–NYSE–2018–01]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Amend the Complimentary Products and Services Available to Certain Eligible New Listings Pursuant to Section 907.00 of the Exchange's Listed Company Manual

March 8, 2018.

I. Introduction

On January 3, 2018, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Section 907.00 of the Exchange's Listed Company Manual (''Manual'') to provide that companies initially listed on or after April 1, 2018 will not be eligible to receive corporate governance tools under the Exchange's current services offering. The proposed rule change was published for comment in the **Federal Register** on January 22, 2018.[3] No comment letters were received in response to the Notice. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange has proposed to amend Section 907.00 of the Manual to provide that companies initially listed on or after April 1, 2018 will not be eligible to receive the corporate governance tools described under the Exchange's current services offering.

As set forth in Section 907.00 of the Manual, the Exchange currently provides Eligible New Listings [4] with complimentary corporate governance tools (with a commercial value of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82506 (January 16, 2018), 83 FR 3035 (''Notice'').

[4] For the purposes of Section 907.00, the term ''Eligible New Listing'' means: (i) Any U.S. company that lists common stock on the Exchange for the first time and any non-U.S. company that lists an equity security on the Exchange under Section 102.01 or 103.00 of the Manual for the first time, regardless of whether such U.S. or non-U.S. company conducts an offering and (ii) any U.S. or non-U.S. company emerging from a bankruptcy, spinoff (where a company lists new shares in the absence of a public offering), and carve-out (where a company carves out a business line or division, which then conducts a separate initial public offering).

approximately $50,000 annually) [5] for a period of 24 calendar months.[6] According to the Exchange, companies that qualify as Eligible New Listings have generally not been interested in utilizing the corporate governance tools available as part of the Exchange's services offering.[7] The Exchange has therefore proposed to discontinue the corporate governance tools portion of its services offering for companies that list on or after April 1, 2018.[8] The Exchange proposal states, however, that any Eligible New Listing that lists prior to April 1, 2018 will continue to be able to access the corporate governance tools for a period of 24 months to the extent their eligibility permits under current Section 907.00 of the Manual.[9]

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act.[10] Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4) [11] and 6(b)(5) of the Act [12] in particular, in that the proposed rule is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Moreover, the Commission believes that the proposed rule change is consistent with Section 6(b)(8) of the Act [13] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that it is consistent with the Act for the Exchange to modify its existing complimentary services offering to no longer offer corporate governance tools to Eligible New Listings that list on or after April 1, 2018. The Exchange states that Eligible New Listings have generally not been interested in utilizing the corporate governance tools offered by the Exchange.[14] The Commission believes it is reasonable and consistent with the Act for the Exchange to discontinue such services if it believes they are not being utilized. The Commission notes that the effect of the proposal is to reduce the commercial value of offerings to Eligible New Listings by $50,000 annually, which is the value of the corporate governance tools as currently set forth in Section 907.00 of the Manual.[15] The value of the remaining offerings to Eligible New Listings will continue to remain transparent under Section 907.00 of the Manual. The Commission believes that by accurately describing in the Manual the current products and services available to listed companies and the current values of those products and services, the Exchange is maintaining transparency with respect to its rules and the fees applicable to such companies. This helps to ensure that individual listed companies are not given specially negotiated packages of products and services to list or remain listed that would raise unfair discrimination issues under the Act.[16]

Under the proposal, Eligible New Listings that list prior to April 1, 2018 will remain eligible to receive all the complimentary products and services currently provided by the Exchange, including the corporate governance tools. The Commission notes that Section 6(b)(5) of the Act does not require that all issuers be treated the same; rather, the Act requires that the rules of an exchange not unfairly discriminate between issuers. The Exchange states that it believes it is not unfairly discriminatory to continue to offer corporate governance tools to companies listed prior to April 1, 2018, as that benefit was part of the services offering that was available at the time of such companies' initial listing and may have had some influence over their listing decisions.[17]

The Commission believes that the Exchange has provided a sufficient basis for its different treatment of Eligible New Listings that list prior to April 1, 2018 and that this portion of the Exchange's proposal meets the requirements of the Act. In making this determination, the Commission notes that the provision of services under Section 907.00 of the Manual is for a limited duration and that the Exchange has provided a reasonable basis for deciding to treat Eligible New Listings that list prior to April 1, 2018 differently from other listed companies going forward. The Commission notes that at the time such companies listed, they had an expectation, if they intended to utilize the corporate governance tools, to be able to do so for the entire 24 month period as set forth in the current rule. To allow such companies listed prior to April 1, 2018 to finish utilizing corporate governance tools for any remainder of their 24 month period appears to be reasonable, equitable, and not unfairly discriminatory. In addition, the Commission notes that the April 1, 2018 date, to curtail the offering of corporate governance tools for Eligible New Listings that list on or after that date, was transparent and published for comment in advance of approval by the Commission in the order discussed herein. As noted above, the Commission received no comments on the proposal. The Commission has also previously approved proposals providing different services to newly-listed issuers, including those transferring their listing from another exchange, and has found this consistent with Sections 6(b)(4) and 6(b)(5) of the Act.[18] Finally, the Commission notes that it recently approved a similar proposal by the Exchange's affiliate, NYSE American LLC, to discontinue the corporate governance services it provides to certain eligible new listings.[19]

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, that the products and services provided under Section 907.00 of the Manual are equitably allocated among issuers consistent with Section 6(b)(4) of the Act, the proposed

[5] *See* Notice, *supra* note 3, at 3036 n.5.

[6] *See* Section 907.00 of the Manual. In addition, as set forth in Section 907.00 of the Manual, the Exchange provides certain categories of currently and newly listed issuers with some or all of the following additional complimentary services for a period of 24 months: Market surveillance products and services (with a commercial value of approximately $55,000 annually), Web-hosting products and services (with a commercial value of approximately $16,000 annually), web-casting services (with a commercial value of approximately $6,500 annually), market analytics products and services (with a commercial value of approximately $30,000 annually), and news distribution products and services (with a commercial value of approximately $20,000 annually). *Id.*

[7] *See* Notice, *supra* note 3, at 3036.

[8] *See id.*

[9] *See id.*

[10] 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(8).

[14] *See* Notice, *supra* note 3, at 3036.

[15] *See* Section 907.00 of the Manual. *See also* Notice, *supra* note 3, at 3036 n.5.

[16] *See* Securities Exchange Act Release No. 65127 (August 12, 2011), 76 FR 51449 (August 18, 2011) (SR–NYSE–2011–20) (order approving the initial complimentary products and services provided by the Exchange to Eligible New Listings).

[17] *See* Notice, *supra* note 3, at 3036.

[18] *See* Securities Exchange Act Release Nos. 76127 (October 9, 2015), 80 FR 62584 (October 16, 2015) (order approving SR–NYSE–2015–36); 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (order approving SR–NASDAQ–2014–058); 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (order approving SR–NASDAQ–2011–122).

[19] *See* Securities Exchange Act Release No. 81783 (September 29, 2017), 82 FR 46575 (October 5, 2017) (order approving SR–NYSEAMER–2017–05).

rule change does not unfairly discriminate among issuers consistent with Section 6(b)(5) of the Act, and the proposed rule change is appropriate and consistent with Section 6(b)(8) of the Act in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[20]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NYSE–2018–01), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05076 Filed 3–13–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82832; File No. SR–CboeBZX–2018–005]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Cboe Vest S&P 500® Premium Income ETF Under Rule 14.11(c)(5)

March 8, 2018.

On January 10, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Cboe Vest S&P 500® Premium Income ETF under BZX Rule 14.11(c)(5). The proposed rule change was published for comment in the **Federal Register** on January 26, 2018.[3] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this filing is March 12, 2018.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the Exchange's proposal. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates April 26, 2018, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR–CboeBZX–2018–005).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05077 Filed 3–13–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82827; File No. SR–PEARL–2018–04]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 402, Criteria for Underlying Securities

March 8, 2018.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 22, 2018, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change'') a 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 is filing a proposal to amend Exchange Rule 402, Criteria for Underlying Securities, to modify the criteria for listing an option on an underlying covered security.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 402, Criteria for Underlying Securities, to modify the criteria for listing options on an underlying security as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (hereinafter ''covered security'' or ''covered securities''). This is a competitive filing that is based on a proposal recently submitted by Nasdaq PHLX LLC (''Nasdaq Phlx'') and approved by the Commission.[3]

In particular, the Exchange proposes to modify Rule 402(b)(5)(i) to permit the listing of an option on an underlying covered security that has a market price of at least $3.00 per share for the previous three (3) consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation (''OCC'') for listing and trading. The Exchange does not intend to amend any other criteria for listing options on an underlying security in Rule 402.

Currently the underlying covered security must have a closing market

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[20] 15 U.S.C. 78f(b)(4), (5), and (8).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82538 (January 19, 2018), 83 FR 3807.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82474 (January 9, 2018), 83 FR 2240 (January 16, 2018) (Order Approving SR–Phlx–2017–75).

price of $3.00 per share for the previous five (5) consecutive business days preceding the date on which the Exchange submits a listing certificate to OCC. In the proposed amendment, the market price will still be measured by the closing price reported in the primary market in which the underlying covered security is traded, but the measurement will be the price over the prior three (3) consecutive business day period preceding the submission of the listing certificate to OCC, instead of the prior five (5) business day period.

The Exchange acknowledges that the Options Listing Procedures Plan [4] requires that the listing certificate be provided to OCC no earlier than 12:01 a.m. and no later than 11:00 a.m. (Chicago time) on the trading day prior to the day on which trading is to begin.[5] The proposed amendment will still comport with that requirement. For example, if an initial public offering (''IPO'') occurs at 11:00 a.m. on Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on Thursday by 12:01 a.m. (Chicago time), with the market price determined by the closing price over the three-day period from Monday through Wednesday. The option on the IPO would then be eligible for trading on the Exchange on Friday. The proposed amendment would essentially enable options trading within four (4) business days of an IPO becoming available instead of six (6) business days (five (5) consecutive days plus the day the listing certificate is submitted to OCC).

The Exchange's initial listing standards for equity options in Rule 402 (including the current price/time standard of $3.00 per share for five (5) consecutive business days) are substantially similar to the initial listing standards adopted by other options exchanges.[6] At the time the Exchange received its initial approval from the Commission, as part of its Rules, the Exchange adopted the ''look back'' period of five (5) consecutive business days, it determined that the five-day period was sufficient to protect against attempts to manipulate the market price of the underlying security and would provide a reliable test for stability.[7] Surveillance technologies and procedures concerning manipulation have evolved since then to provide adequate prevention or detection of rule or securities law violations within the proposed time frame, and the Exchange represents that its existing trading surveillances are adequate to monitor the trading of options on the Exchange.[8]

Furthermore, the Exchange notes that the scope of its surveillance program also includes cross market surveillance for trading that is not just limited to the Exchange. In particular, the Financial Industry Regulatory Authority (''FINRA''), pursuant to a regulatory services agreement, operates a range of cross-market equity surveillance patterns on behalf of the Exchange to look for potential manipulative behavior, including spoofing, algorithm gaming, marking the close and open, and momentum ignition strategies, as well as more general, abusive behavior related to front running, wash shales, quoting/routing, and Reg SHO violations. These cross-market patterns incorporate relevant data from various markets beyond the Exchange and its affiliate, Miami International Securities Exchange, LLC (''MIAX Options''), including data from the New York Stock Exchange (''NYSE'') and from the Nasdaq Stock Market (''Nasdaq'').

Additionally, for options, MIAX PEARL, through FINRA, utilizes an array of patterns that monitor manipulation of options, or manipulation of equity securities (regardless of venue) for the purpose of impacting options prices on both MIAX Options and MIAX PEARL options markets (*i.e.,* mini-manipulation strategies). Accordingly, the Exchange believes that the cross market surveillance performed by FINRA on behalf of the Exchange, coupled with the Exchange staff's real-time monitoring of similarly violative activity on MIAX PEARL and its affiliated market as described herein, reflects a comprehensive surveillance program that is adequate to monitor for manipulation of the underlying security and overlying option within the proposed three-day look back period.

Furthermore, the Exchange notes that the proposed listing criteria would still require that the underlying security be listed on NYSE, the American Stock Exchange (now known as NYSE American), or the National Market System of The Nasdaq Stock Market (now known as the Nasdaq Global Market) (collectively, the ''Named Markets''), as provided for in the definition of ''covered security'' from Section 18(b)(1)(A) of the 1933 Act.[9] Accordingly, the Exchange believes that the proposed rule change would still ensure that the underlying security meets the high listing standards of a Named Market, and would also ensure that the underlying is covered by the regulatory protections (including market surveillance, investigation and enforcement) offered by these exchanges for trading in covered securities conducted on their facilities.

Furthermore, the Nasdaq, Nasdaq Phlx's affiliated listing market, had no cases within the past five years where an IPO-related issue for which it had pricing information qualified for the $3.00 price requirement during the first three (3) days of trading and did not qualify for the $3.00 price requirement during the first five (5) days.[10] In other words, none of these qualifying issues fell below the $3.00 threshold within the first three (3) or five (5) days of trading. As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with Nasdaq's findings related to the IPO-related issues as described herein, adequately address potential concerns regarding possible manipulation or price stability within the proposed timeframe.

The Exchange also believes that the proposed look back period can be implemented in connection with the other initial listing criteria for underlying covered securities. In

[4] The Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11a(2)(3)(B) of the Securities Exchange Act of 1934 (a/k/a the Options Listing Procedures Plan (''OLPP'')) is a national market system plan that, among other things, sets forth procedures governing the listing of new options series. *See* Securities Exchange Act Release No. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001) (Order approving OLPP). The sponsors of OLPP include OCC; BATS Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; EDGX Exchange, Inc.; Miami International Securities Exchange, LLC; MIAX PEARL, LLC; The Nasdaq Stock Market LLC; NASDAQ BX, Inc.; Nasdaq PHLX LLC; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; NYSE American, LLC; and NYSE Arca, Inc.

[5] *See* OLPP at page 3.

[6] *See, e.g.,* Phlx Rule 1009, Commentary .01; *see also* BOX Rule 5020(b)(5).

[7] *See* Securities Exchange Act Release No. 79543 (December 13, 2016), 81 FR 92901 (December 20, 2016) (order granting approval of MIAX PEARL for registration as a National Securities Exchange).

[8] Such surveillance procedures generally focus on detecting securities trading subject to opening price manipulation, closing price manipulation, layering, spoofing or other unlawful activity impacting an underlying security, the option, or both. The Exchange, through the Financial Industry Regulatory Authority (''FINRA''), has price movement alerts, unusual market activity and order book alerts active for all trading symbols. These real time patterns are active for the new security as soon as the IPO begins trading.

[9] *See* 15 U.S.C. 77r(b)(1)(A).

[10] There were over 750 IPO-related issues on Nasdaq within the past five years. Out of all of the issues with pricing information, there was only one issue that had a price below $3 during the first five consecutive business days. The Exchange notes, however, that Nasdaq allows for companies to list on the Nasdaq Capital Market at $2.00 or $3.00 per share in some instances, which was the case for this particular issue. *See* Nasdaq Rule 5500 Series for initial listing standards on the Nasdaq Capital Market. *See also supra* note 3.

particular, the Exchange recognizes that it may be difficult to verify the number of shareholders in the days immediately following an IPO due to the fact that stock trades generally clear within two business days (T+2) of their trade date and therefore the shareholder count will generally not be known until T+2.[11] The Exchange notes that the current T+2 settlement cycle was recently reduced from T+3 on September 5, 2017 in connection with the Commission's amendments to Exchange Rule 15c6–1(a) to adopt the shortened settlement cycle,[12] and the look back period of three (3) consecutive business days proposed herein reflects this shortened T+2 settlement period. As proposed, stock trades would clear within T+2 of their trade date (*i.e.,* within three (3) business days) and therefore the number of shareholders could be verified within three (3) business days, thereby enabling options trading within four (4) business days of an IPO (three (3) consecutive business days plus the day the listing certificate is submitted to OCC).

Furthermore, the Exchange notes that it can verify the shareholder count with various brokerage firms that have a large retail customer clientele. Such firms can confirm the number of individual customers who have a position in the new issue. The earliest that these firms can provide confirmation is usually the day after the first day of trading (T+1) on an unsettled basis, while others can confirm on the third day of trading (T+2). The Exchange has confirmed with some of these brokerage firms who provide shareholder numbers to the Exchange that they are T+2 after an IPO. For the foregoing reasons, the Exchange believes that basing the proposed three (3) business day look back period on the T+2 settlement cycle would allow for sufficient verification of the number of shareholders.

The proposed rule change will apply to all covered securities that meet the criteria of Rule 402. Pursuant to Rule 402, the Exchange establishes guidelines to be considered in evaluating the potential underlying securities for Exchange option transactions.[13] However, the fact that a particular security may meet the guidelines established by the Exchange does not necessarily mean that it will be approved as an underlying security.[14] As part of the established criteria, the issuer must be in compliance with any applicable requirement of the Securities Exchange Act of 1934.[15] Additionally, in considering the underlying security, the Exchange relies on information made publicly available by the issuer and/or the markets in which the security is traded.[16] Even if the proposed option meets the objective criteria, the Exchange may decide not to list, or place limitations or conditions upon listing.[17] The Exchange believes that these measures, together with its existing surveillance procedures, provide adequate safeguards in the review of any covered security that may meet the proposed criteria for consideration of the option within the timeframe contained in this proposal.

The Exchange notes that this filing is substantially similar to a companion MIAX Options filing, modifying the criteria for listing an option on an underlying covered security on its exchange.

2. Statutory Basis

MIAX PEARL believes that its proposed rule change is consistent with Section 6(b) of the Act [18] in general, and furthers the objectives of Section 6(b)(5) of the Act [19] in particular, in that 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 mechanisms 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 the proposed changes to its listing standards for covered securities would allow the Exchange to more quickly list options on a qualifying covered security that has met the $3.00 eligibility price without sacrificing investor protection. As discussed above, the Exchange believes that its existing trading surveillances provide a sufficient measure of protection against potential price manipulation within the proposed three (3) consecutive business day timeframe. The Exchange also believes that the proposed three (3) consecutive business day timeframe would continue to be a reliable test for price stability in light of Nasdaq's findings that none of the IPO-related issues on Nasdaq within the past five years that qualified for the $3.00 per share price standard during the first three trading days fell below the $3.00 threshold during the fourth or fifth trading day. Furthermore, the established guidelines to be considered by the Exchange in evaluating the potential underlying securities for Exchange option transactions,[20] together with existing trading surveillances, provide adequate safeguards in the review of any covered security that may meet the proposed criteria for consideration of the option within the proposed timeframe.

In addition, the Exchange believes that basing the proposed timeframe on the T+2 settlement cycle adequately addresses the potential difficulties in confirming the number of shareholders of the underlying covered security. Having some of the largest brokerage firms that provide these shareholder counts to the Exchange confirm that they are able to provide these numbers within T+2 further demonstrates that the 2,000 shareholder requirement can be sufficiently verified within the proposed timeframe. For the foregoing reasons, the Exchange believes that the proposed amendments will remove and perfect the mechanism of a free and open market and a national market system by providing an avenue for investors to swiftly hedge their investment in the stock in a shorter amount of time than what is currently in place.[21]

Finally, it should be noted that a price/time standard for the underlying security was first adopted when the listed options market was in its infancy, and was intended to prevent the proliferation of options being listed on low-priced securities that presented special manipulation concerns and/or lacked liquidity needed to maintain fair and orderly markets.[22] When options trading commenced in 1973, the Commission determined that it was necessary for securities underlying options to meet certain minimum standards regarding both the quality of the issuer and the quality of the market

[11] The number of shareholders of record can be validated by large clearing agencies such as The Depository Trust and Clearing Corporation (''DTCC'') upon the settlement date (*i.e.,* T+2).

[12] *See* Securities Exchange Act Release No. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (Amendment to Securities Transaction Settlement Cycle) (File No. S7–22–16).

[13] *See* Exchange Rule 402(b). The Exchange established specific criteria to be considered in evaluating potential underlying securities for Exchange Option Transactions.

[14] *Id.*

[15] *See* Exchange Rule 402(b)(3).

[16] *See* Exchange Rule 402(d).

[17] *See* Exchange Rule 402(b).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* notes 13–17 above.

[21] This proposed rule change does not alter any obligations of issuers or other investors of an IPO that may be subject to a lock-up or other restrictions on trading related securities.

[22] *See* Securities Exchange Act Release No. 29628 (August 29, 1991), 56 FR 43949–01 (September 5, 1991) (SR–AMEX–86–21; SR–CBOE–86–15; SR–NYSE–86–20; SR–PSE–86–15; and SR–PHLX–86–21) (''1991 Approval Order'') ay 43949 (discussing the Commission's concerns when options trading initially commenced in 1973).

for a particular security.[23] These standards, including a price/time standard, were imposed to ensure that those issuers upon whose securities options were to be traded were widely-held, financially sound companies whose shares had trading volume and float substantial enough so as not to be readily susceptible to manipulation.[24] At the time, the Commission determined that the imposition of these standards was reasonable in view of the pilot nature of options trading and the limited experience of investors with options trading.[25]

Now more than 40 years later, the listed options market has evolved into a mature market with sophisticated investors. In view of this evolution, the Commission has approved various exchange proposals to relax some of these initial listing standards throughout the years,[26] including reducing the price/time standard in 2003 from $7.50 per share for the majority of business days over a three month period to the current $3.00 per share/five business day standard (''2003 Proposal'').[27] It has been almost fifteen years since the Commission approved the 2003 proposal, and both the listed options market and exchange technologies have continued to evolve since then. In this instance, MIAX PEARL is only proposing a modest reduction of the current five (5) business day standard to three (3) business days to correspond to the securities industry's move to a T+2 standard settlement cycle.[28] The $3.00 per share standard and all other initial options listing criteria in Rule 402 will remain unchanged by this proposal. For the reasons discussed herein, the Exchange therefore believes that the proposed three (3) business day period will be beneficial to the marketplace without sacrificing investor protections.

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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by Nasdaq Phlx that was recently approved by the Commission.[29] The proposed rule change will reduce the number of days to list options on an underlying security, and is intended to bring new options listings to the marketplace quicker.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[30] and Rule 19b–4(f)(6) thereunder.[31]

A proposed rule change filed under Rule 19b–4(f)(6)[32] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[33] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to modify the criteria for listing an option on an underlying covered security to align with the criteria of other options exchanges, and the Exchange's proposal does not raise new issues. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[34]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2018–04 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–PEARL–2018–04. 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

[23] *See* 1991 Approval Order at 43949.

[24] *Id.*

[25] *Id.*

[26] *See e.g.,* 1991 Approval Order (modifying a number of initial listing criteria, including the reduction of the price/time standard from $10 per share each day during the preceding three calendar months to $7.50 per share for the majority of days during the same period).

[27] *See* Securities Exchange Act Release Nos. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (SR–CBOE–2002–62); 47352 (February 11, 2003), 68 FR 8319 (February 20, 2003) (SR–PCX–2003–06); 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003) (SR–ISE–2003–04); 47613 (April 1, 2003), 68 FR 17120 (April 8, 2003) (SR–Amex–2003–19); and 47794 (May 5, 2003), 68 FR 25076 (May 9, 2003) (SR–Phlx–2003–27).

[28] *See supra* note 12.

[29] *See supra* note 3.

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6)(iii).

[34] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2018–04, and should be submitted on or before April 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05073 Filed 3–13–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82842; File No. SR–CboeBZX–2017–005]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of a Series of the Cboe Vest S&P 500 Buffer Protect Strategy ETF Under the ETF Series Solutions Trust Under Rule 14.11(c)(3), Index Fund Shares

March 9, 2018

I. Introduction

On November 21, 2017, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade, under BZX Rule 14.11(c)(3), shares (''Shares'') of a series of the Cboe Vest S&P 500® Buffer Protect Strategy ETF (individually, ''Fund,'' and, collectively, ''Funds'') under the ETF Series Solutions Trust (''Trust''). The proposed rule change was published for comment in the **Federal Register** on December 11, 2017.[3] On January 22, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to March 11, 2018.[4] The Commission has received no comment letters on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to disapprove the proposed rule change.

II. Exchange's Description of the Proposed Rule Change[6]

The Exchange proposes to list and trade the Shares of the Funds under BZX Rule 14.11(c)(3), which governs the listing and trading of Index Fund Shares. In total, the Exchange is proposing to list and trade Shares of twelve monthly series of the Cboe Vest S&P 500® Buffer Protect Strategy ETF. Each Fund will be an index-based exchange traded fund (''ETF''). The Funds will include the following: Cboe Vest S&P 500® Buffer Protect Strategy (January) ETF; Cboe Vest S&P 500® Buffer Protect Strategy (February) ETF; Cboe Vest S&P 500® Buffer Protect Strategy (March) ETF; Cboe Vest S&P 500® Buffer Protect Strategy (April) ETF; Cboe Vest S&P 500® Buffer Protect Strategy (May) ETF; Cboe Vest S&P 500® Buffer Protect Strategy (June) ETF; Cboe Vest S&P 500® Buffer Protect Strategy (July) ETF; Cboe Vest S&P 500® Buffer Protect Strategy (August) ETF; Cboe Vest S&P 500® Buffer Protect Strategy (September) ETF; Cboe Vest S&P 500® Buffer Protect Strategy (October) ETF; Cboe Vest S&P 500® Buffer Protect Strategy (November) ETF; and Cboe Vest S&P 500® Buffer Protect Strategy (December) ETF. Each Fund will be based on the Cboe S&P 500 Buffer Protect Index (Month) Series, where ''Month'' is the corresponding month associated with the roll date of the applicable Fund (individually, ''Index,'' and, collectively, ''Indexes'').

The Shares will be offered by the Trust, which was established as a Delaware statutory trust on February 9, 2012. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N–1A (''Registration Statement'') with the Commission.[7] The Funds' adviser will be Cboe Vest Financial, LLC (''Adviser''), and the index provider will be Cboe Exchange, Inc. (''Cboe Options'' or ''Index Provider'').

Each Fund's investment objective is to track, before fees and expenses, the performance of its respective Index. The value of each Index is calculated daily by Cboe Options utilizing an option valuation model. The Exchange is submitting this proposed rule change because the Indexes for the Funds do not meet the listing requirements of BZX Rule 14.11(c)(3) applicable to an index that consists of equity securities. Specifically, the Indexes for the Funds do not meet the listing requirements of BZX Rule 14.11(c)(3) because the Indexes consist of options based on an index of U.S. Component Stocks.[8]

Cboe Vest S&P 500® Buffer Protect Indexes

Each Index is a rules-based options index that consists exclusively of FLexible EXchange Options on the S&P 500 Index (''FLEX Options'') listed on Cboe Options.[9] The Indexes are designed to provide exposure to the large capitalization U.S. equity market with lower volatility and downside risks than traditional equity indices, except in environments of rapid appreciation in the U.S. equity market over the course of one year. On a specified day of the applicable month for each Index (''Roll Date''),[10] the applicable Index

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82217 (December 5, 2017), 82 FR 58243 (''Notice'').

[4] *See* Securities Exchange Act Release No. 82558, 83 FR 3820 (January 26, 2018).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] A more detailed description of the Trust, the Funds, and the Shares, as well as the availability of price information and other information regarding the Indexes (as defined herein) and the Funds' portfolio holdings, are included in the Notice and Registration Statement (as defined herein). *See* Notice, *supra* note 3; Registration Statement, *infra* note 7 and accompanying text.

[7] *See* Registration Statement on Form N–1A for the Trust, dated October 24, 2017 (File Nos. 333–179562 and 811–22668). According to the Exchange, the Commission has not yet issued an order granting exemptive relief to the Trust under the Investment Company Act of 1940 applicable to the activities of the Funds, but the Funds will not be listed on the Exchange until such an order is issued and any conditions contained therein are satisfied.

[8] As defined in Rule 14.11(c)(1)(D), the term ''U.S. Component Stock'' means an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depositary receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

[9] Additional information about the Indexes and methodology is available on the Index Provider's website at *www.cboe.com.*

[10] Each of the twelve Indexes is designed to provide returns over a defined year long period and, thus, there is an Index associated with each month. As such, the Roll Date for a specific Index is dependent on the monthly series for which the Index is associated. For example, the Roll Date for the Cboe® S&P 500® Buffer Protect Index January Series is in January, and the Roll date for the Cboe® S&P 500® Buffer Protect Index February Series is in

Continued

implements a portfolio of put and call FLEX Options with expirations on the next Roll Date that, if held to such Roll Date, seeks to ''buffer protect'' against the first 10% decline in the value of the S&P 500 Index, while providing participation up to a maximum capped gain in the value of the S&P 500 Index (''Capped Level''). The Capped Level is calculated as of each Roll Date based on the prices of the applicable FLEX Options, such that the value of the portfolio of FLEX Options that comprises each Index is equivalent to the value of a portfolio comprised of the S&P 500 Index constituents. As of the 2017 Roll Date, the Capped Level for the January Index was 11%, meaning that the January Index is designed to provide participation up to a maximum 11% gain in the value of the S&P 500 Index from the 2017 Roll Date to the 2018 Roll Date, but to not provide any participation for gains in the S&P 500 Index in excess of 11%.

Each Index is designed to provide the following outcomes between Roll Dates:

- *If the S&P 500 declines more than 10%:* The Index declines 10% less than the S&P 500 Index (*e.g.,* if the S&P 500 Index returns −35%, the Index is designed to return −25%);
- *If the S&P 500 declines between 0% and 10%:* The Index provides a total return of zero (0%);
- *If the S&P 500 appreciates between 0% and the Capped Level:* The Index appreciates the same amount as the S&P 500 Index; and
- *If the S&P 500 appreciates more than the Capped Level:* The Index appreciates by the amount of the Capped Level.

Each Index includes a mix of purchased and written (sold) put and call FLEX Options structured to achieve the results described above. Such results are only applicable for each full 12-month period from one Roll Date to the next Roll Date, and the Index may not return such results for shorter or longer periods. The value of each Index is calculated daily by Cboe Options utilizing a rules-based options valuation model.

Holdings of the Funds

Under Normal Market Conditions,[11] each Fund will seek to track the total return performance, before fees and expenses, of its respective Index. Under Normal Market Conditions, each Fund will invest all, or substantially all, of its assets in the FLEX Options that make up each respective underlying Index, standardized U.S. exchange-listed options contracts based on the S&P 500 (''S&P 500 Index Options''), U.S. exchange-listed options based on one or more ETFs [12] that track the performance of the S&P 500 Index and have the same economic characteristics as the FLEX Options that make up each Index (''Comparable ETF Options''),[13] as well as cash and cash equivalents.[14] Under Normal Market Conditions, at least 80% of each Fund's total assets (exclusive of any collateral held from securities lending) will be invested in the FLEX Options that make up the Index. The Funds will hold only FLEX Options, S&P 500 Index Options, Comparable ETF Options, and cash and cash equivalents. The FLEX Options owned by each Fund will have the same terms (*i.e.,* same strike price and expiration) for all investors of that Fund within an outcome period. The Capped Level is determined with respect to the applicable Index on the inception date of the applicable Fund and at the beginning of each outcome period.

III. Proceedings To Determine Whether To Disapprove SR–CboeBZX–2017–005 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [15] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[16] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act,[17] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

Under the proposal, each Fund's investment objective is to track, before fees and expenses, the performance of its respective Index, each of which consists of a hypothetical portfolio of purchased and written (sold) put and call FLEX Options structured to participate in market gains and losses of the S&P 500 Index within pre-determined ranges that are only applicable for a full 12-month period from one Roll Date to the next Roll Date. Specifically, on each Roll Date, the applicable Index implements a portfolio of put and call FLEX Options with expirations on the next Roll Date that, *if held to such Roll Date,* seeks to buffer protect against the first 10% decline in the value of the S&P 500 Index, and to provide participation up to a maximum capped gain in the value of the S&P 500 Index. Because of these Index characteristics, the Index outcomes that each Fund seeks to track are best realized if the Shares are bought at the initial Roll Date and sold at the expiration of the next Roll Date. The Commission notes, however, that market participants may buy or sell Shares of the Funds at any time, not only at the initial or expiration of a Roll Date. Consequently, with respect to the pricing of the Shares at any time other than the commencement or expiration of a Roll Date, the Commission seeks commenters' views on the sufficiency of the information provided in the proposed rule change to support a determination that the listing and trading of the Shares would be

February, a pattern which continues through the rest of the calendar year.

[11] The term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events, such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[12] For purposes of this proposal, the term ETF means Portfolio Depositary Receipts and Index Fund Shares as defined in BZX Rules 14.11(b) and 14.11(c), respectively, and their equivalents on other national securities exchanges.

[13] The term ''Comparable ETF Options'' will at any time include only the five ETFs based on the S&P 500 Index with the greatest options consolidated average daily exchange trading volume for the previous quarter.

[14] For purposes of this filing, cash equivalents are short-term instruments with maturities of less than three months, including: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

[15] 15 U.S.C. 78s(b)(2)(B).

[16] *Id.*

[17] 15 U.S.C. 78f(b)(5).

consistent with Section 6(b)(5) of the Act.

IV. Procedure: Request for Written Comments

Interested persons are invited to submit written views, data, and arguments concerning the foregoing, including whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act, any request for an opportunity to make an oral presentation.[18]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by April 4, 2018. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 18, 2018.

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–CboeBZX–2017–005 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–CboeBZX–2017–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2017–005 and should be submitted on or before April 4, 2018. Rebuttal comments should be submitted by April 18, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05159 Filed 3–13–18; 8:45 am]

BILLING CODE 8011–01–P

[18] Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[19] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82850; File No. SR–NYSEArca–2017–69]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of ProShares QuadPro Funds Under NYSE Arca Rule 8.200–E

March 9, 2018.

On July 31, 2017, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of ProShares QuadPro U.S. Large Cap, ProShares QuadPro Short U.S. Large Cap, ProShares QuadPro U.S. Small Cap, and ProShares QuadPro Short U.S. Small Cap under NYSE Arca Rule 8.200–E. The proposed rule change was published for comment in the **Federal Register** on August 18, 2017.[3] On September 28, 2017, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 29, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change as originally filed. On November 14, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and superseded the proposed rule change as modified by Amendment No. 1. On November 16, 2017, the Commission published notice of Amendment No. 2 and instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.[7] On February 9, 2018, pursuant to Section 19(b)(2) of the Act,[8] the Commission designated a longer period within which to approve or disapprove the proposed rule change, as modified by Amendment No. 2.[9] The Commission has received no comments on the proposed rule change.

On March 7, 2018, the Exchange withdrew the proposed rule change (SR–NYSEArca–2017–69), as modified by Amendment No. 2.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05166 Filed 3–13–18; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81388 (August 14, 2017), 82 FR 39477.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 81746, 82 FR 46315 (October 4, 2017) (designating November 16, 2017 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 82105, 82 FR 55699 (November 22, 2017).

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Securities Exchange Act Release No. 82684, 83 FR 6914 (February 15, 2018) (designating April 15, 2018 as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82848; File No. SR–MRX–2018–08]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing of Proposed Rule Change To Introduce the ATR Protection for Orders That Are Routed to Away Markets

March 9, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 23, 2018, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the 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 introduce its Acceptable Trade Range protection for orders that are routed to away markets pursuant to the Options Order Protection and Locked/Crossed Markets Plan.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange offers an Acceptable Trade Range (''ATR'') protection that prevents the execution of quotes and orders on the regular order book outside of set thresholds. The purpose of the proposed rule change is to enhance this ATR protection for orders that are routed to away markets pursuant to the Options Order Protection and Locked/Crossed Markets Plan (''Linkage Plan'') instead of being executed immediately on the Exchange or resting on the regular order book.

As codified in Rule 714(b)(1), the Exchange's trading system calculates an Acceptable Trade Range to limit the range of prices at which an order or quote will be allowed to execute.[3] The Acceptable Trade Range is calculated by taking the reference price, plus or minus a value to be determined by the Exchange (*i.e.,* the reference price – (x) for sell orders/quotes and the reference price + (x) for buy orders or quotes).[4] Upon receipt of a new order or quote, the reference price is the national best bid (''NBB'') for sell orders/quotes and the national best offer (''NBO'') for buy orders/quotes. If an order or quote reaches the outer limit of the Acceptable Trade Range without being fully executed then any unexecuted balance will be cancelled.

Currently, the trading system calculates an appropriate reference price for an incoming order or quote when that order or quote rests or trades on the regular order book but not when orders are routed to an away market pursuant to the Linkage Plan without first trading on the Exchange. The Exchange now proposes to enhance its ATR protection by applying it to orders that are routed to away markets without first trading on the Exchange. As proposed, Rule 714(a)(1) will continue to provide that the reference price for the ATR protection is the NBB for sell orders/quotes and the NBO for buy orders/quotes. For clarity, however, the Exchange proposes to move this language to a separate bullet under proposed Rule 714(a)(1)(ii). In addition, proposed Rule 714(a)(1)(ii) will indicate that the reference price is calculated upon receipt of a new order or quote, provided that if the applicable NBB or NBO price is improved at the time an order is routed to an away market, a new reference price is calculated based on the NBB or NBO at that time.

Although the Exchange will continue to use the NBB or NBO as the reference price for the ATR protection, the Exchange believes that it is appropriate to update the reference price if the applicable NBB or NBO price is improved at the time an order is routed to an away market. Orders that are routed to away markets are eligible for the ''Flash'' auction process described in Supplementary Material .02 to Rule 1901. When a Flash auction is initiated, members are given an opportunity to enter responses to trade with the order for a time period established by the Exchange not to exceed one (1) second.[5] Because the applicable NBB or NBO price may change during the Flash auction, the Exchange believes that it is appropriate to consider the updated NBB or NBO price at the time the order is actually routed to an away market, if doing so would provide additional protection to the order—*i.e.,* if the NBB or NBO price used as the reference price is improved at that time. If the NBB or NBO price is not improved, the ATR protection will continue to use the NBB or NBO price on entry as the reference price, thereby providing the maximum protection to the order. The following examples illustrate how the ATR protection will be applied to orders routed to away markets:

Example 1

1. ATR threshold set to $0.15 for non-penny symbols
2. NBBO is $0.90 (35) × $1.00 (25):
   a. BATS: $0.90 (10) × $1.00 (25)
   b. CBOE: $0.90 (25) × $1.05 (25)
   c. MIAX: $0.85 (25) × $1.15 (25)
   d. MRX: $0.85 (50) × $1.20 (50)
3. Member enters a Limit Order to buy 200 contracts at $1.20
4. Flash auction initiated at a price of $1.00
5. CBOE quote improved establishing a new NBBO of $0.90 (35) × $0.95 (25):
   a. BATS: $0.90 (10) × $1.00 (25)
   b. CBOE: $0.90 (25) × $0.95 (25)
   c. MIAX: $0.85 (25) × $1.15 (25)
   d. MRX: $0.85 (50) × $1.20 (50)
6. No responses entered and Flash auction terminates and routes:
   a. 25 contracts to buy to CBOE at $0.95
   b. 25 contracts to buy to BATS at $1.00
7. Because the NBO is improved at time of routing, the reference price is set to the improved NBO price of $0.95, establishing an Acceptable Trade Range of $1.10
8. The remaining balance of 150 contracts that cannot be executed within the

[3] The ATR protection is not available for All-or-None orders.

[4] There are three categories of options for ATR: (1) Penny Pilot Options trading in one cent increments for options trading at less than $3.00 and increments of five cents for options trading at $3.00 or more, (2) Penny Pilot Options trading in one-cent increments for all prices, and (3) Non-Penny Pilot Options.

[5] Currently, the exposure period for the Flash auction is set to 150 milliseconds.

Acceptable Trade Range is cancelled

Example 2

1. ATR threshold set to $0.15 for non-penny symbols
2. NBBO is $0.90 (35) × $1.00 (25):
   a. BATS: $0.90 (10) × $1.00 (25)
   b. CBOE: $0.90 (25) × $1.05 (25)
   c. MIAX: $0.85 (25) × $1.15 (25)
   d. MRX: $0.85 (50) × $1.20 (50)
3. Member enters a Limit Order to buy 200 contracts at $1.20
4. Flash auction initiated at a price of $1.00
5. BATS quote worsened establishing a new NBBO of $0.90 (35) × $1.05 (50):
   a. BATS: $0.90 (10) × $1.05 (25)
   b. CBOE: $0.90 (25) × $1.05 (25)
   c. MIAX: $0.85 (25) × $1.15 (25)
   d. MRX: $0.85 (50) × $1.20 (50)
6. No responses entered and Flash auction terminates and routes:
   a. 25 contracts to buy to BATS at $1.05
   b. 25 contracts to buy to CBOE at $1.05
   c. 25 contracts to buy to MIAX at $1.15
7. Because the NBO is worsened at time of routing, the reference price is set to the initial NBO price of $1.00, establishing an Acceptable Trade Range of $1.15
8. The remaining balance of 125 contracts that cannot be executed within the Acceptable Trade Range is cancelled

Implementation

The Exchange proposes to launch the ATR functionality described in this proposed rule change no later than October 31, 2018. The Exchange will announce the implementation date of this functionality in an Options Trader Alert issued to members prior to the launch date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Specifically, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by enhancing the Exchange's ATR protection. The ATR functionality is designed to ensure that orders and quotes entered on the Exchange are executed at reasonable prices based on the applicable NBBO price on receipt. Currently, the Exchange's ATR protection calculates a reference price at the time an order or quote rests or trades locally but not when an order is routed to an away market pursuant to the Linkage Plan without first trading on the Exchange. To further protect orders that are subject to routing that have not traded on the Exchange, the Exchange is proposing to implement the ATR protection for those orders. The Exchange will continue to use the NBBO as the reference price for the ATR protection but now that the Exchange is protecting orders that are routed away pursuant to the Linkage Plan without trading on the Exchange, the Exchange proposes to use the NBBO price on routing instead of the NBBO on receipt only in those circumstances where the NBBO is improved at the time of routing. As described earlier in this proposed rule change, the Exchange operates a Flash auction that provides an opportunity for Members to match or improve the NBBO price prior to routing eligible orders to away markets. Since the NBBO price may change during the Flash auction's exposure period, the Exchange believes that the ATR protection should take improved NBBO prices into account when determining whether a particular price is a reasonable execution price. The Exchange believes, however, that a worsened NBBO price should not be considered as this would decrease rather than increase the protection provided to such an order. In sum, the proposed changes to the ATR protection will protect investors and the public interest by providing additional protections designed to ensure that quotes and orders entered on the Exchange are executed at reasonable prices, and thereby perfect the mechanism of a free and open market and a national market system.

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 enhance the Exchange's ATR protection by extending that protection to orders that are routed to away markets that did not first trade on the Exchange. The proposed protection will apply equally to all orders that are routed to away markets pursuant to the Linkage Plan. The Exchange believes that this change is the result of a competitive market where exchanges must continually improve the functionality offered to market participants in order to remain competitive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2018–08 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–MRX–2018–08. 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

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2018–08 and should be submitted on or before April 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05165 Filed 3–13–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82828; File No. SR–MIAX–2018–06]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 402, Criteria for Underlying Securities

March 8, 2018.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 22, 2018, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to amend Exchange Rule 402, Criteria for Underlying Securities, to modify the criteria for listing an option on an underlying covered security.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 402, Criteria for Underlying Securities, to modify the criteria for listing options on an underlying security as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (hereinafter ''covered security'' or ''covered securities''). This is a competitive filing that is based on a proposal recently submitted by Nasdaq PHLX LLC (''Nasdaq Phlx'') and approved by the Commission.[3]

In particular, the Exchange proposes to modify Rule 402(b)(5)(i) to permit the listing of an option on an underlying covered security that has a market price of at least $3.00 per share for the previous three (3) consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation (''OCC'') for listing and trading. The Exchange does not intend to amend any other criteria for listing options on an underlying security in Rule 402.

Currently the underlying covered security must have a closing market price of $3.00 per share for the previous five (5) consecutive business days preceding the date on which the Exchange submits a listing certificate to OCC. In the proposed amendment, the market price will still be measured by the closing price reported in the primary market in which the underlying covered security is traded, but the measurement will be the price over the prior three (3) consecutive business day period preceding the submission of the listing certificate to OCC, instead of the prior five (5) business day period.

The Exchange acknowledges that the Options Listing Procedures Plan[4] requires that the listing certificate be provided to OCC no earlier than 12:01 a.m. and no later than 11:00 a.m. (Chicago time) on the trading day prior to the day on which trading is to begin.[5] The proposed amendment will still comport with that requirement. For example, if an initial public offering (''IPO'') occurs at 11:00 a.m. on Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on Thursday by 12:01 a.m. (Chicago time), with the market price determined by the closing price over the three-day period from Monday through Wednesday. The option on the IPO would then be eligible for trading on the Exchange on Friday. The proposed amendment would essentially enable options trading within four (4) business days of an IPO becoming available instead of six (6) business days (five (5) consecutive days plus the day the listing certificate is submitted to OCC).

The Exchange's initial listing standards for equity options in Rule 402 (including the current price/time standard of $3.00 per share for five (5) consecutive business days) are substantially similar to the initial listing standards adopted by other options exchanges.[6] At the time the Exchange received its initial approval from the Commission, as part of its Rules, the Exchange adopted the ''look back'' period of five (5) consecutive business days, it determined that the five-day period was sufficient to protect against attempts to manipulate the market price of the underlying security and would

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82474 (January 9, 2018), 83 FR 2240 (January 16, 2018) (Order Approving SR–Phlx–2017–75).

[4] The Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11a(2)(3)(B) of the Securities Exchange Act of 1934 (a/k/a the Options Listing Procedures Plan (''OLPP'')) is a national market system plan that, among other things, sets forth procedures governing the listing of new options series. *See* Securities Exchange Act Release No. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001) (Order approving OLPP). The sponsors of OLPP include OCC; BATS Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; EDGX Exchange, Inc.; Miami International Securities Exchange, LLC; MIAX PEARL, LLC; The Nasdaq Stock Market LLC; NASDAQ BX, Inc.; Nasdaq PHLX LLC; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; NYSE American, LLC; and NYSE Arca, Inc.

[5] *See* OLPP at page 3.

[6] *See, e.g.,* Phlx Rule 1009, Commentary .01; *see also* BOX Rule 5020(b)(5).

provide a reliable test for stability.[7] Surveillance technologies and procedures concerning manipulation have evolved since then to provide adequate prevention or detection of rule or securities law violations within the proposed time frame, and the Exchange represents that its existing trading surveillances are adequate to monitor the trading of options on the Exchange.[8]

Furthermore, the Exchange notes that the scope of its surveillance program also includes cross market surveillance for trading that is not just limited to the Exchange. In particular, the Financial Industry Regulatory Authority (''FINRA''), pursuant to a regulatory services agreement, operates a range of cross-market equity surveillance patterns on behalf of the Exchange to look for potential manipulative behavior, including spoofing, algorithm gaming, marking the close and open, and momentum ignition strategies, as well as more general, abusive behavior related to front running, wash shales, quoting/routing, and Reg SHO violations. These cross-market patterns incorporate relevant data from various markets beyond the Exchange and its affiliate, MIAX PEARL, LLC (''MIAX PEARL''), including data from the New York Stock Exchange (''NYSE'') and from the Nasdaq Stock Market (''Nasdaq'').

Additionally, for options, MIAX Options, through FINRA, utilizes an array of patterns that monitor manipulation of options, or manipulation of equity securities (regardless of venue) for the purpose of impacting options prices on both MIAX Options and MIAX PEARL options markets (*i.e.,* mini-manipulation strategies). Accordingly, the Exchange believes that the cross market surveillance performed by FINRA on behalf of the Exchange, coupled with the Exchange staff's real-time monitoring of similarly violative activity on MIAX Options and its affiliated market as described herein, reflects a comprehensive surveillance program that is adequate to monitor for manipulation of the underlying security and overlying option within the proposed three-day look back period.

Furthermore, the Exchange notes that the proposed listing criteria would still require that the underlying security be listed on NYSE, the American Stock Exchange (now known as NYSE American), or the National Market System of The Nasdaq Stock Market (now known as the Nasdaq Global Market) (collectively, the ''Named Markets''), as provided for in the definition of ''covered security'' from Section 18(b)(1)(A) of the 1933 Act.[9] Accordingly, the Exchange believes that the proposed rule change would still ensure that the underlying security meets the high listing standards of a Named Market, and would also ensure that the underlying is covered by the regulatory protections (including market surveillance, investigation and enforcement) offered by these exchanges for trading in covered securities conducted on their facilities.

Furthermore, the Nasdaq, Nasdaq Phlx's affiliated listing market, had no cases within the past five years where an IPO-related issue for which it had pricing information qualified for the $3.00 price requirement during the first three (3) days of trading and did not qualify for the $3.00 price requirement during the first five (5) days.[10] In other words, none of these qualifying issues fell below the $3.00 threshold within the first three (3) or five (5) days of trading. As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with Nasdaq's findings related to the IPO-related issues as described herein, adequately address potential concerns regarding possible manipulation or price stability within the proposed timeframe.

The Exchange also believes that the proposed look back period can be implemented in connection with the other initial listing criteria for underlying covered securities. In particular, the Exchange recognizes that it may be difficult to verify the number of shareholders in the days immediately following an IPO due to the fact that stock trades generally clear within two business days (T+2) of their trade date and therefore the shareholder count will generally not be known until T+2.[11] The Exchange notes that the current T+2 settlement cycle was recently reduced from T+3 on September 5, 2017 in connection with the Commission's amendments to Exchange Rule 15c6–1(a) to adopt the shortened settlement cycle,[12] and the look back period of three (3) consecutive business days proposed herein reflects this shortened T+2 settlement period. As proposed, stock trades would clear within T+2 of their trade date (*i.e.,* within three (3) business days) and therefore the number of shareholders could be verified within three (3) business days, thereby enabling options trading within four (4) business days of an IPO (three (3) consecutive business days plus the day the listing certificate is submitted to OCC).

Furthermore, the Exchange notes that it can verify the shareholder count with various brokerage firms that have a large retail customer clientele. Such firms can confirm the number of individual customers who have a position in the new issue. The earliest that these firms can provide confirmation is usually the day after the first day of trading (T+1) on an unsettled basis, while others can confirm on the third day of trading (T+2). The Exchange has confirmed with some of these brokerage firms who provide shareholder numbers to the Exchange that they are T+2 after an IPO. For the foregoing reasons, the Exchange believes that basing the proposed three (3) business day look back period on the T+2 settlement cycle would allow for sufficient verification of the number of shareholders.

The proposed rule change will apply to all covered securities that meet the criteria of Rule 402. Pursuant to Rule 402, the Exchange establishes guidelines to be considered in evaluating the potential underlying securities for Exchange option transactions.[13] However, the fact that a particular security may meet the guidelines established by the Exchange does not necessarily mean that it will be approved as an underlying security.[14] As part of the established criteria, the issuer must be in compliance with any applicable requirement of the Securities

[7] *See* Securities Exchange Act Release No. 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (order granting approval of MIAX Options for registration as a National Securities Exchange).

[8] Such surveillance procedures generally focus on detecting securities trading subject to opening price manipulation, closing price manipulation, layering, spoofing or other unlawful activity impacting an underlying security, the option, or both. The Exchange, through the Financial Industry Regulatory Authority (''FINRA''), has price movement alerts, unusual market activity and order book alerts active for all trading symbols. These real time patterns are active for the new security as soon as the IPO begins trading.

[9] *See* 15 U.S.C. 77r(b)(1)(A).

[10] There were over 750 IPO-related issues on Nasdaq within the past five years. Out of all of the issues with pricing information, there was only one issue that had a price below $3 during the first five consecutive business days. The Exchange notes, however, that Nasdaq allows for companies to list on the Nasdaq Capital Market at $2.00 or $3.00 per share in some instances, which was the case for this particular issue. *See* Nasdaq Rule 5500 Series for initial listing standards on the Nasdaq Capital Market. *See also supra* note 3.

[11] The number of shareholders of record can be validated by large clearing agencies such as The Depository Trust and Clearing Corporation (''DTCC'') upon the settlement date (*i.e.,* T+2).

[12] *See* Securities Exchange Act Release No. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (Amendment to Securities Transaction Settlement Cycle) (File No. S7–22–16).

[13] *See* Exchange Rule 402(b). The Exchange established specific criteria to be considered in evaluating potential underlying securities for Exchange Option Transactions.

[14] *Id.*

Exchange Act of 1934.[15] Additionally, in considering the underlying security, the Exchange relies on information made publicly available by the issuer and/or the markets in which the security is traded.[16] Even if the proposed option meets the objective criteria, the Exchange may decide not to list, or place limitations or conditions upon listing.[17] The Exchange believes that these measures, together with its existing surveillance procedures, provide adequate safeguards in the review of any covered security that may meet the proposed criteria for consideration of the option within the timeframe contained in this proposal.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[18] in general, and furthers the objectives of Section 6(b)(5) of the Act[19] in particular, in that 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 mechanisms 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 the proposed changes to its listing standards for covered securities would allow the Exchange to more quickly list options on a qualifying covered security that has met the $3.00 eligibility price without sacrificing investor protection. As discussed above, the Exchange believes that its existing trading surveillances provide a sufficient measure of protection against potential price manipulation within the proposed three (3) consecutive business day timeframe. The Exchange also believes that the proposed three (3) consecutive business day timeframe would continue to be a reliable test for price stability in light of Nasdaq's findings that none of the IPO-related issues on Nasdaq within the past five years that qualified for the $3.00 per share price standard during the first three trading days fell below the $3.00 threshold during the fourth or fifth trading day. Furthermore, the established guidelines to be considered by the Exchange in evaluating the potential underlying securities for Exchange option transactions,[20] together with existing trading surveillances, provide adequate safeguards in the review of any covered security that may meet the proposed criteria for consideration of the option within the proposed timeframe.

In addition, the Exchange believes that basing the proposed timeframe on the T+2 settlement cycle adequately addresses the potential difficulties in confirming the number of shareholders of the underlying covered security. Having some of the largest brokerage firms that provide these shareholder counts to the Exchange confirm that they are able to provide these numbers within T+2 further demonstrates that the 2,000 shareholder requirement can be sufficiently verified within the proposed timeframe. For the foregoing reasons, the Exchange believes that the proposed amendments will remove and perfect the mechanism of a free and open market and a national market system by providing an avenue for investors to swiftly hedge their investment in the stock in a shorter amount of time than what is currently in place.[21]

Finally, it should be noted that a price/time standard for the underlying security was first adopted when the listed options market was in its infancy, and was intended to prevent the proliferation of options being listed on low-priced securities that presented special manipulation concerns and/or lacked liquidity needed to maintain fair and orderly markets.[22] When options trading commenced in 1973, the Commission determined that it was necessary for securities underlying options to meet certain minimum standards regarding both the quality of the issuer and the quality of the market for a particular security.[23] These standards, including a price/time standard, were imposed to ensure that those issuers upon whose securities options were to be traded were widely-held, financially sound companies whose shares had trading volume and float substantial enough so as not to be readily susceptible to manipulation.[24] At the time, the Commission determined that the imposition of these standards was reasonable in view of the pilot nature of options trading and the limited experience of investors with options trading.[25]

Now more than 40 years later, the listed options market has evolved into a mature market with sophisticated investors. In view of this evolution, the Commission has approved various exchange proposals to relax some of these initial listing standards throughout the years,[26] including reducing the price/time standard in 2003 from $7.50 per share for the majority of business days over a three month period to the current $3.00 per share/five business day standard (''2003 Proposal'').[27] It has been almost fifteen years since the Commission approved the 2003 proposal, and both the listed options market and exchange technologies have continued to evolve since then. In this instance, MIAX Options is only proposing a modest reduction of the current five (5) business day standard to three (3) business days to correspond to the securities industry's move to a T+2 standard settlement cycle.[28] The $3.00 per share standard and all other initial options listing criteria in Rule 402 will remain unchanged by this proposal. For the reasons discussed herein, the Exchange therefore believes that the proposed three (3) business day period will be beneficial to the marketplace without sacrificing investor protections.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX Options 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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by Nasdaq Phlx that was recently approved by the Commission.[29] The proposed rule change will reduce the number of days

[15] *See* Exchange Rule 402(b)(3).

[16] *See* Exchange Rule 402(d).

[17] *See* Exchange Rule 402(b).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* notes 13–17 above.

[21] This proposed rule change does not alter any obligations of issuers or other investors of an IPO that may be subject to a lock-up or other restrictions on trading related securities.

[22] *See* Securities Exchange Act Release No. 29628 (August 29, 1991), 56 FR 43949–01 (September 5, 1991) (SR–AMEX–86–21; SR–CBOE–86–15; SR–NYSE–86–20; SR–PSE–86–15; and SR–PHLX–86–21) (''1991 Approval Order'') ay 43949 (discussing the Commission's concerns when options trading initially commenced in 1973).

[23] *See* 1991 Approval Order at 43949.

[24] *Id.*

[25] *Id.*

[26] *See e.g.,* 1991 Approval Order (modifying a number of initial listing criteria, including the reduction of the price/time standard from $10 per share each day during the preceding three calendar months to $7.50 per share for the majority of days during the same period).

[27] *See* Securities Exchange Act Release Nos. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (SR–CBOE–2002–62); 47352 (February 11, 2003), 68 FR 8319 (February 20, 2003) (SR–PCX–2003–06); 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003) (SR–ISE–2003–04); 47613 (April 1, 2003), 68 FR 17120 (April 8, 2003) (SR–Amex–2003–19); and 47794 (May 5, 2003), 68 FR 25076 (May 9, 2003) (SR–Phlx–2003–27).

[28] *See supra* note 12.

[29] *See supra* note 3.

to list options on an underlying security, and is intended to bring new options listings to the marketplace quicker.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [30] and Rule 19b–4(f)(6) thereunder.[31]

A proposed rule change filed under Rule 19b–4(f)(6) [32] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[33] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to modify the criteria for listing an option on an underlying covered security to align with the criteria of other options exchanges, and the Exchange's proposal does not raise new issues. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[34]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2018–06 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–MIAX–2018–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2018–06, and should be submitted on or before April 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05074 Filed 3–13–18; 8:45 am]

BILLING CODE 8011–01–P

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6)(iii).

[34] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82845; File No. SR–BOX–2018–08]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 7600(c) To State That the Qualified Open Outcry (''QOO'') Order is Subject to the Trade-Through Exceptions Outlined in Rule 15010(b)

March 9, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 27, 2018, BOX Options Exchange LLC (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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7600(c) to state that the Qualified Open Outcry (''QOO'') Order is subject to the trade-through exceptions outlined in Rule 15010(b). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 7600(c) to state that the Qualified Open Outcry (''QOO'') Order is subject to the trade-through exceptions in Rule 15010(b).[3]

Currently, BOX Participants must comply with Exchange rules and the terms of the Options Order Protection and Locked/Crossed Market Plan (''Linkage Plan'') by honoring any better-priced Protected Quotes.[4] The Linkage Plan, as codified in BOX Rule 15000 Series, provides that Participants shall not effect trade-throughs of a Protected Bid or Offer (collectively, a ''Protected Quote''), except pursuant to an applicable exceptions that are outlined in Sections(b)(1) through (10) of Rule 15010. A Protected Quote is defined as a bid or offer in an options series that (1) is disseminated pursuant to the OPRA Plan and (2) is the best bid or offer, respectively, displayed by an eligible exchange.

The Exchange notes that it recently adopted rules for an open outcry Trading Floor.[5] These rules included a statement in Rule 7600(c) that both sides of the QOO Order must execute at a price equal to or better than the NBBO. The Exchange now proposes to add language to explain that this statement does not apply if the execution of the QOO Order is using one of the exceptions outlined in Rule 15010(b). Specifically, the Exchange proposes to state that ''when a Floor Broker executes the QOO Order, the execution price must be equal to or better than the NBBO, subject to the exceptions in Rule 15010(b).''

Specifically, pursuant to Rule 15010(b)(4), a QOO Order with an ISO designation will be submitted to the Trading Host in the same manner as any other QOO Order.[6] Without an ISO designation, a QOO Order priced worse than the NBBO would be rejected. The Exchange notes that the Floor Broker is the individual who marks the QOO Order with an ISO designation and is responsible for taking out all better-priced Protected Bids at away exchanges.[7]

Upon identifying the QOO Order as an ISO, the system will execute the order, regardless of the NBBO.[8] A Floor Broker must ensure that the routing of any outbound ISOs in connection with an execution of a QOO Order on the Trading Floor occur as contemporaneously as possible.

For example, assume the following at the time the QOO Order is submitted to the BOX trading host:

NBBO: .97–1.00
Cboe: .97–1.00[9]
Phlx: .97–1.02
Nasdaq ISE: .97–1.03
All other Exchanges: .95–1.05

A QOO Order with an ISO designation is submitted to the Trading Host to sell 100 at .96. The QOO Order will execute regardless of the NBBO. Contemporaneously, the Floor Broker must take out all better-priced Protected Bids. The Floor Broker would send the following orders to each exchange displaying a better-priced Protected Quote, for the full size of the Protected Quote, contemporaneous with the execution of the QOO Order on BOX:

Sell 10@.97 Cboe
Sell10@.97 Phlx
Sell 10@.97 Nasdaq ISE

The Exchange notes that other options exchanges with open outcry trading floors have made this distinction in the past in their respective Regulatory Circulars.[10] The Exchange also notes that Arca and Cboe do not reference these exceptions in their trading floor rules. Further, the Exchange believes that referencing these exceptions in the BOX Trading Floor rules will provide clarity and transparency to BOX Participants.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[11] in general, and Section 6(b)(5) of the Act,[12] in particular, in that the proposed change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest.

The Exchange believes that stating that both sides of the QOO Order must execute at a price equal to or better than the NBBO subject to the exceptions in Rule 15010(b) is reasonable because it will provide Participants with more clarity and transparency with regard to the Trading Floor rules; specifically, rules surrounding QOO Orders on the Trading Floor and their relationship with the Linkage Plan. Further, the Exchange believes that the proposed change is appropriate as other exchanges have made this clarification in their respective circulars.

B. Self-Regulatory Organization's Statement on Burden on Competition

As discussed above, the Exchange notes that the proposed rule change is simply amending Rule 7600(c) to state

[3] The Exchange notes that, in practice, QOO Orders will rely on the exceptions detailed in Rule 15010(b)(4) and (7). Under BOX Rule 15010(b)(4), an exception to trade-through liability exists if the transaction that constitutes the Trade-Through is the execution of an order identified as an Intermarket Sweep Order (''ISO''), or the transaction that constitutes the Trade-Through is effected by BOX while simultaneously routing an ISO to execute against the full displayed size of any better-priced Protected Bid or Offer. Under BOX Rule 15010(b)(7), another exception to Trade-Through liability exists if the transaction that constituted the Trade-Through was effected as a portion of a Complex Trade. This may happen if the Participant has a Stock Option Complex Order. Because BOX does not trade equities, the Participant would direct that portion of the order to another exchange and execute the option portion on BOX.

[4] *See* Securities Exchange Act Release No. 54551 (September 29, 2006), 71 FR 59148 (October 6, 2006) (Order Approving NMS Linkage Plan).

[5] *See* Securities Exchange Act Release No. 81292 (August 2, 2017), 82 FR 37144 (August 8, 2017)(Order Approving SR–BOX–2016–48 as modified by Amendment Nos. 1 and 2).

[6] The Exchange notes that the QOO Order with the ISO designation will be treated in the same manner as any other QOO Order on the Trading Floor. The ISO designation simply identifies that the QOO Order has an ISO designation and must no longer execute at a price equal to or better than the NBBO.

[7] The Exchange notes that this is identical to the process for electronic orders.

[8] The Exchange notes that the ISO designation does not allow the QOO Order to ignore interest on the BOX Book.

[9] Assume the away markets are all bidding for 10 contracts.

[10] *See* NYSE Arca (''Arca'') Options RB–16–04 available at *https://www.nyse.com/publicdocs/nyse/markets/arca-options/rule-interpretations/2016/NYSE%20Arca%20Options%20RB%2016-04.pdf, see also* Chicago Board Options Exchange, Incorporated (''Cboe'') Regulatory Circular RG09–117 available at *https://www.cboe.org/publish/regcir/rg09-117.pdf.* The Exchange notes that it recently issued a Regulatory Circular reminding BOX Participants of the rules that must be followed when trading in open out-cry on the BOX Trading Floor. *See* BOX Regulatory Circular RC–2017–17 available at *https://boxoptions.com/assets/RC-2017-17-Order-Protection-Rules-in-Open-Outcry-Trading.pdf.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

that the exceptions detailed in Rule 15010(b) apply to Trading Floor transactions. As mentioned above, other options exchanges with open out-cry trading floors have issued Regulatory Circulars addressing the Linkage Plan and how it relates to their respective trading floor rules. As such, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiver of the operative delay would allow it to implement the proposal immediately and eliminate the potential for confusion with regard to QOO Orders on the Trading Floor and their relationship to the Linkage Plan. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is designed to provide clarity and transparency to BOX Participants with regard to QOO Orders on the Trading Floor and their relationship to the Linkage Plan. The Commission also notes that the proposed rule change is consistent with the practices of other options exchanges, which are set forth in regulatory circulars.[17] Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2018–08 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–BOX–2018–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2018–08 and should be submitted on or before April 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05162 Filed 3–13–18; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See supra* note 10.

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82844; File No. SR–CboeBZX–2018–016]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delist the Shares of the iShares Edge U.S. Fixed Income Balanced Risk ETF From Listing Pursuant to Rule 14.11(i) and Approval Orders Issued by the Commission as a Series of Managed Fund Shares, and To Re-List Pursuant to Rule 14.11(c)(4) as a Series of Index Fund Shares

March 9, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 28, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to delist the shares of the iShares Edge U.S. Fixed Income Balanced Risk ETF (the ''Fund'') from listing pursuant to Rule 14.11(i) and approval orders issued by the Commission as a series of Managed Fund Shares, and to re-list pursuant to Rule 14.11(c)(4) as a series of Index Fund Shares.

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delist the shares of the Fund (the ''Shares'') from listing pursuant to an approval order issued by the Commission under Rule 14.11(i) related to Managed Fund Shares and re-listing pursuant to Rule 14.11(c)(4) related to Index Fund Shares[5] based on Fixed Income Securities.[6] [7] The Exchange is submitting this proposal because the index that the Fund proposes to track meets all of the generic listing standards of Rule 14.11(c)(4)(B)(i) except that the Index includes exposure to U.S. Treasury futures contracts, which are not contemplated as Index constituents under Rule 14.11(c).

The Shares began trading on the Exchange on February 26, 2015 after the Commission issued an order[8] approving the listing and trading of the Shares on the Exchange,[9] which included a number of Continued Listing Representations.[10] At that time, the Exchange was required to file separate proposals under Section 19(b) of the Act before the listing of any funds listed pursuant to Rule 14.11(i) (''Managed Fund Shares''). While the Shares would be listed as a series of Index Fund Shares instead of Managed Fund Shares, the Fund's holdings will continue meet the applicable Continued Listing Representations from the Order, except that the Fund plans to track the investment results of an index, specifically the Bloomberg Barclays U.S. Fixed Income Balanced Risk Index (the ''Index'').[11]

The Index uses a rules-based approach to calculate an equal volatility-weighted allocation to each of five segments of the Parent Index: (1) Investment-grade corporate bonds 1–5 year; (2) investment-grade corporate bonds 5–10 year; (3) high yield corporate bonds rated BB or higher; (4) high yield corporate bonds rated below BB; and (5) U.S. agency mortgage-backed securities. Segments with lower credit spread volatility receive a higher weighting, and segments with higher credit spread volatility receive a lower weighting, with the result that the contribution of each segment to overall credit spread volatility is approximately equal. The Index adjusts interest rate risk so that it equals credit spread risk by adding either long positions in U.S. Treasury bonds or short positions in U.S. Treasury futures.

The Index meets all of the generic listing standards of Rule 14.11(c)(4)(B)(i) except that the Index includes exposure to U.S. Treasury futures contracts. The Index also meets all of the generic listing standards applicable to Managed Fund Shares under Rule 14.11(i), including the exposure to U.S. Treasury futures contracts. The Index also meets the Continued Listing Representations from the Order related to portfolio holdings. As noted above, the Exchange is submitting this proposal because the Index contains futures contracts (U.S. Treasury futures contracts) in a manner permitted pursuant to the Order, but for which Rule 14.11(c) does not currently contemplate. All U.S. Treasury futures contracts held by the Fund will trade on markets that are a member of the Intermarket Surveillance Group (''ISG'') or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[12]

Based on the foregoing, the Exchange believes that the proposal is non-controversial and should be effective upon filing. Specifically, because: (i) The Index meets the generic listing standards applicable to Index Fund Shares except the portion of the Index that includes exposure to U.S. Treasury futures contracts, which are not contemplated as Index constituents under Rule 14.11(c); (ii) the Index would meet the generic listing standards for Managed Fund Shares under Rule 14.11(i)(4)(C), including the exposure to U.S. Treasury futures contracts under

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] As provided in Rule 14.11(c)(1)(A)(i), the term ''Index Fund Share'' means a security that is issued by an open-end management investment company based on a portfolio of stocks or fixed income securities or a combination thereof, that seeks to provide investment results that correspond generally to the price and yield performance or total return performance of a specified foreign or domestic stock index, fixed income securities index, or combination thereof.

[6] The Exchange notes that all necessary steps to delist and re-list the Fund have been taken, including but not limited to: (1) filing an information statement and prospectus on Form N–14 with the SEC that notified shareholders of the reorganization and specifically of the background and reasons for the reorganization, the financial highlights of the Fund, the principal investment risks, shareholder rights and obligations and the form of the Agreement and Plan of Reorganization; and (2) obtaining the board approval for the reorganization.

[7] As defined in Rule 14.11(c)(4), ''Fixed Income Securities'' are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to U.S. Department of Treasury securities, government-sponsored entity securities (''GSE Securities''), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or subdivision thereof.

[8] *See* Securities Exchange Act Release No. 74297 (February 18, 2015), 80 FR 9788 (February 24, 2015) (SR–BATS–2014–056) (the ''Order'').

[9] The Order states that ''the Fund is an actively-managed fund that does not seek to replicate the performance of a specified index.''

[10] As defined in Rule 14.11(a), ''Continued Listing Representations'' means any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values (as applicable), or the applicability of Exchange listing rules specified in any filing to list a series of Other Securities.

[11] The Index measures the performance of the corporate and mortgage portion of the Bloomberg Barclays U.S. Universal Index (the ''Parent Index'') while targeting an equal allocation between interest rate and credit spread risk.

[12] For a list of the current members and affiliate members of ISG, see *www.isgportal.com.* The Exchange notes that not all components of the Fund's holdings may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Rule 14.11(i)(4)(C)(iv);[13] (iii) the Index would meet all of the Continued Listing Representations, which formed the basis for the Commission's approval in the Order;[14] (iv) all of the U.S. Treasury futures contracts included in the Index will be traded on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement; and (v) the Index is largely a memorialization of the strategy previously employed by the Fund and the de-listing and re-listing is a technical matter of form without substantive change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[15] in general and Section 6(b)(5) of the Act[16] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Index meets all of the generic listing standards of Rule 14.11(c)(4)(B)(i) except that the Index includes exposure to U.S. Treasury futures contracts. The Index also meets all of the generic listing standards applicable to Managed Fund Shares under Rule 14.11(i), including the exposure to U.S. Treasury futures contracts. The Index also meets the Continued Listing Representations from the Order related to portfolio holdings. As noted above, the Exchange is submitting this proposal because the Index contains futures contracts (U.S. Treasury futures contracts) in a manner permitted pursuant to the Order, but for which Rule 14.11(c) does not currently contemplate. All U.S. Treasury futures contracts held by the Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Based on the foregoing, the Exchange believes that the proposal is non-controversial and should be effective upon filing. Specifically, because: (i) The Index meets the generic listing standards applicable to Index Fund Shares except the portion of the Index that includes exposure to U.S. Treasury futures contracts, which are not contemplated as Index constituents under Rule 14.11(c); (ii) the Index would meet the generic listing standards for Managed Fund Shares under Rule 14.11(i)(4)(C), including the exposure to U.S. Treasury futures contracts under Rule 14.11(i)(4)(C)(iv);[17] (iii) the Index would meet all of the Continued Listing Representations, which formed the basis for the Commission's approval in the Order;[18] (iv) all of the U.S. Treasury futures contracts included in the Index will be traded on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement; and (v) the Index is largely a memorialization of the strategy previously employed by the Fund and the de-listing and re-listing is a technical matter of form without substantive change.

As such, the Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest because there are no substantive issues raised by this proposal that were not otherwise addressed by the Order.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes that the proposal to allow the Fund to be listed on the Exchange pursuant to the generic listing standards under Rule 14.11(i)(4)(C) will have no impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[19] and subparagraph (f)(6) of Rule 19b–4 thereunder.[20]

[13] The Exchange believes that, while there are certain differences between Index Fund Shares and Managed Fund Shares, the policy considerations underpinning the approval of the generic listing standards for Managed Fund Shares, particularly related to a portfolio's holdings in listed derivatives, are identical between Managed Fund Shares and Index Fund Shares, and, as such, an index underlying a series of Index Fund Shares that holds derivatives in a manner compliant with Rule 14.11(i)(4)(C)(iv) does not raise any issues that have not previously been contemplated by the Commission. *See* Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR–BATS–2015–100).

[14] As originally approved by the Commission for the listing and trading of the Fund as a series of Managed Fund Shares, the Commission determined in the Order that the proposal was consistent with the Act, stating that ''the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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.''

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

[17] The Exchange believes that, while there are certain differences between Index Fund Shares and Managed Fund Shares, the policy considerations underpinning the approval of the generic listing standards for Managed Fund Shares, particularly related to a portfolio's holdings in listed derivatives, are identical between Managed Fund Shares and Index Fund Shares, and, as such, an index underlying a series of Index Fund Shares that holds derivatives in a manner compliant with Rule 14.11(i)(4)(C)(iv) does not raise any issues that have not previously been contemplated by the Commission. *See* Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR–BATS–2015–100).

[18] As originally approved by the Commission for the listing and trading of the Fund as a series of Managed Fund Shares, the Commission determined in the Order that the proposal was consistent with the Act, stating that ''the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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.''

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b–4(f)(6) [21] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[22] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay to allow the Shares to immediately be listed and traded on the Exchange pursuant to Rule 14.11(c)(4) instead of Rule 14.11(i). The Exchange represents that the Index would meet the generic listing standards for Managed Fund Shares under Rule 14.11(i)(4)(C), including the exposure to U.S. Treasury futures contracts under Rule 14.11(i)(4)(C)(iv) [23] and the Index would meet all of the Continued Listing Representations, which formed the basis for the Commission's approval in the Order.[24] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2018–016 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–CboeBZX–2018–016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2018–016, and should be submitted on or before April 4, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–05161 Filed 3–13–18; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] *See supra* text accompanying note 17.

[24] *See supra* text accompanying note 18.

[25] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Caltius Partners V (SBIC), L.P. License No. 09/09–0482; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Caltius Partners V (SBIC), L.P., 11766 Wilshire Blvd., Suite 850, Los Angeles, CA 90025, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Caltius Partners V (SBIC), L.P. proposes to provide senior subordinated loan financing to Emerging Acquisitions, LLC d/b/a Bulk Handling Systems, 3592 West 5th Avenue, Eugene, OR 97402 (''BHS'').

The financing is brought within the purview of § 107.730(a) and (d) of the Regulations because Caltius Equity Partners III, L.P. an Associate of Caltius Partners V (SBIC), L.P., owns more than ten percent of BHS, and therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Dated: February 27, 2018.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2018–05134 Filed 3–13–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018 0030]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel CHASING SUMMER; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 13, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0030. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CHASING SUMMER is:

—*Intended Commercial use of Vessel:* ''Captained and bareboat pleasure charters''

—*Geographic Region:* ''South Carolina and Florida''

The complete application is given in DOT docket MARAD–2018–0030 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

By Order of the Maritime Administrator.
Dated: March 9, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–05123 Filed 3–13–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018 0034]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel OTIUM; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 13, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0034. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OTIUM is:

—*Intended Commercial use of Vessel:* ''Sightseeing, dinner cruises, date nighte, chargers in the Puget Sound and Sailish Sea primarily in Saratoga passage and Penn cove.''

—*Geographic Region:* ''Washington State''

The complete application is given in DOT docket MARAD–2018–0034 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

By Order of the Maritime Administrator.

Dated: March 9, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–05124 Filed 3–13–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0032]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ARROW; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 13, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0032. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ARROW is:

—*Intended Commercial Use of Vessel:* ''Passenger Charter''

—*Geographic Region:* ''New York (excluding New York Harbor) ''

The complete application is given in DOT docket MARAD–2018–0032 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

By Order of the Maritime Administrator.

Dated: March 9, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–05122 Filed 3–13–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0035]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel TERN; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 13, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0035. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TERN is:

—*Intended Commercial use of Vessel:* ''The commercial use of this boat will be to operate as a passenger vessel conducting whale watching and coastal tours in the waters within 10 miles of Newport Beach Harbor in California. We anticipate obtaining a Certificate of Inspection from the USCG to operate with 12 passengers pending the granting of this waiver.''

—*Geographic Region:* ''California''

The complete application is given in DOT docket MARAD–2018–0035 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of

this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

By Order of the Maritime Administrator.

Dated: March 9, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–05126 Filed 3–13–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018 0033]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PULPO; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 13, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0033. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PULPO is:

—*Intended Commercial use of Vessel:* ''uninspected small passenger vessel day sight seeing excursions on local waterways''

—*Geographic Region:* ''Florida''

The complete application is given in DOT docket MARAD–2018–0033 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121.

* * * * *

By Order of the Maritime Administrator.

Dated: March 9, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–05125 Filed 3–13–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0129; Notice 2]

Toyota Motor Engineering & Manufacturing North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Grant of petition.

SUMMARY: Toyota Motor Engineering & Manufacturing North America, Inc., on behalf of Toyota Motor Corporation and certain other specified Toyota manufacturing entities (collectively referred to as ''Toyota''), has determined that certain model year (MY) 2016–2017 Lexus RX350 and Lexus RX450H motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 202a, *Head Restraints.* Toyota filed a noncompliance information report dated November 29, 2016. Toyota also petitioned NHTSA on December 21, 2016, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

FOR FURTHER INFORMATION CONTACT: Ed Chan, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 493–0335, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION:

I. *Overview:* Toyota, has determined that certain MY 2016–2017 Lexus RX350 and RX450H motor vehicles do not fully comply with paragraph S4.5 of FMVSS No. 202a, *Head Restraints* (49

CFR 571.202a). Toyota filed a noncompliance information report dated November 29, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Toyota also petitioned NHTSA on December 21, 2016, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published with a 30-day public comment period, on April 7, 2017, in the **Federal Register** (82 FR 17079). One comment was received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at: *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2016–0129.''

II. *Vehicles Involved:* Approximately 120,748 MY 2016–2017 Lexus RX350 and Lexus RX450H motor vehicles manufactured between September 28, 2016, and November 23, 2016, are potentially involved.

III. *Noncompliance:* Toyota explains that the rear seat outboard head restraints are removable by utilizing the same action (*i.e.,* depressing the lock release button while the headrest is being pulled upward) that is used to adjust the head restraints from the first adjustment position to the second. Therefore, the requirements of paragraph S4.5 of FMVSS No. 202a are not met.

IV. *Rule Requirements:* Paragraph S4.5 of FMVSS No. 202a, titled ''Removability of Head Restraints'' includes the requirements relevant to this petition:

- The head restraint must not be removable without a deliberate action distinct from any act necessary for upward adjustment.

V. *Summary of Toyota's Petition:* Toyota described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Toyota submitted the following reasoning:

1. The rear outboard head restraints continue to meet the underlying purpose of S4.5 of the standard:

a. *Background of S4.5:* Toyota referenced a notice of proposed rulemaking (NPRM) that NHTSA issued in 2001 [1] to upgrade FMVSS No. 202 and stated that its principal focus was to improve performance of front and rear outboard head restraints to mitigate ''whiplash'' injuries, particularly in rear crashes. Toyota stated that the agency recognized that existing adjustable head restraints could be manually removed solely by hand, and not be replaced, thereby creating a greater risk of injury. As a result, the proposed rule stated that removable front seat head restraints would not be permitted, but that due to concerns with rear visibility, removable restraints in the rear would not be prohibited. Toyota stated that the draft rule did not contain any requirement comparable to the one set forth in paragraph S4.5 of FMVSS No. 202a.

Toyota further explained that when NHTSA issued the FMVSS No. 202 Final Rule in 2004,[2] it made a variety of changes from the requirements proposed in the NPRM. One of those was to not require rear seat outboard head restraints, but to impose certain requirements on head restraints that were voluntarily installed. Toyota noted that most of the comments submitted on the NPRM favored removability of both front and rear seat head restraints solely by hand, although some supported a prohibition on removability at all positions, because a removed restraint might not be replaced or correctly reinstalled. Toyota stated that NHTSA ultimately decided to allow head restraint removability for both front and rear restraints, but for both front and rear optional head restraints, specified that removal must be by means of a deliberate action that is distinct from any act necessary for adjustment to ensure that head restraints are not accidentally removed when being adjusted, thereby reducing the likelihood of inadvertent head restraint removal and increasing the chances that vehicle occupants will receive the benefits of properly positioned head restraints. To implement this requirement, the agency added the text in paragraph S4.5. In 2007, the agency amended the standard by adding the word ''upward'' before ''adjustment'' to clarify the upward adjustment and removability aspects of the requirement.

b. *The noncompliance is inconsequential because the rear outboard head restraints meet the underlying purpose of S4.5:* Toyota stated that the rear seat head restraints in the subject vehicles allow manual adjustment by sliding the head restraint in and out of the seat back on stays attached to the head restraint. Position locking is achieved by two notches in one of the stays, allowing for a detent mechanism. Toyota stated that the posts go through plates on top of the seat back, one of which contains a button which is pressed to allow the restraint to be removed. To adjust the height of the head restraint from the fully stowed position on top of the seatback to the first notch on the stay, the restraint is simply pulled upward. To reach the second notch, the button must first be pressed to allow the restraint to be lifted; it then will lock in position. To remove the restraint, the button must again be pressed before lifting it out of the seatback. Because the button must be pressed to adjust the restraint from the first notch position to the second, and the same action is required to start the removal process, the restraint does not conform to paragraph S4.5 of FMVSS No. 202a.

Toyota stated that there are three factors, when considered together, that make this noncompliance inconsequential to motor vehicles safety:

i. With the subject head restraints, the necessity to press the release button to move from the first notch to the second, in addition to the need to press it to release the restraint from the second notch to remove it, lessens the ease of removal, thereby reducing the likelihood of inadvertent removal and increasing the chances that the occupant will receive the benefits of a properly positioned head restraint.

ii. The subject vehicle model can be generally described as a mid-sized sports-utility vehicle (SUV). The roofline tends to slope downward toward the rear of the vehicle, and the distance between the top of the head restraint and the headliner is less than in other mid-sized SUV's with a less sloped roofline. The rear seat can be manually adjusted forward and rearward on the seat track for a distance of 120mm from the front position to the rear position. The nominal design seat back position is approximately 27 degrees rearward to the vertical line, and the seat back can be reclined an additional 10 degrees. The seat back folds forward from the nominal design position. (See figure 6 of Toyota's petition).

Given the rear seat design, there are a variety of combinations of seat track and seat back positions that can be attained. Typically, the seat would most likely be placed in the mid-track position or rearward for occupant comfort and convenience. From the mid-track position (60mm) rearward there are 30 combinations of seat track/seat back angle combinations for the manually reclining seat back.[3] Of these

[1] 66 FR 968 (January 4, 2001)

[2] 69 FR 74848 (December 14, 2004)

[3] Some models are equipped with a power reclining seat back with the same adjustment range

combinations there are 25 where there would be some degree of interference between the top of the head restraint and the vehicle headliner if someone intended to remove it. To completely remove the restraint from the top of the seat in these 25 combinations, there must be a deliberate action to compress the soft material of the restraint, because it cannot be pulled directly out of the seatback. In some cases, the seat back angle would have to be adjusted or the seat moved forward on the seat track before the restraint can be removed without headliner interference. (See figure 7 of Toyota's petition)

Together with the need to press the release button to move the head restraint when in either the first or second notches, such further deliberate actions in many seat adjustment positions of either compressing the restraint material, adjusting the seat slide position, or adjusting the seat back angle lessen the ease with which the restraint can be removed, reduce the chance of accidental removal, and increase the chances that the occupant will receive the benefits of a properly positioned head restraint.

iii. Finally, in addition to the two previously noted factors, it is unlikely that the head restraint will be inadvertently removed as there is 97.7mm of travel distance from the second notch until the head restraint is fully removed from the seat; this length is much greater than the travel distance between the fully stowed position and second notch (37.5mm). The difference is easily recognized by anyone attempting to adjust the head restraint. (See figure 8 of Toyota's petition) Therefore, the overall design and operation of the rear head restraints in the subject vehicles fulfill the purpose and policy behind the S4.5 requirement.

2. The Design and performance of the rear seat head restraints provide safety benefits to a broad range of occupants and pose no risk of exacerbating whiplash injuries, making the noncompliance inconsequential:

a. Toyota stated that NHTSA elected not to mandate rear seat head restraints in vehicles; however, certain requirements for voluntarily installed rear head restraints were adopted. Toyota stated that the requirements for rear outboard head restraints are common in some respects with those of front seat restraints, but that the rear seat environment and usage resulted in several differences. Toyota stated that NHTSA analyzed the usage of rear seats and studied the various types of occupants who typically occupy rear seating positions. Toyota stated that NHTSA found that 10 percent of all occupants sit in rear outboard seats, and that only 5.1 percent of those are people who are 13 years or older. Toyota stated that this justified a difference in the minimum height requirement for front and rear head restraints. The standard requires front integral head restraints to have a height of at least 800mm above the H-point [4] to the top of the restraint; the top of an adjustable restraint must reach at least 800mm and cannot be adjustable below 750mm. Rear outboard head restraints must have a height not less than 750mm in any position of adjustment. Toyota quoted the agency as stating: ''The agency has estimated that a 750mm head restraint height would offer whiplash protection to nearly the entire population of rear seat occupants.''

Toyota stated that the rear outboard restraints in the subject vehicles meet or surpass all the requirements in the completely stowed position and in the first notch position. Toyota stated that there is nothing about the performance of these restraints that poses a risk of exacerbating whiplash injuries and that the noncompliance does not create such a risk.

b. Rear head restraint height well surpasses the requirements of the standard: Toyota stated that when NHTSA established height requirements for mandatory front head restraints, an adjustment range was adopted that was estimated to ensure that the top of the head restraint exceeded the head center of gravity for an estimated 93 percent of all adults. Toyota stated that research conducted since the implementation of the previous height requirements has shown that head restraints should be at least as high as the center of gravity of the occupant's head to adequately control motion of the head and neck relative to the torso.

Toyota stated that the rear head restraints in the subject vehicles not only surpass the 750mm requirement for voluntarily installed rear seat restraints, but also can be adjusted to surpass the 800mm requirement applicable to mandatory front seat head restraints. In the fully stowed position, the rear outboard head restraints measure 780mm above the H-point. In the first notch position they are 797mm above the H-point, and in the second notch position they are 816mm above the H-point. (See figure 9 of Toyota's petition)

Toyota stated that it evaluated the height of the rear outboard head restraints in the subject vehicles against the center of gravity of various size occupants. In the first notch position, which can be attained by simply pulling upward on the head restraint in a manner compliant with S4.5, the center of gravity of the head of an occupant the size of a 95th percentile adult male (AM95) is below the top of the head restraint.[5] (See figure 10 of Toyota's petition) Therefore, for virtually 100 percent of the female adult population of the United States [6] and over 95 percent of the U.S. male adult population, the rear outboard head restraints can help ''adequately control motion of the head and neck relative to the torso'' in a position that can be adjusted in compliance with the standard. It can also protect occupants larger than AM95 occupants when adjusted to the second notch position.

c. Toyota stated that the rear outboard head restraints in the subject vehicles meet and surpass all other performance requirements of the standard not only in the fully stowed position, but also in both the first and second notch positions. These include energy absorption (S4.2.5 and S5.2.5), backset retention (S4.2.7 and S5.2.7), and height retention (S4.2.6 and S5.2.6). Toyota summarized the performance in tables that can be found in its petition. It contended that there is nothing about the performance of the rear outboard head restraints in the subject vehicles that in relation to the additional criteria set forth in these tables that poses a risk of exacerbating whiplash injuries.

3. The occupancy rates and usage of the Lexus RX model further supports the conclusion that the noncompliance with S4.5 is inconsequential to safety: The rear seat vehicle environment has unique aspects in terms of occupancy rates and usage. This is why the agency decided to specify different requirements for front and rear seat head restraints. As noted above, the agency found that, in the general vehicle population studied for the purpose of adopting FMVSS 202a requirements, the occupancy rate for the rear outboard seating positions was about 10 percent.

as the manual reclining seat back, but which can be placed in positions between the 2 degree increments of the manual seat back.

[4] The H-point is defined by a test machine placed in the vehicle seat. From the side, the H-point represents the pivot point between the torso and upper leg portions of the test machine, or roughly like the hip joint of a 50th percentile male occupant viewed laterally.

[5] NHTSA assumed during the rulemaking that the center of gravity of the head of the AM95 was 105mm from the top of the head. See FRIA at page 44. See also 66 FR at page 975. Figure 10, below, uses this value. The center of gravity of the head of the BIORID III ATD is 110.5mm below the top of the head.

[6] ''The center of gravity height of a 99th percentile female reclined at 25 degrees is about 19mm below a 750mm (29.5 inches) high head restraint at a 50mm (2 inch) backset.''

Toyota undertook an analysis of the National Automotive Sampling System (NASS) General Estimates System (GES) data to better understand the outboard rear seat occupancy rate in the subject vehicles. The subject vehicles are the fourth generation of the Lexus RX model series, which was introduced for MY2016. Because the exposure of this model year in the fleet is somewhat limited, and NASS GES does not yet contain MY2016 data, the three previous generations of the RX model going back to MY 1999 were used for the analysis. While there are design differences in each generation, all are mid-size SUV's, and it is expected that the user demographics and rear seat usage would be representative of the subject vehicles.

Based on the analysis, the occupancy rate for rear outboard seat occupants in all types of crashes for the RX models analyzed was 10 percent—meaning that 10 percent of the RX vehicles involved in crashes have a rear outboard passenger. This is the same as what NHTSA found to be the occupancy rate in the general vehicle population when it undertook the FMVSS 202a rulemaking. In a smaller subset of only rear crashes, the occupancy rate in the RX models is slightly higher, but still small—only 13 percent.

The data analyzed were insufficient to provide an understanding of the size of the occupants who ride in the rear outboard positions in the subject vehicles. However, considering that the occupancy rate is consistent with NHTSA's previous analyses, there is no reason to believe that occupant sizes would be significantly different from the general vehicle population. In the Final Regulatory Impact Analysis, the agency found that, of the small percentage of occupants that ride in the rear of vehicles generally, 83 percent of all rear outboard occupants were 5'9'' or less and 17 percent were 5'10'' and above. The latter is the height of the average U.S. male. As outlined in Section II, above, the rear outboard head restraints in the subject vehicles are designed so that the center of gravity of the head of the small percentage of large occupants who may occasionally ride in the rear seats of the subject vehicles is below the top of the head restraint. Therefore, the number of occupants who may actually seek to adjust the rear outboard head restraints in the subject vehicles is insignificant, further justifying a finding that the paragraph S4.5 noncompliance is inconsequential to vehicle safety.

Toyota stated that it is unaware of any consumer complaints, field reports, accidents, or injuries that have occurred as a result of this noncompliance as of December 15, 2016.

Toyota concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

Public Comments: One comment was received by an anonymous source and they recommended that Toyota's petition be denied. They indicated that this law was important because it works to reduce whiplash injuries and that if someone were trying to adjust their head restraint, and accidentally removed it, they would be at a greater risk of injury if they were involved in a crash trying to take it to a mechanic.

NHTSA'S Decision

NHTSA has reviewed the petition and the anonymous comment and has made its decision to grant the petition based on the reasons described below.

NHTSA's Analysis: In promulgating the requirements related to head restraint removability, it was the agency's desire to take reasonable steps to increase the likelihood that a head restraint is available when needed. We stated the following in the 2004 final rule:

> ''If head restraints were too easily removable, chances are greater that they will be removed. That, in turn, increases the chances that the restraints might not be reinstalled correctly, if at all. By prohibiting removability without the use of deliberate action distinct from any act necessary for adjustment, the likelihood of inadvertent head restraint removal will be reduced, thus increasing the chances that vehicle occupants will receive the benefits of properly positioned head restraints.'' [7]

We believe the rationale and justification for this provision remains sound. NHTSA's decision in this matter, in no way changes the agency's position about the general need for the removability requirements specified in S4.5 of FMVSS No. 202a.

We find merit in the argument presented by Toyota that when the head restraint is in the stowed (full down), first notch, and second notch position, the head restraint ''meet[s] and surpass all other performance requirements of the standard . . . .'' Thus, when the head restraint is not removed, all benefits of the standard have been preserved.

Toyota provided information indicating that when the rear seat is adjusted to a mid-track position, most seat adjustment positions (25 of 30) are such that there would be interference during head restraint removal necessitating compression of the head restraint foam or readjustment of the seat back to complete the removal. However, Toyota did not provide similar data for more forward seat track positions. Based on the data presented, it seems likely that the interference during removal would be lessened or eliminated in these more forward positions. Nonetheless, NHTSA finds some merit in the argument that this mitigates to some degree the possibility of inadvertent head restraint removal, when the seat is at mid-track or more rearward.

We do not agree with Toyota's contention that ''the overall design and operation of the rear head restraints in the subject vehicles fulfills the purpose and policy behind the S4.5 requirement.'' However, we find merit in the argument that the required 97mm of travel beyond the second adjustment position to remove the head restraint may mitigate potential unintended removal. This distance is greater than the travel from the fully stowed to the second adjustment position (37mm), and this additional distance (without a detent) may indicate to the operator that the head restraint is being removed rather than being adjusted to a higher position.

Finally, although not required by FMVSS No. 202a, NHTSA notes that the head restraints, if removed, can be reinstalled by the operator without the assistance of a mechanic and without any tools.

NHTSA's Decision: In consideration of the foregoing, NHTSA finds that Toyota has met its burden of persuasion that the FMVSS No. 202a noncompliance is inconsequential as it relates to motor vehicle safety. Accordingly, Toyota's petition is hereby granted and Toyota is consequently exempted from the obligation to provide notification of, and remedy for, the subject noncompliance in the affected vehicles under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that Toyota no longer

[7] 69 FR 74863.

controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Toyota notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8)

Claudia Covell,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 2018–05136 Filed 3–13–18; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before March 29, 2018.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 1, 2018.

Donald Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
		SPECIAL PERMITS DATA	
6293–M	ATK LAUNCH SYSTEMS INC	173.56(b)	To modify the special permit to authorize a change in water volume of a spent mixed acid by reducing the minimum water content to 16% by volume. (mode 1).
8009–M	FIBA TECHNOLOGIES, INC	173.302a(a)(4), 178.37(k)(1), 178.37(k)(2)(i).	To modify the special permit to authorize additional permitted cylinders to be used for tensile testing. (modes 1, 2, 3).
8215–M	OLIN CORPORATION	172.320, 173.212, 173.62(c)	To modify the special permit to add wetted KDNBF with water (approved as UN0473 under EX2010110501) to also be transported under the terms of the special permit. (modes 1, 2).
8451–M	KAMAN PRECISION PRODUCTS, INC.	172.320, 173.54(a), 173.54(j), 173.56(b), 173.57, 173.58, 173.60.	To modify the permit authorization to include cargo only aircraft. (modes 1, 4).
9847–M	FIBA TECHNOLOGIES, INC	173.213, 173.302a(b)(2), 173.302a(b)(3), 173.302a(b)(4), 173.302a(b)(5), 180.205(c), 180.205(f), 180.205(g), 180.205(i), 180.209(a).	To modify the special permit to authorize UE testing of approved Canadian cylinders. (modes 1, 3).
9847–M	FIBA TECHNOLOGIES, INC	173.213, 173.302a(b)(2), 173.302a(b)(3), 173.302a(b)(4), 173.302a(b)(5), 180.205(c), 180.205(f), 180.205(g), 180.205(i), 180.209(a).	To modify the special permit to authorize neck thread inspections in accordance with latest revision of CGA C–23. (modes 1, 3).
10922–M	FIBA TECHNOLOGIES, INC	172.302(c), 173.302(a), 180.205, 180.207(d)(1).	To modify the special permit to authorize UE testing of approved Canadian cylinders. (modes 1, 2, 3, 4).
11110–M	UNITED PARCEL SERVICE CO.	171.8, 175.75	To modify the special permit to authorize additional approved air carriers. (mode 4).
12412–M	MIDLAND CUSTOM APPLICATORS LLC.	177.83(h), 172.203(a), 172.302(c).	To modify the special permit to authorize hoses to be attached to discharge outlets during transportation while on private property. (mode 1).
12412–M	RAGSDALE SERVICES INC	177.83(h), 172.203(a), 172.302(c).	To modify the special permit to authorize hoses to be attached to discharge outlets during transportation while on private property. (mode 1).

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
12607–M	FIBA TECHNOLOGIES, INC	180.205(c), 180.205(f), 180.205(g), 180.215, 180.209(h), 180.209(k).	To modify the special permit to authorize UE testing on approved Canadian cylinders (modes 1, 2, 3, 4, 5).
14296–M	GASCON A DIVISION OF SOUTHEY HOLDINGS (PTY) LTD.	178.274(b), 178.276(b)	To authorize UN portable tanks that are designed, constructed, certified and stamped in accordance with Section VIII Division 2 latest edition of ASME Code. (modes 1, 2, 3).
14301–M	GASCON (PTY) LTD	178.274(b), 178.276(b)	To modify the special permit to authorize portable tanks to be designed, constructed, certified and stamped in accordance with Section VIII Division 2 of the ASME Code. (modes 1, 2, 3).
14453–M	FIBA TECHNOLOGIES, INC	180.209(a), 180.209(b), 180.209(b)(1)(iv).	To modify the special permit to authorize the UE testing of approved Canadian cylinders. (modes 1, 2, 3).
14661–M	FIBA TECHNOLOGIES, INC	180.209(a), 180.209(b), 180.209(b)(1)(iv).	To modify the special permit to authorize UE testing of approved Canadian cylinders. (modes 1, 2, 3).
16231–M	THALES ALENIA SPACE	173.301(f), 173.302a(a)(1), 173.304a(a)(2).	To modify the special permit to authorize batteries of up to 12 cells rather than only batteries with 12 cells (modes 1, 2, 3).
16490–M	DEMEX INTERNATIONAL, INC.	176.83, 176.63, 176.116(e), 176.120, 176.137(a)(7), 176.138(b), 176.144(e).	To modify the special permit to authorize the maximum quantity of explosives on a vessel to exceed the port maximum. (mode 3).
20283–M	LG CHEM	172.101(j)	To modify the special permit to authorize a variant design of an authorized battery. (mode 4).
20284–M	SHARPS COMPLIANCE, INC	171.101(j)	To modify the special permit to authorize cargo vessel as approved mode of transportation. (modes 1, 3).
20292–M	NUANCE SYSTEMS LLC	173.181, 173.187, 173.201, 173.211, 173.302(a).	To modify the special permit to authorize a new design of the approved cylinders which will operate at higher temperatures. (modes 1, 2, 3).
20421–M	THE PROCTER & GAMBLE COMPANY.	172.200, 172.300, 172.400, 172.500, 173.304a(a), 174.1, 177.800.	To modify the special permit to authorize the transportation in commerce of plastic receptacles charged with liquefied gases, or a mixture of a liquefied and compressed gas, and which are exempted from marking, labeling, and shipping papers when shipped by motor vehicle or rail freight. (modes 1, 2, 4, 5).
20503–M	DYNO NOBEL INC	177.835(a), 177.835(c)(3), 177.848(e)(2), 177.848(g)(3).	To modify the special permit to authorize additional packing groups for already authorized hazmat. (mode 1).
20541–M	ISGEC HEAVY ENGINEERING LTD.	179.300–19(a)	To modify the special permit to authorize changes to the shell and overall length of the tank cars. (modes 1, 2, 3).

[FR Doc. 2018–05131 Filed 3–13–18; 8:45 am]
BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before April 13, 2018.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 1, 2018.

Donald Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
		Special Permits Data	
20604–N	ELSTER AMERICAN METER COMPANY, LLC.	173.185(c)(3)(i)	To authorize the transportation in commerce of lithium batteries contained in equipment without certain markings on each package. (modes 1, 2).
20607–N	The Greenbrier Companies	179.100–12(c)	To authorize the manufacture, mark, sale, and use of tank cars with the protective housing mounted in an alternate manner. (mode 2).
20608–N	DEPARTMENT OF DEFENSE (MILITARY SURFACE DEPLOYMENT & DISTRIBUTION COMMAND).	173.302a(a)(1)	To authorize the transportation in commerce of compressed air in non-DOT specification cylinders. (modes 1, 2, 3, 4, 5).
20611–N	Deckload Aviation LLC	172.101(j)	To authorize the transportation in commerce of hazardous materials in excess of the quantity limits specified in Column (9B) of the 172.101 when transported via rotorcraft external load operations. (mode 5).
20614–N	USDA APHIS Veterinary Services.	172.101(i)(3)	To authorize the transportation of depopulated livestock and/or poultry for treatment and disposal in bulk packagings. (mode 1).
20615–N	FSTI, INC.	172.102(c)(7)	To authorize the transportation in commerce of hydrochloric acid in portable tanks fitted with bottom outlets. (mode 1).
20616–N	TEMSCO HELICOPTERS INC	172.101(j), 172.200, 172.204(c)(3), 172.301(c), 173.27(b)(2), 175.30(a)(1), 175.75, 175.33.	To authorize the transportation in commerce of certain hazardous materials by cargo aircraft, including 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft to remote locations of the US with out being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 5).
20617–N	HILLWOOD AIRWAYS, LLC	172.101(j), 173.27(b)(2), 175.30(a)(1).	To authorize the transportation of materials forbidden for transportation via air by cargo-only aircraft. (mode 5).

[FR Doc. 2018–05130 Filed 3–13–18; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before April 13, 2018.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 1, 2018.

Donald Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
		SPECIAL PERMITS DATA—Granted	
11323–M	SHARPSVILLE CONTAINER CORPORATION.	173.302a(a)(1),	To modify the special permit to authorize an additional stainless steel cylinder.
14313–M	AIRGAS USA LLC	172.203(a), 172.301(c), 173.302a(b), 180.205.	To modify the special permit to remove the requirement for an annual gain control linearity check and replace it with a one time certification from the manufacturer generated at the time of the system manufacture.
14832–M	TRINITY INDUSTRIES, INC	172.203(a), 173.31(e)(2)(iii), 179.100–12(c).	To modify the special permit to authorize an additional toxic by inhalation material.
15647–M	FIBA TECHNOLOGIES, INC	179.7, 180.505, 180.519(b)(6)	To modify the special permit to authorize visual inspection for certain tanks rather than hydrostatic testing.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
15980–M	WINDWARD AVIATION INC	172.400, 172.200, 172.300, 173.27, 175.33, 175.75.	To modify the special permit to authorize additional Class 2.1, 3, and 8 hazmat.
16232–M	LINDE GAS NORTH AMERICA LLC.	171.23(a), 171.23(a)(2)(ii), 171.23(a)(3), 173.301(f)(3), 173.301(g).	To modify the special permit to authorize additional cylinders for the transportation in commerce of Xenon/Krypton.
20350–N	STRATO, INC	179.7(b)(8)	To authorize the manufacture, mark, sell, and use of tank car service equipment manufactured under a previously valid Class F registration.
20425–N	COMPOSITE ADVANCED TECHNOLOGIES CNG.	173.302(a)	To authorize the transportation in commerce of non-DOT specification over wrapped carbon fiber and epoxy composite reinforced cylinder.
20441–M	SPACEFLIGHT, INC	173.185(a)	To modify the special permit from emergency to routine.
20525–N	AVFUEL CORPORATION	180.407(a)	To authorize the transportation in commerce of certain non-DOT specification cargo tanks (airport refueller trucks) containing a residue of gasoline and aviation fuel.
20541–N	ISGEC HEAVY ENGINEERING LTD.	179.300–19(a)	To authorize the manufacture, mark, sale, and use of DOT specification tank cars that have been inspected outside of the United States.
20549–N	CORNERSTONE ARCHITECTURAL PRODUCTS LLC.	172.400, 172.700(a), 172.102(c)(1), 172.200, 172.300.	To authorize the manufacture, marking, sale and use of non-DOT specification fiberboard boxes for the transportation in commerce of certain batteries without shipping papers, marking of the proper shipping name and identification number or labeling, when transported for recycling or disposal.
20566–N	UNIVERSITY OF LOUISIANA AT LAFAYETTE.	173.199(a)	To authorize the transportation in commerce of category B infectious substances.
20571–N	CATALINA CYLINDERS, INC	173.302a, 178.71(l)(1)(i), 178.71(l)(1)(ii).	To authorize the manufacture, mark, sale, and use of non-DOT specification cylinders meeting the requirements of ISO 11119–2, except as specified in the special permit.
20584–N	BATTERY SOLUTIONS, LLC	173.185(f)(3)	To authorize the manufacture, mark, sale and use of certain drums for the transportation in commerce of certain damaged or defective lithium ion cells and batteries and lithium metal cells and batteries.
20597–N	DEPARTMENT OF DEFENSE (MILITARY SURFACE DEPLOYMENT & DISTRIBUTION COMMAND).	173.220	To authorize the transportation of remotely piloted vehicles which are fueled while in transportation.
20600–N	FIREAWAY INC	173.56(b)	To authorize the manufacture, mark, sale, and use of fire extinguishing and suppression articles shipped as UN3268, Safety Devices.
20601–N	Capella Space Corp	173.185(a)	To authorize the transportation in commerce of low production lithium batteries contained in equipment via cargo-only aircraft.
20609–N	AUTOLIV ASP, INC	172.700(a), 172.200(a), 172.203(a), 172.302(c).	To authorize the transportation in commerce of hazmat that has been packaged by individuals who are not fully hazmat trained.
SPECIAL PERMITS DATA—Denied			
20545–N	STANDARD FUSEE CORPORATION.	172.401, 172.101, 172.202, 172.301.	To authorize the transportation in commerce of certain explosive materials reclassed as Division 4.1.
20560–N	CYTEC INDUSTRIES INC	172.400, 172.200, 172.301, 173.213.	To authorize the transportation in commerce of phosphorus contained in manufactured articles in non-DOT specification packaging without certain hazard communication.
SPECIAL PERMITS DATA—Withdrawn			
20518–N	COLEP PORTUGAL, S.A	178.33–7	To authorize manufacture, mark, sale and use of non-DOT specification Aerosol cans conforming with all regulations applicable to a DOT specification (2P and 2Q), except for the wall thickness.
20578–N	JAMES ALEXANDER CORP	172.101(j), 172.101(j), 173.27(b), 173.27(b).	To authorize the transportation in commerce of articles containing 40–60% hydrogen peroxide by aircraft.
20605–N	GUARDIAN HELICOPTERS, INC.	172.101(j), 172.200, 172.204(c)(3), 172.301(c), 173.1, 173.27(b)(2), 175.30(a)(1), 175.75.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 cargo-only aircraft (rotorcraft external load operations) transporting hazardous materials attached to or suspended from the aircraft, and Part 135, as applicable, in remote areas of the US only, without being subject to certain hazard communication requirements, quantity limitations and certain loading and stowage requirements.

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BILLING CODE 4909–60–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of modified of System of Records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled, ''Veterans Health Administration Leadership and Workforce Development-VA'' (161VA10A2) as set forth in a notice, published in the **Federal Register** on February 22, 2010. VA is amending the system of records by revising the System Name, System Manger, Purpose of the System, Categories of Records in the System, Record Source Categories, Routine Uses of Records Maintained in the System, Policies and Practices for Storage of Records, Policies and Practices for Retrievability of Records, Policies and Practices for Retention and Disposal, Safeguards, and Record Access Procedure. VA is republishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than April 13, 2018. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the amended system will become effective April 13, 2018.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll-free number). Comments should indicate that they are submitted in response to ''Veterans Health Administration Leadership and Workforce Development-VA''. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Chris Jaqua, Veterans Health Administration Human Capital Systems and Services (HCSS) Program Office, Department of Veterans Affairs, 55 North Robinson Avenue, Oklahoma City, OK 73102; telephone (405) 552–4345.

SUPPLEMENTARY INFORMATION: The System Name is being changed from ''Veterans Health Administration Leadership and Workforce Development-VA'' to ''Veterans Health Administration Human Capital Management''.

The System Manager has been amended to replace ''Diana Rogers, Department of Veterans Affairs, Veterans Health Administration High Performance Development Model (HPDM) Program Office, 55 North Robinson Avenue, Oklahoma City, Oklahoma 73102; telephone (405) 552–4336'' with Officials maintaining the system:

Manager of the Human Capital Systems and Services (HCSS), 55 North Robinson Avenue, Suite 1010, Oklahoma City, OK 73102.

Director of Events Division, Employee Education System, #1 Jefferson Barracks Drive, Building 56, St. Louis, MO 63125.

Deputy Director of Events Division, Employee Education System, #1 Jefferson Barracks Drive, Building 56, St. Louis, MO 63125.

Associate Director of Web Architecture, Employee Education System, 2200 Fort Roots Drive, Building 11, North Little Rock, AR 72114.

The Purpose of the System is being amended to include leadership and organization development and Records will support pairing of learning and professional growth services by internal coaches and consultants to VA employees and leaders.

The Categories of Records in the System is being amended to include: The Talent Assessment Data 1. • Work Setting status • Service Type • Clinical position type • Coaching preference • Performance standards • Resume; 4. Veterans Benefits Administration; 9. Coach- Coach status • Education • Biographical information • Availability • Years; 10. Identification of boss; 11. Program Management • Inquiry Status • Inquiry date • Enrollment status • Enrollment date • Pairing status • Open/closed status • Referral source • Close reason • Survey status • Service start and end dates • Target group • Group location • Organizational chart • Service requested • Organizational opportunities/challenges • Complaints • Barriers to work • Signed agreement; 12. Service contact information • Contact dates • Contact time • Contact type • Contact notes; 13. Development Assessments Assessment type • Results and summaries; 14. Employee Requesting Information • Leadership interests and experiences • Number of direct reports • Current role descriptors • Self-described characteristics • Readiness for change • Current and future role preferences • Aspirations; 15. Credentialing Audio Recordings and Transcripts • Audio file.

The Record Source Categories is being amended to replace 89VA16 with 89VA10NB. Veterans Benefits Administration (VBA) is being included.

The Routine Uses of Records Maintained in the System has been amended by adding language to Routine Use #7 which states, ''*a. Effective Response.* A federal agency's ability to respond quickly and effectively in the event of a breach of federal data is critical to its efforts to prevent or minimize any consequent harm. An effective response necessitates disclosure of information regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or playing a role in preventing or minimizing harms from the breach. b. *Disclosure of Information.* Often, the information to be disclosed to such persons and entities is maintained by federal agencies and is subject to the Privacy Act (5 U.S.C. 552a). The Privacy Act prohibits the disclosure of any record in a system of records by any means of communication to any person or agency absent the written consent of the subject individual, unless the disclosure falls within one of twelve statutory exceptions. In order to ensure an agency is in the best position to respond in a timely and effective manner, in accordance with 5 U.S.C. 552a(b)(3) of the Privacy Act, agencies should publish a routine use for appropriate systems specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach.''

Routine Uses of Records Maintained in the System has been amended by adding Routine Use #8 which states ''VA may disclosure any audio files and accompanying transcripts to coaching credentialing entities for the sole purpose of evaluation of a coach who is applying for an advanced coaching credential.''

The following Routine Uses are being added:

Routine use #9, ''VA may, on its own initiative, disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.'' VA needs this routine use for the data breach response and remedial efforts with another Federal agency.

Routine use #10, ''VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.'' VA must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation.

Routine use #11, ''VA may disclose information from this system to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.'' VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

Routine use #12, ''VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.'' VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation.

The Policies and Practices for Storage of Records is being amended to include the VACIN Server in Cincinnati, Ohio.

Policies and Practices for Retrievability of Records has been amended to include organization number and position number or other assigned identifiers of the organizations, positions or individuals on whom records are maintained.

Policies and Practices for Retention and Disposal is being amended to replace paper records and information maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States with the records are disposed of in accordance with General records 4.3, item 031.

The Physical, Procedural, and Administrative Safeguards is being amended to remove:

1. Access to Veterans Affairs working and storage areas is restricted to Veterans Affairs employees on a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, Veterans Affairs file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to computer rooms at health care facilities is generally limited by appropriate locking devices and restricted to authorized Veterans Affairs employees and vendor personnel. Automatic Data Processing peripheral devices are placed in secure areas.

Access to information stored on automated storage media at other Veterans Affairs locations is controlled by individually unique passwords/codes. Employees are limited to only that information in the file which is needed in the performance of their official duties.

3. Access to the Little Rock Campus Servers is restricted to Center employees, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic scanning and locking devices. All other persons gaining access to computer rooms are escorted after identity verification and log entry to track person, date, time in, and time out of the room. Information stored in the computer may be accessed by authorized Veterans Affairs employees at remote locations including Veterans Affairs health care facilities, Information Systems Centers, Veterans Affairs Central Office, and Veteran Integrated Service Networks. Access is controlled by secure individually unique system authentication.

The Physical, Procedural, and Administrative Safeguards section will be replaced with the following language:

1. Access to and use of national administrative databases, warehouses, and data marts are limited to those persons whose official duties require such access, and VA has established security procedures to ensure that access is appropriately limited. Information security officers and system data stewards review and authorize data access requests. VA regulates data access with security software that authenticates users and requires individually-unique codes and passwords. VA requires information security training for all staff and instructs staff on the responsibility each person has for safeguarding data confidentiality.

2. Physical access to computer rooms housing national administrative databases, warehouses, and data marts is restricted to authorized staff and protected by a variety of security devices. Unauthorized employees, contractors, and other staff are not allowed in computer rooms.

3. Data transmissions between operational systems and national administrative databases, warehouses, and data marts maintained by this system of record are protected by state-of-the-art telecommunication software and hardware. This may include firewalls, intrusion detection devices, encryption, and other security measures necessary to safeguard data as it travels across the Wide Area Network.

The Record Access Procedure is amended to include the Program Office in which requests for services were made.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, 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. John Oswalt, Executive Director for Privacy, Department of Veterans Affairs approved this document on February 2, 2018 for publication.

Dated: March 8, 2018.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy Information and Identity Protection, Office of Quality, Privacy and Risk, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME

Veterans Health Administration Human Capital Management-VA (61VA10A2)

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are maintained at the North Little Rock Campus, 2200 Fort Roots Drive, Little Rock, Arkansas 72114.

SYSTEM MANAGER(S):

Officials maintaining the system:

Manager of the Human Capital Systems and Services (HCSS), 55 North Robinson Avenue, Suite 1010, Oklahoma City, OK 73102.

Director of Events Division, Employee Education System, #1 Jefferson Barracks Drive, Building 56, St. Louis, MO 63125.

Deputy Director of Events Division, Employee Education System, #1 Jefferson Barracks Drive, Building 56, St. Louis, MO 63125.

Associate Director of Web Architecture, Employee Education System, 2200 Fort Roots Drive, Building 11, North Little Rock, AR 72114.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code (U.S.C.), Section 501a.

PURPOSE(S) OF THE SYSTEM:

The records and information may be used for the management of Veterans Health Administration (VHA) executive and senior executive employees and employees in national programs for performance appraisal and bonus award entries, bonus and appraisal documentation storage, rank award and type given, supervisory training status, leadership and organization development, and employee position management. Records will support pairing of learning and professional growth services by internal coaches and consultants to VA employees and leaders. Reports for workforce succession planning and analysis, VHA supervisory training status and course grade, bonus award dollar amounts per executive and non-executive employee used by Performance Review Boards. Human resource position creation, and fill actions, employee action and assignment tracking data is collected for business processing and analysis.

Workgroups are developed for survey use and data collection. Data that is entered and stored can be extracted from the database and used for other applications.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

The records include information from and concerning Veterans Affairs Central Office, VHA, VHA Canteen, VHA Central Office, VBA, and National Cemetery Administration (NCA) personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information related to: People, work groups, workforce, funding, leadership classes, personal development plans, supervisory levels, mentor and coach roles and certifications, High Performance Development Model, senior executive information and recruitment, human resources automation, positions, organizations, the Talent Assessment Data and locations of VHA top management positions. Central Office and Veterans Integrated Service Network (VISN) managers and staff, facility directors, associate directors, chiefs of staff, and other senior clinical and administrative field managers' positions are included. The VHA Executive Management Program consists of the functions that fall under the purview of the VHA Executive Resources Board and the VHA Performance Review Board. Their functions include executive development, recruitment and placement; organizational analysis; succession planning; and performance assessment and recognition. The method used to collect this information is a proprietary system using relational technology. Information from this database is joined and expanded with information from the VHA executive program processes (*i.e.,* organization, vacancies, recruitment efforts, performance, etc.). This combination of information is used in the administration of the Executive Resources Board and Performance Review Board functions. The sharing and development of information involving executives and organizations provides an effective means for accomplishing the Executive Resources Board and Performance Review Board objectives. The following modules are in VHA Leadership and Workforce Development: VHA Leadership and Workforce Development Home, Performance, Workgroups, VA National Database for Interns, Student Educational Experience Program, High Performance Development Model Funding, Executive Career Field Career Development Plan On-Line Application, Technical Career Field Preceptor On-Line Application, Career Development Plans, Workforce Planning, Class and Program Management (includes: Graduate Healthcare Administration Training Program, School at Work, Leadership Effectiveness Accountability Development, Technical Career Field, Executive Career Field Candidate Development Program, Senior Executive Service Candidate Development programs, Ethics, Professional Development Plans, Supervisory Training, Open Season (VHA Executive Recruitment), WebHR (Web-based Human Resource module), and Mentor Coach Certification). VHA Leadership and Workforce Development data contains:

1. Employee data.

- Employee legal name
- Social Security number
- Veteran's preference
- Vietnam Era veteran
- Retirement plan
- Tenure
- Universal personal identification number
- Universal user name
- Sex
- Supervisory status
- Supervisory training status
- Work contact information
- Facility
- Network Identification
- Home contact information
- Home of record contact information
- Assigned facility/organization
- Pay plan
- Pay grade
- Step
- Retirement eligibility
- Union membership
- Leave balances
- Program
- Credentials
- Grievance
- Disciplinary actions
- Third-party and other employee actions
- Work Setting status
- Service Type
- Clinical position type
- Coaching preference
- Performance standards
- Resume

2. Employee position data.

- VHA Leadership and Workforce Development position titles
- High Performance Development Management ratings
- Position requestor contact data
- Legal authority
- Competitive Level
- Fair Labor Standards Act category
- Drug testing position indicator
- Citizenship/Residency status
- English language proficiency

- Announcement status
- Vacancy status
- Date job opened
- Days to open
- Days to issue certificate
- Date job closed
- Job type/Occupation series/Grade
- Pay plan
- Work schedule
- Appropriation code
- Cost center
- Date candidates referred
- Date nomination received
- Date to Executive Resources Board
- Date credentials complete
- Date recruitment received
- Position start and end dates
- Appointment start and end dates
- Position location
  - Location complexity rating
- Position reporting official
- Position status
  - Supervisory
  - Bargaining unit
  - Senior executive pay band
- Level of supervisory responsibility
- Date of offer
- Position status change
- Reason for change
- Position authorization data
- Announcement tracking data (location and dates of actions)
- Area of consideration
- Number of applicants (internal, external, not qualified)
- Number interviewed
- Applicant outcome and notification
- Selecting official
- Re-announcement
  - Position cancelations
  - Date fingerprinted
  - Background check data
  - Physician Comp Panel and Standards
- Board data

3. Bonus data.

- Executive/Senior Executive Service
  - Pay band and band max pay
  - Proposed pay adjustment
  - Proposed rating
  - Approved rating
  - Approved bonus pay
  - Actual pay
  - Rank award
- Type
- Previous year nomination and award amount
- Current year nomination
  - Bonus pool total
  - Local bonus funding amount
  - Form Uploads
- Appraisal
- High level reviews
- Comments
- Bonus justification
- Rank award nominations
- Non-Executive (each Fiscal Year)
  - Rating
  - Award amount
  - Pay adjustment (Yes/No)

4. Workgroups and Organizations.

- Just under 100 codes—not job occupation series codes—code developed for the All Employee Survey
  - Agency selection
  - Veterans Affairs
  - VHA
  - VBA
  - NCA
- Agency networks
- Agency organizations
- Formal and informal name
- Organization type
- Network
- Physical location
- Duty Code
- Complexity Level
- Station number
- Workgroup supervisory designations
- Workgroup coordinator assignment
- Workgroup coordinator contact info

5. Development Plans.

- Uploaded text document
  - Document filled from template
  - Free text employee documentation

6. Funding.

- Program funding
- Program funds available
- Reimbursement type
- Appropriation code
- Fiscal contact name and phone
- Amount per employee
- Fund control point
- Requested average salary
- Approved funds
- Withdrawn funds
- Date funding sent
- Approval funding comments
- Approved Full Time Equivalents dollars
- Cost center

7. Career Programs.

- Program Eligibility criteria
- Program waiver
- Program employee applied
- Class title
- Program/Class year
- School name and state
- Major
- Anticipated graduation date
- Application status
- Employment history
- Education history
- Competency data (application questions and answers)
- Applicant endorsers
- Class administrator assignments
- Employee list per class
- Program completion status
- Requested number of student hires
- Requested funding for student salary
- Student work schedule
- Number Full Time Equivalents requested

8. Workforce Planning—Annual Corporate Office and VISNs.

- Planning team members
- Strategic direction
- Historical analysis
  - Employee reason to leave
  - Equal employment opportunity category of employee
- Projected workforce-rational and issues
- Recruitment and Retention programs used
- Leadership programs/activities and participation
- Workplace morale assessment
- Work plan comments

9. Mentor and Coach Information.

- Mentor status
- Coach status
- Core training
  - Courses
  - Date and location
  - Training instructors
  - Training history
- Certification level
- Education
- Biographical information
- Availability
- Practical experience years, hours and event

10. Perseus Survey Software.

- Employee legal name
- Last 4 social security number
- VISNs
- Facility/Office
- Work Setting (Section/Division/Campus/Product Line/Service/Department)
- Occupation
- Identification of supervisory chain of command
- Identification of boss
- Identification of peer and subordinate relationships
- Demographic information
  - Gender
  - Age
  - Race/National Origin
  - Tenure
  - Grade Level
- Data Input in Response to survey questions (questionnaires which cover the following types of topics as an example)
  - Assessment Inventories, such as 360 Assessments, WES/MBI Instruments
  - Customer Satisfaction surveys/evaluations (High Performance Development Model, Health Care Retention and Recruitment Office, National Center for Organizational Development, Delegated Examining Units, Workforce Management and Consulting Office)
  - Organizational assessment instruments such as Civility, Respect

and Engagement in the Workplace Evaluation, VA Nursing Outcomes Database Registered Nursing survey, Education Inventories, Center for Faith Based and Community Initiatives Communications survey, Aggressive Behavior Prevention Survey, Integrated Ethics Workbook, Methicillin Resistant Staphylococcus Aureus, Office of Personal Management All Employee Survey, Exit/Entrance Surveys, Organizational Climate Assessment Program surveys, surveys for specific facilities/offices

○ Program Assessments/Proficiency surveys such as Technical Career Field Return on Investment survey, Supervisory Training Pre/Post Test surveys, Human Resource Proficiency Tracking survey

○ Professional Assessment surveys such as Executive Career Field Candidate/Mentor questionnaires, Acting Director/Senior Executive Service applicant assessments

11. Program Management.

- Inquiry Status
- Inquiry date
- Enrollment status
- Enrollment date
- Pairing status
- Open/closed status
- Referral source
- Close reason
- Survey status
- Service start and end dates
- Target group
- Group location
- Organizational chart
- Service requested
- Organizational opportunities/challenges
- Complaints
- Barriers to work
- Signed agreement

12. Service Contact Information.

- Contact dates
- Contact time
- Contact type
- Contact notes

13. Development Assessments.

- Assessment type
- Results and summaries

14. Employee Requesting Information.

- Leadership interests and experiences
- Number of direct reports
- Current role descriptors
- Self-described characteristics
- Readiness for change
- Current and future role preferences
- Aspirations

15. Credentialing Audio Recordings and Transcripts.

- Audio file

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by VA's employees associated to VA Medical Centers, VA Corporate Offices, VBA, NCA, VHA Corporate Offices, VHA Canteen, VISNs and facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of and at the written request of the individual.

2. Disclosure may be made to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code.

3. VA may disclose information in this system of records to the Department of Justice (DOJ), either on VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is relevant to DOJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

4. Disclosure may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

5. VA may disclose on its own initiative any information in this system, except the names and home addresses of Veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. On its own initiative, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

6. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

7. VA may, on its own initiative disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) VA has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by VA or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out VA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

a. Effective Response. A Federal agency's ability to respond quickly and effectively in the event of a breach of Federal data is critical to its efforts to prevent or minimize any consequent harm. An effective response necessitates

disclosure of information regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or playing a role in preventing or minimizing harms from the breach.

b. *Disclosure of Information.* Often, the information to be disclosed to such persons and entities is maintained by Federal agencies and is subject to the Privacy Act (5 U.S.C. 552a). The Privacy Act prohibits the disclosure of any record in a system of records by any means of communication to any person or agency absent the written consent of the subject individual, unless the disclosure falls within one of twelve statutory exceptions. In order to ensure an agency is in the best position to respond in a timely and effective manner, in accordance with 5 U.S.C. 552a(b)(3) of the Privacy Act, agencies should publish a routine use for appropriate systems specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach.

8. VA may disclose any audio files and accompanying transcripts to coaching credentialing entities for the sole purpose of evaluation of a coach who is applying for an advanced coaching credential.

9. VA may, on its own initiative, disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

10. VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

11. VA may disclose information from this system to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.

12. VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on the HPDM1 Server and VACIN Server and backup servers in Little Rock, Arkansas and Cincinnati, Ohio.

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

Records are retrieved by name, social security number, position number, organization number, position number, or other assigned identifiers of the organizations, positions or individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records are disposed of in accordance with General records 4.3, item 031.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Access to and use of national administrative databases, warehouses, and data marts are limited to those persons whose official duties require such access, and VA has established security procedures to ensure that access is appropriately limited. Information security officers and system data stewards review and authorize data access requests. VA regulates data access with security software that authenticates users and requires individually-unique codes and passwords. VA requires information security training for all staff and instructs staff on the responsibility each person has for safeguarding data confidentiality.

2. Physical access to computer rooms housing national administrative databases, warehouses, and data marts is restricted to authorized staff and protected by a variety of security devices. Unauthorized employees, contractors, and other staff are not allowed in computer rooms.

3. Data transmissions between operational systems and national administrative databases, warehouses, and data marts maintained by this system of record are protected by state-of-the-art telecommunication software and hardware. This may include firewalls, intrusion detection devices, encryption, and other security measures necessary to safeguard data as it travels across the Wide Area Network.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they are or were employed or made contact or the Program Office in which requests for services were made.

CONTESTING RECORD PROCEDURES:

(See Record Access procedures above.)

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the VA facility location at which they are or were employed. Inquiries should include the person's full name, social security number, dates of employment, date(s) of contact, and return address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Under Title 5 U.S.C. § 552a(k)(6), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act, if the system of records is testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process. The Talent Assessment Data within the system of records is considered examination material used to determine if an employee has the qualifications, leadership skills and experience necessary to become a Medical Center Director.

Based upon the foregoing, the Secretary of Veterans Affairs has exempted this system of records, to the extent that it encompasses information pertaining to criminal law enforcement related activities from the following provisions of the Privacy Act of 1974, as permitted by 5 U.S.C. § 552a(k)(6):

5 U.S.C. § 552a(c)(3).
5 U.S.C. § 552a(d)(1) through (4).
5 U.S.C. § 552a(e)(1).
5 U.S.C. § 552a(e)(4)(G), (H) and (I).
5 U.S.C. § 552a(f).

5 U.S.C. § 552a(e)(4)(G), (H) and (I).
5 U.S.C. § 552a(f).

Reasons for exemptions: The exemption of examination material in this system of records is necessary to ensure candid and complete assessment of individual qualifications for appointment or promotion in VHA. The disclosure of the Talent Assessment Data would compromise the objectivity of the examination for the individuals and the willingness to provide full, candid assessments by the reviewers.

HISTORY:

Last full publication provided in 75 FR 34 dated February 22, 2010.

[FR Doc. 2018–05087 Filed 3–13–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a Modified System of Records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled ''The Revenue Program-Billing and Collections Records-VA'' (114VA16) as set forth in a notice, published in the **Federal Register** on February 11, 2014. VA is amending the system of records by revising the System Number, System Manager, Categories of Individuals Covered by the System, Categories of Records in the System, Record Source Categories, Routine Uses of Records Maintained in the System, Policies and Practices for Retention and Disposal of Records, and Safeguards. VA is republishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than April 13, 2018. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the amended system will become effective April 13, 2018.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll-free number). Comments should indicate that they are submitted in response to ''The Revenue Program-Billing and Collections Records-VA''. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: The System Number is changed from 114VA16 to 114VA10D to reflect the current organizational alignment.

System Manager is being amended to replace Chief Business Officer, Chief Business Office (16) with Deputy Under Secretary for Health, Office of Community Care (10D).

Categories of Individuals Covered by the System is being amended to add ''or Community Care programs, such as Choice'' to Item 9. Healthcare professionals providing examination or treatment to individuals under contract or resource sharing agreements.

Categories of Records in the System is being amended to remove the universal personal identification number. In Item 3, International Classification of Diseases (ICD)–9–CM will be replaced with ICD–10–CM. Drug Enforcement Administration (DEA) number was added to Item 6.

The Record Source Categories is being amended to change 77VA10Q to 77VA10A4 and 79VA19 to 79VA10P2.

The Routine Uses of Records Maintained in the System has been amended by adding language to Routine Use #20 which states, ''*a. Effective Response.* A federal agency's ability to respond quickly and effectively in the event of a breach of federal data is critical to its efforts to prevent or minimize any consequent harm. An effective response necessitates disclosure of information regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or playing a role in preventing or minimizing harms from the breach. b. *Disclosure of Information.* Often, the information to be disclosed to such persons and entities is maintained by federal agencies and is subject to the Privacy Act (5 U.S.C. 552a). The Privacy Act prohibits the disclosure of any record in a system of records by any means of communication to any person or agency absent the written consent of the subject individual, unless the disclosure falls within one of twelve statutory exceptions. In order to ensure an agency is in the best position to respond in a timely and effective manner, in accordance with 5 U.S.C. 552a(b)(3) of the Privacy Act, agencies should publish a routine use for appropriate systems specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach.''

Routine use #23 is also being added to state, ''VA may, on its own initiative, disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach. VA needs this routine use for the data breach response and remedial efforts with another Federal agency.''

Routine Use #24 is being added to state, ''VA may disclose relevant information to attorneys, insurance companies, employers, third parties liable or potentially liable under health plan contracts, and courts, boards, or commissions, to the extent necessary to aid VA in the preparation, presentation, and prosecution of claims authorized under Federal, State, or local laws, and regulations promulgated thereunder.'' VA must be able to release billing information that is related to VA's claims for recovery to health insurers, workers compensation insurers, auto reparations insurers, and any other entity liable to pay VA.

Routine Use #25 is being added to state, ''VA may disclose relevant information to health plans, quality review and/or peer review organizations in connection with the audit of claims or other review activities to determine quality of care or compliance with professionally accepted claims processing standards.'' This routine use permits disclosure of information for quality assessment audits received by Healthcare Effectiveness Data and Information Set or similar auditors.

Policies and Practices for Retention and Disposal of Records has been amended to replace ''Paper records and

information stored on electronic storage media are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States'' with Follow the requirement of RCS 10–1 Chapter 4 Item 4000.1 a & b. 4000.1 Financial transaction records related to procuring goods and services, paying bills, collecting debts, and accounting.

a. Official Record Held in the Office of Record

Temporary; destroy 6 years after final payment or cancellation, but longer retention is authorized if required for business use. (GRS 1.1, Item 010) (DAA–GRS–2016–0001–0002)

b. All Other Copies

Temporary; destroy or delete when 6 years old, but longer retention is authorized if required for business use. (GRS 1.1 item 013) (DAA–GRS–2016–0001–0002).''

Administrative, Technical, and Physical Safeguards is being amended to replace Automation Center (AC) with Austin Information Technology Center (AITC).

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, 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. John Oswalt, Executive Director for Privacy, Department of Veterans Affairs approved this document on January 18, 2018, for publication.

Dated: March 8, 2018.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy Information and Identity Protection, Department of Veterans Affairs.

SYSTEM NAME

The Revenue Program-Billing and Collections Records—VA (114VA10D)

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are maintained at each VA healthcare facility. In most cases, backup computer tape information is stored at off-site locations. Address locations for VA facilities are listed in VA Appendix 1 of the biennial publication of VA Privacy Act Issuances. In addition, information from these records or copies of records may be maintained at the Department of Veterans Affairs (VA), 810 Vermont Avenue NW, Washington, DC; the VA Austin Automation Center (AAC), Austin, Texas; Veterans Integrated Service Network (VISN) Offices; VA Allocation Resource Center (ARC), Boston, Massachusetts, and contractor facilities.

SYSTEM MANAGER(S):

The official responsible for policies and procedures is the Deputy Under Secretary for Health, Office of Community Care (10D), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. The local officials responsible for maintaining the system are the Director of the facility where the individual is or was associated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code (U.S.C.), sections 1710 and 1729.

PURPOSE(S) OF THE SYSTEM:

The records and information are used for the billing of, and collections from a third party payer, including insurance companies, other Federal agencies, or foreign governments, for medical care or services received by a Veteran for a non-service connected condition or from a first party Veteran required to make copayments. The records and information are also used for the billing of and collections from other Federal agencies for medical care or services received by an eligible beneficiary. The data may be used to identify and/or verify insurance coverage of a Veteran or Veteran's spouse prior to submitting claims for medical care or services. The data may be used to support appeals for non-reimbursement of claims for medical care or services provided to a Veteran. The data may be used to enroll health care providers with health plans and VA's health care clearinghouse in order to electronically file third party claims. For the purposes of health care billing and payment activities to and from third party payers, VA will disclose information in accordance with the legislatively-mandated transaction standard and code sets promulgated by the United States Department of Health and Human Services (HHS) under the Health Insurance Portability and Accountability Act (HIPAA). The data may be used to make application for an NPI, as required by the HIPAA Administrative Simplification Rule on Standard Unique Health Identifier for Healthcare Providers, 45 CFR part 162, for all health care professionals providing examination or treatment within VA health care facilities, including participation in pilot test of NPI enumeration system by the Centers of Medicare and Medicaid Services (CMS). The records and information may be used for statistical analyses to produce various management, tracking and follow-up reports, to track and trend the reimbursement practices of insurance carriers, and to track billing and collection information. The data may be used to support, or in anticipation of supporting, reimbursement claims from community health care providers or their agents. The data may be used to support, or in anticipation of supporting, reimbursement claims from academic affiliates with which VA maintains a business relationship.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Veterans who have applied for healthcare services under Title 38, United States Code, Chapter 17, and in certain cases members of their immediate families.
2. Beneficiaries of other Federal agencies.
3. Individuals examined or treated under contract or resource sharing agreements.
4. Individuals examined or treated for research or donor purposes.
5. Individuals who have applied for Title 38 benefits but who do not meet the requirements under Title 38 to receive such benefits.
6. Individuals who were provided medical care under emergency conditions for humanitarian reasons.
7. Pensioned members of allied forces (Allied Beneficiaries) who are provided healthcare services under Title 38, United States Code, Chapter 1.
8. Healthcare professionals providing examination or treatment to any individuals within VA healthcare facilities.
9. Healthcare professionals providing examination or treatment to individuals under contract or resource sharing agreements or Community Care programs, such as Choice.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information related to:

1. The social security number and insurance policy number of the Veteran and/or Veteran's spouse. The record may include other identifying

information (*e.g.,* name, date of birth, age, sex, marital status) and address information (*e.g.,* home and/or mailing address, home telephone number).

2. Insurance company information specific to coverage of the Veteran and/or spouse to include annual deductibles and benefits.

3. Diagnostic codes (ICD–10–CM, CPT–4, and any other coding system) pertaining to the individual's medical, surgical, psychiatric, dental and/or psychological examination or treatment.

4. Charges claimed to a third party payer, including insurance companies, other Federal agencies, or foreign governments, based on treatment/services provided to the patient.

5. Charges billed to those Veterans who are required to meet co-payment obligations for treatment/services rendered by VA.

6. The name, social security number, Drug Enforcement Administration (DEA) number, National Provider Identifier (NPI) and credentials including provider's degree, licensure, certification, registration or occupation of healthcare providers.

7. Records of charges related to patient care that are created in anticipation of litigation in which the United States is a party or has an interest in the litigation or potential litigation, including a third-party tortfeasor, workers compensation, or no-fault automobile insurance cases. Such records are not subject to disclosure under 5 U.S.C. 552a(d)(5).

RECORD SOURCE CATEGORIES:

The patient, family members or guardian, and friends, employers or other third parties when otherwise unobtainable from the patient or family; health insurance carriers; private medical facilities and healthcare professionals; state and local agencies; other Federal agencies; VA regional offices; Veterans Benefits Administration automated record systems, including Veterans and Beneficiaries Identification and Records Location Subsystem—VA (38VA23) and the Compensation, Pension, Education and Rehabilitation Records—VA (58VA21/22); and various automated systems providing clinical and facilities to include Health Care Provider Credentialing and Privileging Records—VA (77VA10A4) and Veterans Health Information Systems and Technology Architecture (VistA) (79VA10P2).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually-identifiable health information, and 38 U.S.C. 7332; *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. On its own initiative, VA may disclose information, except for the names and home address of veterans and their dependents, to a Federal, state, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

2. Disclosure may be made to an agency in the executive, legislative, or judicial branch, or the District of Columbia government in response to its request or at the initiation of VA, in connection with the letting of a contract, other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision. However, names and addresses of veterans and their dependents will be released only to Federal entities.

3. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

4. Disclosure may be made to National Archives and Records Administration (NARA) in records management inspections conducted under authority of Title 44 U.S.C.

5. Disclosure may be made to the Department of Justice and United States attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

6. Any information in this system of records, including personal information obtained from other Federal agencies through computer-matching programs, may be disclosed for the purposes identified below to any third party, except consumer reporting agencies, in connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by VA. Information may be disclosed under this routine use only to the extent that it is reasonably necessary for the following purposes: (a) To assist VA in collection of Title 38 overpayments, overdue indebtedness, and/or costs of services provided individuals not entitled to such services; and (b) to initiate civil or criminal legal actions for collecting amounts owed to the United States and/or for prosecuting individuals who willfully or fraudulently obtain Title 38 benefits without entitlement. This disclosure is consistent with 38 U.S.C. 5701(b)(6).

7. The name and address of a veteran, other information as is reasonably necessary to identify such Veteran, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the Veteran's indebtedness to the United States by virtue of the person's participation in a benefits program administered by VA may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the provisions of 38 U.S.C. 5701(g)(4) have been met.

8. The name of a veteran, or other beneficiary, other information as is reasonably necessary to identify such individual, and any information concerning the individual's indebtedness by virtue of a person's participation in a medical care and treatment program administered by VA, may be disclosed to the Treasury Department, Internal Revenue Service, for the collection of indebtedness arising from such program by the withholding of all or a portion of the person's Federal income tax refund. These records may be disclosed as part of a computer-matching program to accomplish these purposes.

9. Relevant information (excluding medical treatment information related to drug or alcohol abuse, infection with the human immunodeficiency virus or sickle cell anemia) may be disclosed to HHS for the purpose of identifying improper duplicate payments made by Medicare fiscal intermediaries where VA was authorized and was responsible for payment for medical services obtained at community healthcare facilities.

10. The social security number, universal personal identification number, NPI, credentials, and other identifying information of a healthcare provider may be disclosed to a third party where the third party requires the Department provide that information before it will pay for medical care provided by VA.

11. Relevant information may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practical for the purposes of laws administered by VA, in order for the contractor and/or subcontractor to perform the services of the contract or agreement.

12. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (a) Any payment for the benefit of a physician, dentist, or other licensed healthcare practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (b) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician, dentist or other licensed healthcare practitioner for a period longer than 30 days; or, (c) the acceptance of the surrender of clinical privileges, or any restriction of such privileges by a physician, dentist, or other licensed healthcare practitioner either while under investigation by the healthcare entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer-matching program to accomplish these purposes.

13. Relevant information may be disclosed from this system of records to any third party or Federal agency such as the Department of Defense, Office of Personnel Management, HHS and government-wide third-party insurers responsible for payment of the cost of medical care for the identified patients, in order for VA to seek recovery of the medical care costs. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

14. Relevant information, including the nature and amount of a financial obligation, may be disclosed in order to assist VA in the collection of unpaid financial obligations owed VA, to a debtor's employing agency or commanding officer, so that the debtor employee may be counseled by his or her Federal employer or commanding officer. This purpose is consistent with 5 U.S.C. 5514, 4 CFR 102.5, and section 206 of Executive Order 11222 of May 8, 1965 (30 FR 6469).

15. Identifying information such as name, address, social security number and other information as is reasonably necessary to identify such individual, may be disclosed to the National Practitioner Data Bank at the time of hiring and/or clinical privileging/re-privileging of healthcare practitioners, and at other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/re-privileging, retention or termination of the applicant or employee.

16. Disclosure of individually identifiable health information including billing information for the payment of care may be made by appropriate VA personnel, to the extent necessary and on a need-to-know basis consistent with good medical-ethical practices, to family members and/or the person(s) with whom the patient has a meaningful relationship.

17. Provider identifying information may be disclosed from this system of records to CMS to test the enumeration system for the NPI and once the system is operational, to obtain an NPI for any eligible healthcare professional providing examination or treatment with VA healthcare facilities.

18. Relevant information may be disclosed to community health care providers or their agents where the community health care provider provides health care treatment to veterans and requires the Department provide that information in order for that entity or its agent to submit, or in anticipation of submission of, a health care reimbursement claim or, in the case of the NPI, for permissible purposes specified in the HIPAA legislation (45 CFR part 162).

19. Relevant information may be disclosed to an academic affiliate with which VA maintains a business relationship, where the VA provider also maintains an appointment to that academic affiliate's medical staff. This disclosure is to support, or in anticipation of supporting, a health care reimbursement claim(s) or, in the case of the NPI, for permissible purposes specified in the HIPAA legislation (45 CFR part 162).

20. Any records may be disclosed to appropriate agencies, entities, and persons under the following circumstances: When (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

a. Effective Response. A federal agency's ability to respond quickly and effectively in the event of a breach of federal data is critical to its efforts to prevent or minimize any consequent harm. An effective response necessitates disclosure of information regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or playing a role in preventing or minimizing harms from the breach.

b. *Disclosure of Information.* Often, the information to be disclosed to such persons and entities is maintained by federal agencies and is subject to the Privacy Act (5 U.S.C. 552a). The Privacy Act prohibits the disclosure of any record in a system of records by any means of communication to any person or agency absent the written consent of the subject individual, unless the disclosure falls within one of twelve statutory exceptions. In order to ensure an agency is in the best position to respond in a timely and effective manner, in accordance with 5 U.S.C. 552a(b)(3) of the Privacy Act, agencies should publish a routine use for

appropriate systems specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach.

21. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

22. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

23. VA may, on its own initiative, disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

24. VA may disclose relevant information to attorneys, insurance companies, employers, third parties liable or potentially liable under health plan contracts, and courts, boards, or commissions, to the extent necessary to aid VA in the preparation, presentation, and prosecution of claims authorized under Federal, State, or local laws, and regulations promulgated thereunder.

25. VA may disclose relevant information to health plans, quality review and/or peer review organizations in connection with the audit of claims or other review activities to determine quality of care or compliance with professionally accepted claims processing standards.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), VA may disclose records from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper or electronic media.

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

Records are retrieved by name, social security number or other assigned identifier of the individuals on whom they are maintained, or by specific bill number assigned to the claim of the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Follow the requirement of RCS 10–1 Chapter 4 Item 4000.1 a & b.

4000.1 Financial transaction records related to procuring goods and services, paying bills, collecting debts, and accounting.

a. Official record held in the office of record.

Temporary; destroy 6 years after final payment or cancellation, but longer retention is authorized if required for business use. (GRS 1.1, Item 010) (DAA–GRS–2016–0001–0002).

b. All Other copies.

Temporary; destroy or delete when 6 years old, but longer retention is authorized if required for business use. (GRS 1.1 item 013) (DAA–GRS–2016–0001–0002).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Access to VA working and storage areas is restricted to VA employees on a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Information in VistA may only be accessed by authorized VA personnel. Access to file information is controlled at two levels. The systems recognize authorized personnel by series of individually unique passwords/codes as a part of each data message, and personnel are limited to only that information in the file, which is needed in the performance of their official duties. Information that is downloaded from VistA and maintained on personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes. Access by Office of Inspector General (OIG) staff conducting an audit, investigation, or inspection at the healthcare facility, or an OIG office location remote from the healthcare facility, is controlled in the same manner.

3. Information downloaded from VistA and maintained by the OIG headquarters and Field Offices on automated storage media is secured in storage areas for facilities to which only OIG staff have access. Paper documents are similarly secured. Access to paper documents and information on automated storage media is limited to OIG employees who have a need for the information in the performance of their official duties. Access to information stored on automated storage media is controlled by individually unique passwords/codes.

4. Access to the VA Austin Information Technology Center (AITC) is generally restricted to AITC employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Information stored in the AITC databases may be accessed.

5. Access to records maintained at the VA Allocation Resource Center (ARC) and the VISN Offices is restricted to VA employees who have a need for the information in the performance of their official duties. Access to information stored in electronic format is controlled by individually unique passwords/codes. Records are maintained in manned rooms during working hours. The facilities are protected from outside access during non-working hours by the Federal Protective Service or other security personnel.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they were treated.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA healthcare facility where care was rendered. Addresses of VA healthcare facilities may be found in VA Appendix 1 of the biennial publication of VA Privacy Act Issuances. All inquiries must reasonably identify the place and approximate date that medical care was provided. Inquiries should include the patient's full name, social security number, insurance company information, policyholder and policy identification number as well as a return address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Last full publication provided in 70 FR 55207.

[FR Doc. 2018–05085 Filed 3–13–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment of system of records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled ''Library Network (VALNET)–VA'' (136VA19E) as set forth in a notice, published in the **Federal Register** on November 26, 2010. VA is amending the system of records by revising the System Name, System Number, System Manger, Categories of Individuals Covered by the System, Categories of Records in the System, Records Source Categories, Policies and Practices for Retention and Disposal of Records, and Appendix. VA is republishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than April 13, 2018. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the amended system will become effective April 13, 2018.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (this is not a toll-free number). Comments should indicate that they are submitted in response to ''Library Network (VALNET)–VA'' (136VA19E). Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone 704–245–2492.

SUPPLEMENTAL INFORMATION: The System Name is being changed from ''Library Network (VALNET)–VA'' to ''VA Library Network (VALNET)–VA''.

The System Number is changed from 136VA19E to 136VA10P2 to reflect the current organizational alignment.

The System Manager has been amended to replace VHA Library Program Office (19E) with Director, VHA Library Network Office (10P2C).

The Categories of Individuals Covered by the System is being amended to include records being maintained for Veterans, family members and caregivers.

The Categories of Records in the System is being amended to remove 2. Patients. Included under this section is:

1. Equipment such as iPads, e-readers, and laptops as potential checkout material and record may include name, last four of social security number, email address, phone number, work or ward location of the user; and

2. Veterans, family members and caregivers as user and including the name of user are collected.

The Record Source Category is being amended to include the individual who use the library services.

Policies and Practices for Retention and Disposal of Records is being amended to replace Item XLV with 1950 library Services, Item 1. Temporary; destroy when superseded or obsolete (GRS 14, item 6).

Appendix A has been amended to remove the following libraries which are no longer operating: Library, VA Medical Center, 1700 East 38th Street, Marion, IN 46953–4589; Library, VA Medical Center, 2200 Gage Boulevard, Topeka, KS 66622–0001; Library, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70112; Library, Perry Point VA Medical Center, Circle Drive Building 5H, Perry Point, MD 21902; Library, VA Medical Center, 325 East H Street, Iron Mountain, MI 49801; Library, VA Medical Center, 76 Veterans Way, Bath, NY 14810; Library, Central Texas Veterans Health Care System, 4800 Memorial Drive, Waco, TX 76711; Library, VA Medical Center, 2500 Overbrook Terrace, Madison, WI 53705–2286; Library, VA Medical Center, 1898 Fort Road, Sheridan, WY 82801–8320. The following address of Library, VA Medical Center, #1 Jefferson Barracks Drive, St. Louis, MO 63125–4199 to Library, VA Medical Center, 915 N Grand Blvd., St. Louis, MO 63106.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, 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. John Oswalt, Executive Director for Privacy, Department of Veterans Affairs approved this document on January 18, 2018 for publication.

Dated: March 8, 2018.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy Information and Identity Protection, Office of Quality, Privacy and Risk, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME

''VA Library Network (VALNET)–VA'' (136VA10P2).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are maintained at each Department of Veterans Affairs (VA) medical center library (see Appendix A) and VA Central Office Library at 810 Vermont Avenue NW, Washington, DC 20420.

SYSTEM MANAGER(S):

Official responsible for policies and procedures; Network Librarian, Director, Veterans Health Administration (VHA) Library Network Office (10P2C), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Officials maintaining the system; Director at the facility where the individuals are associated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38 United States Code Section 501.

PURPOSE(S) OF THE SYSTEM:

The records and information may be used to track library materials checked out to library users and those materials that are overdue, materials borrowed from other libraries for library users, to track and recover costs of lost library materials to determine library materials to purchase and/or replace based on usage, to track users of library public access computers, and to compile management and statistical reports. Cost is recovered by Fiscal Service through Bills of Collection. If Bills of Collection are not paid, Fiscal Service may garnish paychecks, including Federal tax refunds, or turn the matter over to collection agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

The records may include information concerning all present and former VA employees, volunteers, students, contractors, regardless of whether they check out materials or use tables of content routing and interlibrary loan services. Records are maintained for Veterans, family members and caregivers that check out materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information related to:

1. Items checked out and in use (library books, journals, audiovisuals, and equipment such as iPads, e-readers, and laptops) and may include name, last four of social security number, email address, phone number, work or ward location of user.

2. Library public access computer work stations used by VA staff, Veterans, family members, and caregivers including name of user;

3. Name, last four digits of the social security number, email address, other assigned identifier, work location information, such as service, and extension for employees, students, and ward location for patients or other assigned identification.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual, VA employees, volunteers, students, contractors, Veterans, and others who use the library services. Automated computer systems such as Integrated Library Systems (ILS) which are used to track items which have been checked out of the library may store the information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus; information protected by 38 U.S.C. 5705, *i.e.,* quality assurance records; or information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, such information cannot be disclosed under a routine use unless there is also specific statutory authority permitting the disclosure. VA may disclose protected health information pursuant to the following routine uses where required or permitted by law.

1. Information from this system of records may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made on behalf of that individual.

2. Disclosure may be made to the National Archives and Records Administration (NARA) for records management inspections under authority of Title 44 United States Code.

3. Disclosure may be at VA's initiative made to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

4. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the reporting of an investigation, the letting of a grant or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

5. Records from this system of records may be disclosed in a proceeding before a court, adjudicative body, or other administrative body when the Agency, or any Agency component or employee (in his or her official capacity as a VA employee), is a party to litigation; when the Agency determines that litigation is likely to affect the Agency, any of its components or employees, or the United States has an interest in the litigation, and such records are deemed to be relevant and necessary to the legal proceedings; provided that the disclosure is compatible with the purpose for which the records were collected.

6. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

7. Disclosure may be made to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

8. Disclosure may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

9. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination.

10. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the

court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

11. VA may disclose on its own initiative any information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

12. To disclose to the Federal Labor Relations Authority (including its General Counsel) information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Services Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

13. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

14. VA may disclose information from this system of records relevant to a claim of a veteran or beneficiary, such as the name, address, the basis and nature of a claim, amount of benefit payment information, medical information, and military service and active duty separation information, at the request of the claimant to accredited service organizations, VA approved claim agents, and attorneys acting under a declaration of representation, so that these individuals can aid claimants in the preparation, presentation, and prosecution of claims under the laws administered by VA. The name and address of a claimant will not, however, be disclosed to these individuals under this routine use if the claimant has not requested the assistance of an accredited service organization, claims agent or an attorney. VA must be able to disclose this information to accredited service organizations, VA approved claim agents, and attorneys representing veterans so they can assist veterans by preparing, presenting, and prosecuting claims under the laws administered by VA.

15. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in electronic and/or paper format.

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

Records are retrieved by name, last four of the social security number and/or other assigned identifiers of the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The VALNET records may be disposed of in accordance with the records retention standards authorized by the NARA General Records Schedule 14, item 6, and published in the Veterans Health Administration Records Control Schedule 10–1, 1950 library Services, Item 1. Temporary; destroy when superseded or obsolete (GRS 14, item 6).

PHYSICAL, PROCEDURAL, AND ADMINISTRATIVE SAFEGUARDS:

1. Access to VA libraries is not restricted to VA employees. Generally the offices housing the files for storage of records are attended by staff who maintain the files during normal duty hours and after normal duty hours facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to files is controlled by the employees who maintain the files. Access to computerized records is controlled by the use of security codes known only to authorize users.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting records in the system may write, call, or visit the VA facility location where they are or were employed or made contact.

CONTESTING RECORD PROCEDURES:

(See Record Access procedures above.)

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the designated individual at the VA facility where the records are maintained. Individuals must furnish the following information in order for their records to be located and identified: a. Full name, b. dates of employment, service, hospital stay, or use of library, c. description of information being sought and, d. return address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Last full publication provided in 75 FR 72873.

APPENDIX A—LIST OF VA LIBRARIES

Library, Alaska VA Healthcare System, 1201 North Muldoon, Anchorage, AK 99508

Library, Central Alabama Veterans Health Care System, 2400 Hospital Road, Tuskegee, AL 36083

Library, VA Medical Center, 1100 North College Avenue, Fayetteville, AR 72703–1999

Library, Central Arkansas Veterans Healthcare System, 4300 W 7th St., Little Rock, AR 72205–5484

Library, Central Arkansas Veterans Healthcare System, 2200 Fort Roots Drive, North Little Rock, AR 72114

Library, VA Medical Center, 650 East Indian School Road, Phoenix, AZ 85012–1892

Library, VA Medical Center, 500 Highway 89 North, Prescott, AZ 86313

Library, VA Medical Center, 3601 South 6th Street, Tucson, AZ 85723–0001
Library, VA Medical Center, 2615 East Clinton Avenue, Fresno, CA 93703–2286
Library, VA Medical Center, 11201 Benton Street, Loma Linda, CA 92357–1000
Library, VA Medical Center, 5901 East 7th Street, Long Beach, CA 90822–5201
Library Service, VA Greater LA Healthcare System, 11301 Wilshire Boulevard, Los Angeles, CA 90073
Library, VA Medical Center, 3801 Miranda Avenue, Palo Alto, CA 94304–1290
Library Service, Northern California Health Care System, 5243 Dudley Blvd. Sacramento, CA 95652
Library, VA Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161–4041
Library, VA Medical Center, 4150 Clement Street, San Francisco, CA 94121–1598
Library, VA Medical Center, 2121 North Avenue, Grand Junction, CO 81501–6499
Library, VA Medical Center, 950 Campbell Avenue, West Haven, CT 06516
Library, VA Medical Center, 50 Irving Street NW, Washington, DC 20422
Library, VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420–0002
Library, VA Medical Center, 1601 Kirkwood Highway, Wilmington, DE 19805
Library, VA Medical Center, 10000 Bay Pines Blvd., Bay Pines, FL 33708
Library, VA Medical Center, 1601 SW Archer Road, Gainesville, FL 32608–1197
Library, VA Medical Center, 619 South Marion Street, Lake City, FL 32025
Library, Miami VA Healthcare System, 1201 NW 16th St, Miami, FL 33125
Library, VA Health Care Center, 5201 Raymond Street, Orlando, FL 32803
Library, VA Medical Center, 13000 Bruce B. Downs Blvd., Tampa, FL 33612–4745
Library, VA Medical Center, 7305 N Military Trail, West Palm Beach, FL 33410–6400
Library, VA Medical Center, 1 Freedom Way, Augusta, GA 30904–6285
Library, VA Medical Center-Atlanta, 1670 Clairmont Road, Decatur, GA 30033
Library, VA Medical Center, 500 West Fort Street, Boise, ID 83702–4598
Library, Jesse Brown VAMC, 820 S Damen Avenue, Chicago, IL 60612–3740
Library, VA Medical Center, 1900 East Main Street, Danville, IL 61832–5198
Library, VA Medical Center, 5th St & Roosevelt Ave, Hines, IL 60141–5142
Library, VA Medical Center, 2401 West Main Street, Marion, IL 62959–1188
Library, VA Medical Center, 3001 N Green Bay Road, North Chicago, IL 60064–3096
Library, Northern Indiana Health Care System, 2121 Lake Avenue, Fort Wayne, IN 46805
Library, VA Medical Center, 1481 West 10th Street, Indianapolis, IN 46202–2803
Library, VA Medical Center, 2250 Leestown Road, Lexington, KY 40511–1093
Library, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40206–1499
Library, VA Medical Center, 2495 Shreveport Highway, Alexandria, LA 71306–9004
Library, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70112
Library, VA Medical Center, 510 East Stoner Avenue, Shreveport, LA 71101–4295
Library, Edith Nourse Memorial Veterans Hospital, 200 Springs Road, Bedford, MA 01730
Library, Boston Healthcare System, 940 Belmont St., Brockton, MA 02301
Library, VA Medical Center, 421 North Main Street, Leeds, MA 01053–9714
Library, VA Maryland Healthcare System, 10 North Greene Street, Baltimore, MD 21201–1524
Library, Togus VA Medical Center, 1 Medical Center Dr., Togus, ME 04330–6795
Library, VA Ann Arbor Healthcare System, 2215 Fuller Road, Ann Arbor, MI 48105
Library, VA Medical Center, 5500 Armstrong Road, Battle Creek, MI 49037
Library, VA Medical Center, 4646 John R. St., Detroit, MI 48201–1916
Library, VA Medical Center, 1500 Weiss Street, Saginaw, MI 48602
Library, VA Medical Center, One Veterans Drive, Minneapolis, MN 55417–2236
Library, VA Medical Center, 4801 Eighth Street North, St. Cloud, MN 56303–2099
Library, VA Medical Center, 400 Veterans Avenue, Biloxi, MS 39531–2410
Library, VA Medical Center, 1500 East Woodrow Wilson, Jackson, MS 39216–5199
Library, VA Medical Center, 800 Hospital Drive, Columbia, MO 65201–5275
Library, VA Medical Center, 4801 Linwood Boulevard, Kansas City, MO 64128–2295
Library, VA Medical Center, 915 N Grand Blvd., St. Louis, MO 63106
Library, VA Medical Center, 3687 Veterans Dr., Fort Harrison, MT 59636
Library, VA Medical Center, 1100 Tunnel Road, Asheville, NC 28805–2087
Library, VA Medical Center, 508 Fulton Street, Durham, NC 27705–3875
Library, VA Medical Center, 1601 Brenner Avenue, Salisbury, NC 28144
Library, VA Medical Center, 2101 Elm Street, Fargo, ND 58102– 2417
Library, VA Medical Center, 4101 Woolworth Avenue, Omaha, NE 68105–1873
Library, VA Medical Center, 718 Smyth Road, Manchester, NH 03104–4098
Library, East Orange Campus, 385 Tremont Ave., East Orange, NJ 07018
Library, VA Medical Center, 151 Knollcroft Road, Lyons, NJ 07939–5000
Library, VA Medical Center, 1501 San Pedro Drive SE, Albuquerque, NM 87108–5138
Library, Southern Nevada Health Care System, 6900 North Pecos Rd., Las Vegas, NV 89086
Library, Reno VA Medical Center, 1000 Locust Street, Reno, NV 89502
Library, VA Medical Center, 113 Holland Avenue, Albany, NY 12208–3410
Library, VA Medical Center, 130 West Kingsbridge Road, Bronx, NY 10468
Library, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209
Library, VA Medical Center, 400 Fort Hill Avenue, Canandaigua, NY 14424–1188
Library, VA Medical Center, 423 East 23rd Street, New York, NY 10010–5050
Library, VA Medical Center, 79 Middleville Road–Bldg. 12, Northport, NY 11768–2290
Library, VA Medical Center, 17273 State Route 104, Chillicothe, OH 4560
Library, VA Medical Center, 3200 Vine Street, Cincinnati, OH 45220–2288
Library, Louis Stokes VA Medical Center, 10701 East Blvd., Cleveland, OH 44106
Library Service, VA Medical Center, 4100 West 3rd Street, Dayton, OH 45428
Library, VA Medical Center, 1011 Honor Heights Drive, Muskogee, OK 74401–1399
Library, VA Medical Center, 921 Northeast 13th Street, Oklahoma City, OK 73104–5028
Library, Portland VA Medical Center, 3710 SW U.S. Veterans Hospital Rd., Portland, OR 97239
Library, Southern Oregon Rehab Center and Clinic, 8495 Crater Lake Highway, White City, OR 97503–1088
Library, VA Medical Center, 2907 Pleasant Valley Blvd., Altoona, PA 16602–4377
Library, VA Medical Center, 325 New Castle Road, Butler, PA 16001–2480

Library, VA Medical Center, 1400 Black Horse Hill Road, Coatesville, PA 19320–2096

Library, Erie VA Medical Center, 135 E 38th Street, Erie, PA 16504–1559

Library, VA Medical Center, 1700 S Lincoln Avenue, Lebanon, PA 17042–7597

Library, Philadelphia VA Medical Center, 3900 Woodland Avenue, Philadelphia, PA 19104

Library, Pittsburgh Healthcare System, 1010 Delafield Rd., Pittsburgh, PA 15215

Library, Pittsburgh Healthcare System, University Drive C, Pittsburgh, PA 15240

Library, VA Medical Center, 1111 East End Boulevard, Wilkes-Barre, PA 18711–0026

Library, VA Medical Center, 10 Calle Casia, San Juan, PR 00921–3201

Library, Providence Medical Center, 830 Chalkstone Avenue, Providence, RI 02908–4799

Library, VA Medical Center, 109 Bee Street, Charleston, SC 29401–5799

Library, WJB Dorn VA Medical Center, 6439 Garners Ferry Road, Columbia, SC 29209

Library, VA Black Hill Health Care System, 500 North 5th Street, Hot Springs, SD 57747

Library, VA Medical Center, 113 Comanche Road, Fort Meade, SD 57741–1099

Library, Sioux Falls VA Medical Center, 2501 W 22nd Street, Sioux Falls, SD 57117

Library, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104–2193

Library, VA Medical Center, Sydney & Lamont Sts., (Johnson City), Mountain Home, TN 37684–5001

Library, Tennessee Valley Healthcare System, 3400 Lebanon Pike, Murfreesboro, TN 37129

Library, VA Medical Center, 1310 24th Avenue, South, Nashville, TN 37212–2637

Library, VA Medical Center, 6010 Amarillo Blvd. West, Amarillo, TX 79106–1992

Library, VA Medical Center, 1201 East 9th Street, Bonham, TX 75418–4019

Library, VA Medical Center, 4500 South Lancaster Road, Dallas, TX 75216–7191

Library, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77030–4298

Library, VA Medical Center, Veterans Memorial Drive, Temple, TX 76504–7497

Library, VA Medical Center, 500 Foothill Boulevard, Salt Lake City, UT 84148

Library, Hampton VA Medical Center, 100 Emancipation Drive, Hampton, VA 23667–0001

Library, VA Medical Center, 1201 Broad Rock Blvd., Richmond, VA 23249–0001

Library, VA Medical Center, 1970 Roanoke Boulevard, Salem, VA 24153–6478

Library, VA White River Junction VA MC, 215 North Main Street, White River Junction, VT 05009

Library, VA Medical Center, 1660 S Columbian Way, Seattle, WA 98108–1597

Library, VA Medical Center, 4815 North Assembly Street, Spokane, WA 99205–6197

Library, VA Medical Center, 9600 Veterans Drive, Tacoma, WA 98493

Library, VA Medical Center, 77 Wainwright, Walla Walla, WA 99362

Library, VA Medical Center, 5000 West National Avenue, Milwaukee, WI 53295–0001

Library, VA Medical Center, 500 East Veterans Street, Tomah, WI 54660–3100

Library, VA Medical Center, 200 Veterans Avenue, Beckley, WV 25801–6499

Library, VA Medical Center, One Medical Center Drive, Clarksburg, WV 26301

Library, VA Medical Center, 1540 Spring Valley Drive, Huntington, WV 25704

Library, VA Medical Center, 510 Butler Avenue, Martinsburg, WV 25401–0205

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40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Leather Finishing Operations Residual Risk and Technology Review; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0194; FRL–9975–21–OAR]

RIN 2060–AT70

National Emission Standards for Hazardous Air Pollutants: Leather Finishing Operations Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Leather Finishing Operations to address the results of the residual risk and technology review (RTR) that the EPA is required to conduct in accordance with section 112 of the Clean Air Act (CAA). We found risks due to emissions of air toxics to be acceptable from this source category and determined that the current NESHAP provides an ample margin of safety to protect public health. We identified no new cost-effective controls under the technology review to achieve further emissions reductions. Therefore, we are proposing no revisions to the numerical emission limits based on these analyses. However, the EPA is proposing amendments to regulatory provisions pertaining to emissions during periods of startup, shutdown, and malfunction (SSM); amendments to add electronic reporting; and amendments to clarify certain rule requirements and provisions. While the proposed amendments would not result in reductions in emissions of hazardous air pollutants (HAP), this action, if finalized, would result in improved compliance and implementation of the rule.

DATES: *Comments.* Comments must be received on or before April 30, 2018. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before April 13, 2018.

Public Hearing. If a public hearing is requested by March 19, 2018, then we will hold a public hearing on March 29, 2018 at the location described in the **ADDRESSES** section. The last day to pre-register in advance to speak at the public hearing will be March 27, 2018.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0194, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov. Regulations.gov* is our preferred method of receiving comments. However, other submission formats are accepted. To ship or send mail via the United States Postal Service, use the following address: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2003–0194, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. Use the following Docket Center address if you are using express mail, commercial delivery, hand delivery, or courier: EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. Delivery verification signatures will be available only during regular business hours.

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. See section I.C of this preamble for instructions on submitting CBI.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system).

For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

Public Hearing. If a public hearing is requested, it will be held at EPA Headquarters, EPA WJC East Building, 1201 Constitution Avenue NW, Washington, DC 20004. If a public hearing is requested, then we will provide details about the public hearing on our Web site at: *https://www.epa.gov/stationary-sources-air-pollution/leather-finishing-operations-national-emission-standards-hazardous.* The EPA does not intend to publish another document in the **Federal Register** announcing any updates on the request for a public hearing. Please contact Ms. Aimee St. Clair at (919) 541–1063 or by email at *StClair.Aimee@epa.gov* to request a public hearing, to register to speak at the public hearing, or to inquire as to whether a public hearing will be held.

The EPA will make every effort to accommodate all speakers who arrive and register. If a hearing is held at a U.S. government facility, individuals planning to attend should be prepared to show a current, valid state- or federal-approved picture identification to the security staff in order to gain access to the meeting room. An expired form of identification will not be permitted. Please note that the Real ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by a noncompliant state, you must present an additional form of identification to enter a federal facility. Acceptable alternative forms of identification include: Federal employee badge, passports, enhanced driver's licenses, and military identification cards. Additional information on the Real ID Act is available at *https://www.dhs.gov/real-id-frequently-asked-questions.* In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building, and demonstrations will not be allowed on federal property for security reasons.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Mr. Bill Schrock, Natural Resources Group, Sector Policies and Programs Division (E143–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5032; fax number: (919) 541–0516; and email address: *schrock.bill@epa.gov.* For specific information regarding the risk modeling methodology, contact Matthew Woody, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–1535; fax number: (919) 541–0840; and email address: *woody.matthew@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, EPA WJC South Building (Mail Code 2227A), 1200 Pennsylvania Avenue NW,

Washington DC 20460; telephone number: (202) 564–1395; and email address: *cox.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2003–0194. All documents in the docket are listed in the *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, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0194. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. This type of information should be submitted by mail as discussed in section 1.C of this preamble. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *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, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.*

Preamble Acronyms and Abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

AEGL acute exposure guideline level
AERMOD air dispersion model used by the HEM–3 model
CAA Clean Air Act
CalEPA California EPA
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guidelines
FR Federal Register
HAP hazardous air pollutant(s)
HCl hydrochloric acid
HEM–3 Human Exposure Model
HF hydrogen fluoride
HI hazard index
HQ hazard quotient
ICR information collection request
IRIS Integrated Risk Information System
km kilometer
MACT maximum achievable control technology
mg/m3 milligrams per cubic meter
MIR maximum individual risk
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
QA/QC quality assurance/quality control
RBLC RACT/BACT/LAER Clearinghouse
REL reference exposure level
RFA Regulatory Flexibility Act
RfC reference concentration
RfD reference dose
RTO regenerative thermal oxidizer
RTR residual risk and technology review
SAB Science Advisory Board
SSM startup, shutdown, and malfunction
TOSHI target organ-specific hazard index
tpy tons per year
TSD technical support document
UF uncertainty factor
UMRA Unfunded Mandates Reform Act
URE unit risk estimate
VCS voluntary consensus standards

Organization of this Document. The information in this preamble is organized as follows:

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

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source category that is the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this proposed action. On July 16, 1992, we published an initial list of source categories to be regulated (57 FR 31576), *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990.* The Leather Tanning and Finishing Operations source category was not included on the initial list, but was added by an update to the list on June 4, 1996 (61 FR 28207), *Revision of Initial List of Categories of Sources and Schedule for Standards Under Sections 112(c) and (e) of the Clean Air Act Amendments of 1990.* On October 2, 2000, we proposed a NESHAP for the Leather Finishing Operations source category (65 FR 58702). The final rule was promulgated on February 27, 2002 (67 FR 9156) (henceforth referred to as the ''Leather Finishing NESHAP''), which modified the listing of this source category by deleting tanning facilities from the definition and renaming the source category ''Leather Finishing Operations.'' The *Revision of Initial List of Categories of Sources and Schedule for Standards Under Sections 112(c) and (e) of the Clean Air Act Amendments of 1990* (see 61 FR 28197, 28202, June 4, 1996), describes the Leather Finishing Operations source category as ''any facility or process engaged in conditioning and enhancement processes that give tanned leather distinctive and desirable qualities required by end users of the material.''

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

NESHAP and source category	NAICS code [1]
Leather Finishing Operations	3161

[1] North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the Internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *http://www.epa.gov/stationary-sources-air-pollution/leather-finishing-operations-national-emission-standards-hazardous.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same Web site. Information on the overall RTR program is available at *http://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.*

A redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2003–0194).

C. What should I consider as I prepare my comments for the EPA?

Submitting CBI. Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2003–0194.

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 301 of the CAA, as amended (42 U.S.C. 7401 *et seq.*). Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of HAP from stationary sources. Generally, the first stage involves establishing technology-based standards and the second stage involves evaluating so-called maximum achievable control technology (MACT) standards to determine whether additional standards are needed to further address any remaining risk associated with HAP emissions. This second stage is commonly referred to as the ''residual risk review.'' In addition to the residual risk review, the CAA also requires the EPA to review standards set under CAA section 112 every 8 years to determine if there are ''developments in practices, processes, or control technologies'' that may be appropriate to incorporate into the standards. This review is commonly referred to as the ''technology review.'' When the two reviews are combined into a single rulemaking, it is commonly referred to as the ''risk and technology review.'' The discussion that follows identifies the most relevant statutory sections and briefly explains the contours of the methodology used to implement these statutory requirements. A more comprehensive discussion appears in the document titled *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology* in the docket for this rulemaking.

In the first stage of the CAA section 112 standard setting process, the EPA promulgates technology-based standards under CAA section 112(d) for categories of sources identified as emitting one or more of the HAP listed in CAA section 112(b). Sources of HAP emissions are either major sources or area sources, and CAA section 112 establishes different requirements for major source standards and area source standards. ''Major sources'' are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. All other sources are ''area sources.'' For major sources, CAA section 112(d) provides that the technology-based NESHAP must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). These standards are commonly referred to as MACT standards. CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT ''floor.'' The EPA must also consider control options that are more stringent than the floor. Standards more stringent

than the floor are commonly referred to as ''beyond-the-floor'' standards. In certain instances, as provided in CAA section 112(h), the EPA may set work practice standards where it is not feasible to prescribe or enforce a numerical emission standard. For area sources, CAA section 112(d)(5) gives the EPA discretion to set standards based on generally available control technologies or management practices (GACT standards) in lieu of MACT standards.

The second stage in standard-setting focuses on identifying and addressing any remaining (*i.e.,* ''residual'') risk according to CAA section 112(f). Section 112(f)(2) of the CAA requires the EPA to determine for source categories subject to MACT standards whether promulgation of additional standards is needed to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. Section 112(d)(5) of the CAA provides that this residual risk review is not required for categories of area sources subject to GACT standards. Section 112(f)(2)(B) of the CAA further expressly preserves the EPA's use of the two-step process for developing standards to address any residual risk and the Agency's interpretation of ''ample margin of safety'' developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* (Benzene NESHAP) (54 FR 38044, September 14, 1989). The EPA notified Congress in the Risk Report that the Agency intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11). The EPA subsequently adopted this approach in its residual risk determinations and the United States Court of Appeals for the District of Columbia Circuit (the Court) upheld the EPA's interpretation that CAA section 112(f)(2) incorporates the approach established in the Benzene NESHAP. See *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008).

The approach in the CAA process used by the EPA to evaluate residual risk and to develop standards under CAA section 112(f)(2) is a two-step approach. In the first step, the EPA determines whether risks are acceptable. This determination ''considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [1] of approximately [1-in-10 thousand] [*i.e.,* 100-in-1 million].'' 54 FR 38045, September 14, 1989. If risks are unacceptable, the EPA must determine the emissions standards necessary to bring risks to an acceptable level without considering costs. In the second step of the process, the EPA considers whether the emissions standards provide an ample margin of safety ''in consideration of all health information, including the number of persons at risk levels higher than approximately 1-in-1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety to protect public health. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent an adverse affect, taking into consideration costs, energy, safety, and other relevant factors.

CAA section 112(d)(6) separately requires the EPA to review standards promulgated under CAA section 112 and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years. In conducting this so-called ''technology review,'' the EPA is not required to recalculate the MACT floor. *Natural Resources Defense Council (NRDC)* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008). *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (D.C. Cir. 2013). The EPA may consider cost in deciding whether to revise the standards pursuant to CAA section 112(d)(6).

B. What is this source category and how does the current NESHAP regulate its HAP emissions?

The Leather Finishing NESHAP was promulgated on February 27, 2002 (67 FR 9156) and codified at 40 CFR part 63, subpart TTTT. The Leather Finishing NESHAP defines ''leather finishing'' as ''a single process or group of processes used to adjust and improve the physical and aesthetic characteristics of the leather surface through the multistage application of a coating comprised of dyes, pigments, film-forming materials, and performance modifiers dissolved or suspended in liquid carriers.'' 40 CFR 63.5460. The Leather Finishing NESHAP does not apply to equipment used solely for leather tanning operations or to portions of leather finishing operations using a solvent degreasing process subject to the Halogenated Solvent Cleaning NESHAP (see 40 CFR 63.5290(c)).

There are currently four existing leather finishing operations that were identified as subject to the Leather Finishing NESHAP: S.B. Foot Tanning Company of Red Wing, MN; Alliance Leather, Inc. of Peabody, MA; Pearl Leather Finishers, Inc. of Johnstown, NY; and Tasman Leather Group, LLC of Hartland, ME.

In the overall process of leather products manufacturing, leather finishing is considered a dry operation as opposed to the ''wet-end'' operations associated with leather tanning. Leather finishing operations can be co-located with wet-end tannery operations or performed in stand-alone facilities. None of the four existing facilities subject to the Leather Finishing NESHAP perform the initial wet-end tanning process that produces the commodity product known as ''wet blues'' or ''blue stock;'' however, based on information available in the facility operating permits, the S.B. Foot and Tasman facilities each perform retanning, coloring, and fat liquoring operations. These are wet-end operations that soften, color, and restore fats and oils to the blue stock. The equipment used solely for leather tanning operations is not subject to the Leather Finishing NESHAP.

In the dry-end leather finishing operations, coatings are typically applied to the leather substrate using spray, roll, and flow coating techniques. The emission source types subject to the emission limits under the Leather Finishing NESHAP include, but are not limited to coating and spraying equipment, coating storage and mixing, and dryers. Emissions of HAP occur from volatilization during the application of the coating, drying, or curing of the coating, and from handling, storage, and clean-up of the finishing materials. Wastewaters laden with HAP are also a potential source of emissions at facilities that use water curtains and water baths for particulate control. The emission point types associated with these emission sources include process vents, storage vessels, wastewater, and fugitive sources.

In developing the Leather Finishing NESHAP, the EPA established MACT standards for four types of leather product process operations: (1) Upholstery leather with greater than or equal to 4 grams of add-on finish per square foot of leather; (2) upholstery leather with less than 4 grams of add-on finish per square foot of leather; (3)

[1] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk if an individual were exposed to the maximum level of a pollutant for a lifetime.

water-resistant leather; and (4) nonwater-resistant leather. The MACT standards limit emissions from new and existing leather finishing operations and are expressed in terms of total HAP emissions per 1,000 square feet of leather processed over a rolling 12-month compliance period. Sources must record the mass of HAP in coatings applied to the leather either through an inventory mass balance or ''measure-as-applied'' approach. Using the mass balance approach, sources may choose to account for disposal of excess finish instead of assuming any excess finish is also emitted. Emissions are calculated based on the assumption that the entire HAP content of the applied finish is released to the environment. Sources using an add-on control device may account for the emission reduction achieved from the control device as measured by a performance test conducted in accordance with the requirements of the Leather Finishing NESHAP.

Based on the data collected as described in section II.C and D of this preamble, HAP emissions from this source category include propyl cellosolve, glycol ethers, diethylene glycol monobutyl ether, trimethylamine, diethylene glycol monomethyl ether, ethylene glycol, toluene, methyl isobutyl ketone, and chromium (III) compounds.

C. What data collection activities were conducted to support this action?

For this RTR, the EPA collected information from the 2014 National Emissions Inventory (NEI, version 1), from facility permits and permit applications, and through discussions with facility representatives and state permitting authorities.

The NEI is a database that contains information about sources that emit criteria air pollutants, their precursors, and HAP. The database includes estimates of annual air pollutant emissions from point, nonpoint, and mobile sources in the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. The EPA collects this information and releases an updated version of the NEI database every 3 years. The NEI includes information necessary for conducting risk modeling, including annual HAP emissions estimates from individual emission points at facilities and the related emissions release parameters. We used NEI emissions and supporting data as the primary source of information to develop the model input file for the risk assessment (hereafter referred to as the ''RTR emissions dataset''). For more details on the NEI, see *https://www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei.*

The EPA also gathered information on annual emissions, emission points, air pollution control devices, and process operations from facility construction and operating permits. We collected permits and supporting documentation from state permitting authorities either through direct contact with the agencies or through state-maintained online databases. The NEI and facility permits contained much of the information we used to develop the RTR emissions dataset. Supplemental information was collected via communication with facility representatives.

The EPA contacted facility representatives for three of the four leather finishing operations subject to the Leather Finishing NESHAP (identified in section II.B of this preamble) to collect supplemental and clarifying information for use in the RTR emissions dataset. Facility representatives provided information including production capacities, coating formulations, HAP emissions, and operating schedules. We were unable to establish contact with facility representatives for Alliance Leather, Inc. of Peabody, MA; however, the Massachusetts Department of Environmental Protection confirmed the facility was in operation at the time of our inquiry (November 2016) and provided a facility annual emissions report for the 2015 reporting year. Contacts with facility representatives, our review of permit documentation, and our review of the 2014 NEI are documented in a separate memorandum titled *Leather Finishing: Residual Risk Modeling File Supporting Documentation* in the docket for this action.

D. What other relevant background information and data are available?

The EPA's Enforcement Compliance History Online (ECHO) database was used as a tool to identify which leather finishing operations were potentially subject to the Leather Finishing NESHAP. The ECHO database provides integrated compliance and enforcement information for approximately 800,000 regulated facilities nationwide. Using the search feature in ECHO, the EPA identified 120 facilities that could potentially be subject to the Leather Finishing NESHAP. The EPA also reviewed the membership directory of the Leather Industries of America trade association and supporting documentation for the 2002 rulemaking and identified an additional 35 facilities with operations potentially subject to the Leather Finishing NESHAP. We then searched state Web sites for operating permits for these facilities to determine whether the permits stated the facility contained leather finishing operations subject to the rule. For facilities for which permits were unavailable, we reviewed company Web sites, online news articles, and aerial imagery to determine if the facility was still in operation. Of the 155 identified facilities, we determined that 24 facilities perform leather finishing operations and 131 facilities are either closed or do not perform leather finishing operations. Of the 24 facilities performing leather finishing operations, only four are subject to the Leather Finishing NESHAP. The 20 remaining facilities are area sources and not subject to the Leather Finishing NESHAP.

The EPA searched for Reasonably Available Control Technology (RACT), Best Available Control Technology (BACT), and Lowest Achievable Emission Rate (LAER) determinations in the RACT/BACT/LAER Clearinghouse (RBLC). The RBLC is a database that contains case-specific information of air pollution technologies that have been required to reduce the emissions of air pollutants from stationary sources. Under the EPA's New Source Review (NSR) program, if a facility is planning new construction or a modification that will increase the air emissions by a certain amount, an NSR permit must be obtained. This central database promotes the sharing of information among permitting agencies and aids in case-by-case determinations for NSR permits. We examined information contained in the RBLC to determine what technologies are currently used at leather finishing operations to reduce air emissions.

The EPA also reviewed other information sources to determine whether there have been developments in practices, processes, or control technologies in the leather finishing operations source category. We reviewed subsequent regulatory actions for sources similar to leather finishing operations and conducted a review of literature published by industry organizations, technical journals, and government organizations. Additional details regarding our review of these information sources is contained in the memorandum titled *CAA section 112(d)(6) Technology Review for the Leather Finishing Source Category* in the docket for this action.

III. Analytical Procedures

In this section, we describe the analyses performed to support the

proposed decisions for the RTR and other issues addressed in this proposal.

A. How do we consider risk in our decision-making?

As discussed in section II.A of this preamble and in the Benzene NESHAP, in evaluating and developing standards under CAA section 112(f)(2), we apply a two-step process to determine whether or not risks are acceptable and to determine if the standards provide an ample margin of safety to protect public health. As explained in the Benzene NESHAP, ''the first step judgment on acceptability cannot be reduced to any single factor'' and, thus, ''[t]he Administrator believes that the acceptability of risk under [previous] section 112 is best judged on the basis of a broad set of health risk measures and information.'' 54 FR 38046, September 14, 1989. Similarly, with regard to the ample margin of safety determination, ''the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.'' *Id.*

The Benzene NESHAP approach provides flexibility regarding factors the EPA may consider in making determinations and how the EPA may weigh those factors for each source category. The EPA conducts a risk assessment that provides estimates of the MIR posed by the HAP emissions from each source in the source category, the hazard index (HI) for chronic exposures to HAP with the potential to cause noncancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause noncancer health effects.[2] The assessment also provides estimates of the distribution of cancer risks within the exposed populations, cancer incidence, and an evaluation of the potential for adverse environmental effects. The scope of EPA's risk analysis is consistent with EPA's response to comment on our policy under the Benzene NESHAP where the EPA explained that:

''[t]he policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of non-cancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the *Vinyl Chloride* mandate that the Administrator ascertain an acceptable level of risk to the public by employing [her] expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in [her] judgment, believes are appropriate to determining what will 'protect the public health'.''

See 54 FR at 38057, September 14, 1989. Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risks. The Benzene NESHAP explained that ''an MIR of approximately one in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors.'' *Id.* at 38045. Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that: ''EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category.'' *Id.* at 38061. We also consider the uncertainties associated with the various risk analyses, as discussed earlier in this preamble, in our determinations of acceptability and ample margin of safety.

The EPA notes that it has not considered certain health information to date in making residual risk determinations. At this time, we do not attempt to quantify those HAP risks that may be associated with emissions from other facilities that do not include the source category under review, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in the category.

The EPA understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. We recognize that such consideration may be particularly important when assessing noncancer risks, where pollutant-specific exposure health reference levels (*e.g.,* reference concentrations (RfCs)) are based on the assumption that thresholds exist for adverse health effects. For example, the EPA recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse noncancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.,* other facilities) to which an individual is exposed may be sufficient to result in increased risk of adverse noncancer health effects. In May 2010, the Science Advisory Board (SAB) advised the EPA ''that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area.''[3]

In response to the SAB recommendations, the EPA is incorporating cumulative risk analyses into its RTR risk assessments, including those reflected in this proposal. The Agency is (1) Conducting facility-wide assessments, which include source category emission points, as well as other emission points within the facilities; (2) combining exposures from multiple sources in the same category that could affect the same individuals; and (3) for some persistent and bioaccumulative pollutants, analyzing the ingestion route of exposure. In addition, the RTR risk assessments have always considered aggregate cancer risk from all carcinogens and aggregate noncancer HI from all noncarcinogens affecting the same target organ system.

Although we are interested in placing source category and facility-wide HAP risks in the context of total HAP risks from all sources combined in the

[2] The MIR is defined as the cancer risk associated with a lifetime of exposure at the highest concentration of HAP where people are likely to live. The HQ is the ratio of the potential exposure to the HAP to the level at or below which no adverse chronic noncancer effects are expected; the HI is the sum of HQs for HAP that affect the same target organ or organ system.

[3] The EPA's responses to this and all other key recommendations of the SAB's advisory on RTR risk assessment methodologies (which is available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf*) are outlined in a memorandum to this rulemaking docket from David Guinnup titled, *EPA's Actions in Response to the Key Recommendations of the SAB Review of RTR Risk Assessment Methodologies.*

vicinity of each source, we are concerned about the uncertainties of doing so. Because of the contribution to total HAP risk from emission sources other than those that we have studied in depth during this RTR review, such estimates of total HAP risks would have significantly greater associated uncertainties than the source category or facility-wide estimates. Such aggregate or cumulative assessments would compound those uncertainties, making the assessments too unreliable.

B. How do we perform the technology review?

Our technology review focuses on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards were promulgated. Where we identify such developments, in order to inform our decision of whether it is ''necessary'' to revise the emissions standards, we analyze the technical feasibility of applying these developments and the estimated costs, energy implications, non-air environmental impacts, and we also considered the emission reductions. In addition, we considered the appropriateness of applying controls to new sources versus retrofitting existing sources.

Based on our analyses of the available data and information, we identify potential developments in practices, processes, and control technologies. For this exercise, we consider any of the following to be a ''development'':

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In addition to reviewing the practices, processes, and control technologies that were considered at the time we originally developed (or last updated) the NESHAP, we reviewed a variety of data sources in our investigation of potential practices, processes, or controls to consider. Among the sources we reviewed were the NESHAP for various industries that were promulgated since the MACT standards being reviewed in this action. We reviewed the regulatory requirements and/or technical analyses associated with these regulatory actions to identify any practices, processes, and control technologies considered in these efforts that could be applied to emission sources in the Leather Finishing Operations source category, as well as the costs, non-air impacts, and energy implications associated with the use of these technologies. Finally, we reviewed information from other sources, such as state and/or local permitting agency databases and industry-supported databases.

C. How did we estimate post-MACT risks posed by the source category?

The EPA conducted a risk assessment that provides estimates of the MIR for cancer posed by the HAP emissions from each source in the source category, the HI for chronic exposures to HAP with the potential to cause noncancer health effects, and the HQ for acute exposures to HAP with the potential to cause noncancer health effects. The assessment also provides estimates of the distribution of cancer risks within the exposed populations, cancer incidence, and an evaluation of the potential for adverse environmental effects. The eight sections that follow this paragraph describe how we estimated emissions and conducted the risk assessment. The docket for this rulemaking contains the following document, which provides more information on the risk assessment inputs and models: *Residual Risk Assessment for the Leather Finishing Operations Source Category in Support of the December 2017 Risk and Technology Review Proposed Rule.* The methods used to assess risks (as described in the eight primary steps below) are consistent with those peer-reviewed by a panel of the EPA's SAB in 2009 and described in their peer review report issued in 2010 [4]; they are also consistent with the key recommendations contained in that report.

[4] U.S. EPA SAB. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing,* May 2010.

1. How did we estimate actual emissions and identify the emissions release characteristics?

Data for four leather finishing operations as described in section II.C of this preamble were used to create the RTR emissions dataset. The emission sources in the RTR emissions dataset include the following types of emissions sources currently regulated by the Leather Finishing NESHAP: Coating and spraying equipment, coating storage and mixing, and dryers. The RTR emissions dataset also includes emissions from buffing operations. This RTR emissions dataset is based primarily on emissions data from the 2014 NEI, facility permits and permit supporting documentation, a state-provided facility annual emissions report, and information obtained through contact with facility representatives. These data sources provided all of the emissions data in the RTR emissions dataset and nearly all of the facility-specific data needed to conduct the risk modeling analysis. However, there were a few instances where default values were used to fill gaps in the facility-specific data used in the risk modeling analysis. For example, default values were used for fugitive release parameters. Use of defaults is discussed in detail in the memorandum titled *Leather Finishing: Residual Risk Modeling File Supporting Documentation* in the docket for this action.

The RTR emissions dataset was refined following an extensive quality assurance (QA) check of source locations, emission release characteristics, and annual emission estimates. We checked the coordinates of each emission source in the dataset using a computer program that renders a three-dimensional representation of Earth based on satellite imagery to ensure the emission point locations were correct. We also confirmed that each stack parameter was within acceptable QA range check boundaries. For further information on the EPA's QA review, see the memorandum titled *Leather Finishing: Residual Risk Modeling File Supporting Documentation* in the docket for this action.

2. How did we estimate MACT-allowable emissions?

The available emissions data used to develop the RTR emissions dataset include estimates of the mass of HAP emitted during a specified annual time period. These ''actual'' emission levels are often lower than the emission levels required to comply with the current MACT standards. The emissions level

allowed to be emitted by the MACT standards is referred to as the ''MACT-allowable'' emissions level. We discussed the use of both MACT-allowable and actual emissions in the final Coke Oven Batteries RTR (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP RTRs (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those actions, we noted that assessing the risks at the MACT-allowable level is inherently reasonable since these risks reflect the maximum level facilities could emit and still comply with national emission standards. We also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP approach. (54 FR 38044, September 14, 1989).

We used the RTR emissions dataset discussed in section III.C.1 of this preamble to estimate allowable emissions levels. The types and sources of data we used to estimate allowable emissions vary by facility and leather finishing operation type. Because the Leather Finishing NESHAP MACT limits are production-based limits (*i.e.,* pounds HAP per square feet of leather processed), estimating MACT-allowable emissions for the Leather Finishing Operations source category would be accomplished by using the actual production level per leather finishing operation type to calculate emissions at the MACT limit per leather finishing operation type. However, we do not have actual production data (quantity and type of leather) for each permitted leather finishing operation because we did not petition facilities for this information with an information collection request (ICR). As a result, different methods for estimating allowable emissions were warranted for each facility and leather finishing operation type. This section provides a summary of our method for estimating allowable emissions for each facility. Refer to the memorandum titled *Leather Finishing: Residual Risk Modeling File Supporting Documentation* in the docket for this action for a more detailed discussion of the data and methods we used to calculate allowable emissions for these facilities.

For Alliance Leather, we estimated allowable emissions for organic HAP using the Leather Finishing NESHAP limit on total HAP emissions that is specified in the facility's permit, which is 3.7 pounds of HAP emitted per 1,000 square feet of leather processed. The facility's total allowable annual HAP emission rate was estimated to be the product of this HAP limit (3.7 pounds per 1,000 square feet of leather processed), the design production capacity of the leather finishing process specified in the operating permit (16,200 square feet per hour), and the annual operating schedule contained in the 2014 NEI (2,000 hours per year). Given that we do not have actual production data for this leather finishing operation, we could not calculate the MACT-allowable emissions level as described above. However, using design production capacity in place of actual production is a more conservative approach, yielding a higher estimate for allowable organic HAP emissions. As further detailed in the memorandum cited above in this section, this approach yielded a total allowable annual HAP emission rate of 60 tpy, equivalent to 118 times the actual emission rate. Allowable organic HAP emissions for the risk modeling file were estimated by multiplying by 118 the actual organic HAP emission rates for each emission release point, emission process, and emission unit combination.

For S.B. Foot Tanning Co. and Pearl Leather Finishers, Inc, we also do not have actual production data. Further, S.B. Foot has multiple leather finishing operations, each subject to a different production-based NESHAP limit. To calculate the MACT-allowable emissions level for each leather finishing operation at the facility, we would need the actual production data for each leather finishing operation. Given our data limitations for these two facilities, we identified an alternative approach for estimating allowable emissions that was not available for Alliance Leather. S.B. Foot and Pearl Leather Finishers are subject to permitted mass-based limits on volatile organic compound(s) (VOC) emissions in tpy. We determined that we could use each facility's permitted VOC limit to estimate allowable organic HAP emissions because all organic HAP emitted are VOC and, in the coating formulations, there is little variation in the ratio of total organic HAP to total VOC. Using the ratio of each facility's permitted VOC emission limit to its reported [5] annual VOC emissions, we estimated allowable organic HAP emissions as the product of actual organic HAP emissions and this ratio. For example, for S.B. Foot, permitted VOC emissions are 200 tpy and reported VOC emissions are 88.61 tpy, which yields a ratio of 2.26. For Pearl Leather Finishers, permitted VOC emissions are 194,180 pounds per year and reported VOC emissions are 41,926 pounds, which yields a ratio of 4.63. Using these ratios, we estimated allowable organic HAP emissions as the product of actual organic HAP emissions and the ratio. For S.B. Foot, actual organic HAP emissions are 16.18 tpy, which multiplied by 2.26 yields 36.5 tpy allowable organic HAP emissions. Using this same method for Pearl Leather Finishers yields an allowable organic HAP emission level of 5.1 tpy. Allowable organic HAP emissions for the risk modeling file were estimated for each facility by multiplying the actual organic HAP emission rates for each emission release point, emission process, and emission unit combination by the ratio. Refer to the memorandum cited above in this section for a detailed discussion about these data sources and calculations. We solicit comment on this proposed method of calculating allowable organic HAP emissions for S.B. Foot and Pearl Leather Finishers.

For Tasman Leather Group, LLC., allowable emissions were estimated using the maximum HAP emissions allowed for area sources, which is 10 tpy for all HAP emitted (refer to the memorandum, *Leather Finishing: Residual Risk Modeling File Supporting Documentation,* in the docket for this action for further discussion on the status of this facility as an area source). Allowable emissions for organic HAP were set equivalent to this total annual HAP emission limit of 10 tpy. Allowable organic HAP emissions for the risk modeling file were estimated by multiplying the actual organic HAP emission rate (as reported in the 2014 NEI) for each emission release point, emission process, and emission unit combination by a factor of 2.78, which is the ratio of allowable total HAP emissions (10 tpy) to actual facility-wide emissions of HAP (3.59 tpy). Refer to the memorandum cited above in this section for a detailed discussion about these data sources and calculations.

We estimated allowable chromium (III) emissions from buffing operations as follows. For S.B. Foot, the allowable rate for each chromium-emitting emission release point was set equal to the potential to emit value in the facility's permit technical support document (TSD), which is 0.319 tpy chromium (III). No additional restrictions on chromium (III) emissions were identified. For Pearl Leather Finishers and Tasman Leather Group, we used emission factors presented in the S.B. Foot permit TSD to estimate the allowable emission rate for each chromium emission release point. For Pearl Leather Finishers, based on communication with facility representatives regarding average

[5] Reported to the 2014 NEI.

production rate, design production capacity, and dust capture, and assuming a 90-percent control efficiency, we calculated an allowable chromium (III) emission rate of 0.266 tpy. For Tasman Leather Group, based on communication with facility representatives, we identified the design capacity of each buffing operation and established that four buffing operations currently operate. Using this design capacity, we calculated allowable chromium emissions based on permit special conditions for the facility allowing the operation of 12 such buffing units at any given time and requiring a 90-percent particulate removal efficiency. Based on these permitted conditions, we calculated an allowable chromium (III) emission rate of 4.98 tpy. Refer to the memorandum cited above in this section for a detailed discussion about these data sources and calculations. We identified no buffing operations at Alliance Leather.

We solicit comment on our proposed methods for estimating allowable emissions. In addition to general comments on these proposed methods, we are interested in additional data that may improve our estimation of allowable emissions.

3. How did we conduct dispersion modeling, determine inhalation exposures, and estimate individual and population inhalation risks?

Both long-term and short-term inhalation exposure concentrations and health risks from the source category addressed in this proposal were estimated using the Human Exposure Model (HEM–3). The HEM–3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 kilometers (km) of the modeled sources, and (3) estimating individual and population-level inhalation risks using the exposure estimates and quantitative dose-response information.

a. Dispersion Modeling

The air dispersion model AERMOD, used by the HEM–3 model, is one of the EPA's preferred models for assessing air pollutant concentrations from industrial facilities.[6] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year (2016) of hourly surface and upper air observations from 824 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block[7] internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2010). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant-specific dose-response values is used to estimate health risks. These dose-response values are the latest values recommended by the EPA for HAP. They are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants* and are discussed in more detail later in this section.

b. Risk From Chronic Exposure to HAP That May Cause Cancer

In developing the risk assessment for chronic exposures, we use the estimated annual average ambient air concentrations of each HAP emitted by each source for which we have emissions data in the source category. The air concentrations at each nearby census block centroid are used as a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. We calculate the MIR for each facility as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, 52 weeks per year, for a 70-year period) exposure to the maximum concentration at the centroid of inhabited census blocks. Individual cancer risks are calculated by multiplying the estimated lifetime exposure to the ambient concentration of each HAP (in micrograms per cubic meter) by its unit risk estimate (URE). The URE is an upper bound estimate of an individual's probability of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, we generally use UREs from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) UREs, where available. In cases where new, scientifically credible dose-response values have been developed in a manner consistent with the EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate.

To estimate incremental individual lifetime cancer risks associated with emissions from the facilities in the source category, the EPA sums the risks for each of the carcinogenic HAP[8] emitted by the modeled sources. Cancer incidence and the distribution of individual cancer risks for the population within 50 km of the sources are also estimated for the source category by summing individual risks. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044, September 14, 1989) and the limitations of Gaussian dispersion models, including AERMOD.

c. Risk From Chronic Exposure to HAP That May Cause Health Effects Other Than Cancer

To assess the risk of noncancer health effects from chronic exposure to HAP, we calculate either an HQ or a target organ-specific hazard index (TOSHI). We calculate an HQ when a single noncancer HAP is emitted. Where more than one noncancer HAP is emitted, we sum the HQ for each of the HAP that affects a common target organ system to obtain a TOSHI. The HQ is the estimated exposure divided by the chronic noncancer dose-response value, which is a value selected from one of several sources. The preferred chronic noncancer dose-response value is the EPA RfC (*https://iaspub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/*

[6] U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[7] A census block is the smallest geographic area for which census statistics are tabulated.

[8] EPA classifies carcinogens as: Carcinogenic to humans, likely to be carcinogenic to humans, and suggestive evidence of carcinogenic potential. These classifications also coincide with the terms ''known carcinogen, probable carcinogen, and possible carcinogen,'' respectively, which are the terms advocated in the EPA's *Guidelines for Carcinogen Risk Assessment,* published in 1986 (51 FR 33992, September 24, 1986). In August 2000, the document *Supplemental Guidance for Conducting Health Risk Assessment of Chemical Mixtures* (EPA/630/R–00/002) was published as a supplement to the 1986 document. Copies of both documents can be obtained from *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=20533&CFID=70315376&CFTOKEN=71597944.* Summing the risks of these individual compounds to obtain the cumulative cancer risks is an approach that was recommended by the EPA's SAB in their 2002 peer review of the EPA's National Air Toxics Assessment (NATA) titled *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory,* available at *http://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

search.do?details=&vocabName=IRIS%20Glossary), defined as ''an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.'' In cases where an RfC from the EPA's IRIS database is not available or where the EPA determines that using a value other than the RfC is appropriate, the chronic noncancer dose-response value can be a value from the following prioritized sources, which define their dose-response values similarly to the EPA: (1) The Agency for Toxic Substances and Disease Registry (ATSDR) Minimum Risk Level (*http://www.atsdr.cdc.gov/mrls/index.asp*); (2) the CalEPA Chronic Reference Exposure Level (REL) (*http://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0*); or (3), as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that used by the EPA.

d. Risk From Acute Exposure to HAP That May Cause Health Effects Other Than Cancer

For each HAP for which appropriate acute inhalation dose-response values are available, the EPA also assesses the potential health risks due to acute exposure. For these assessments, the EPA makes conservative assumptions about emission rates, meteorology, and exposure location. We use the peak hourly emission rate,[9] worst-case dispersion conditions, and, in accordance with our mandate under section 112 of the CAA, the point of highest off-site exposure to assess the potential risk to the maximally exposed individual.

To characterize the potential health risks associated with estimated acute inhalation exposures to a HAP, we generally use multiple acute dose-response values, including acute RELs, acute exposure guideline levels (AEGLs), and emergency response planning guidelines (ERPG) for 1-hour exposure durations), if available, to calculate acute HQs. The acute HQ is calculated by dividing the estimated acute exposure by the acute dose-response value. For each HAP for which acute dose-response values are available, the EPA calculates acute HQs.

An acute REL is defined as ''the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration.'' [10] Acute RELs are based on the most sensitive, relevant, adverse health effect reported in the peer-reviewed medical and toxicological literature. They are designed to protect the most sensitive individuals in the population through the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact. AEGLs represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to 8 hours.[11] They are guideline levels for ''once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.'' *Id.* at 21. The AEGL–1 is specifically defined as ''the airborne concentration (expressed as ppm (parts per million) or mg/m3 (milligrams per cubic meter)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.'' Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects.'' *Id.* AEGL–2 are defined as ''the airborne concentration (expressed as parts per million or milligrams per cubic meter) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.'' *Id.*

ERPGs are developed for emergency planning and are intended as health-based guideline concentrations for single exposures to chemicals.'' [12] *Id.* at 1. The ERPG–1 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor.'' *Id.* at 2. Similarly, the ERPG–2 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.'' *Id.* at 1.

An acute REL for 1-hour exposure durations is typically lower than its corresponding AEGL–1 and ERPG–1. Even though their definitions are slightly different, AEGL–1s are often the same as the corresponding ERPG–1s, and AEGL–2s are often equal to ERPG–2s. The maximum HQs from our acute inhalation screening risk assessment typically result when we use the acute REL for a HAP. In cases where the maximum acute HQ exceeds 1, we also report the HQ based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1).

For this source category, facility-specific actual emissions were used to calculate peak hourly emissions in our acute inhalation screening risk assessment. For each HAP emitted by a facility, the peak hourly emission rate was calculated by dividing the actual annual emission rate by facility-specific annual operating hours and multiplying this hourly rate by an acute emission multiplier of 1.8. The multiplier was developed using U.S. census data reported in 2012 through 2017 for leather finishing operations production capacity utilization over the period 2011 through 2016. The multiplier was calculated as the ratio of the highest

[9] In the absence of hourly emission data, we develop estimates of peak hourly emission rates by multiplying the average actual annual emissions rates by a default factor (usually 10) to account for variability. This is documented in *Residual Risk Assessment for the Leather Finishing Operations Source Category in Support of the December 2017 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Analysis of Data on Short-term Emission Rates Relative to Long-term Emission Rates.* Both are available in the docket for this rulemaking.

[10] CalEPA issues acute RELs as part of its Air Toxics Hot Spots Program, and the 1-hour and 8-hour values are documented in *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants,* which is available at *http://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.*

[11] National Academy of Sciences (NAS), 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals,* page 2. Available at *https://www.epa.gov/sites/production/files/2015-09/documents/sop_final_standing_operating_procedures_2001.pdf.* Note that the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances ended in October 2011, but the AEGL program continues to operate at the EPA and works with the National Academies to publish final AEGLs, (*https://www.epa.gov/aegl*).

[12] *ERPGS Procedures and Responsibilities.* March 2014. American Industrial Hygiene Association. Available at: *https://www.aiha.org/get-involved/AIHAGuidelineFoundation/EmergencyResponsePlanningGuidelines/Documents/ERPG%20Committee%20Standard%20Operating%20Procedures%20%20-%20March%202014%20Revision%20%28Updated%2010-2-2014%29.pdf.*

production rate capacity use factor (87.5) to the lowest production rate capacity use factor (46.6). Emissions from leather finishing operations are primarily from coatings operations. The production capacity of leather finishing operations is constrained by the amount of time it takes to apply and cure coatings, and machines are running more or less continuously, which gives a smooth temporal profile and, thus, a low emission adjustment factor. Consequently, actual emissions and acute hourly emissions will be similar, and the selected adjustment factor of 1.8 was selected over the default adjustment factor of 10. The description of how peak hourly emissions were calculated and additional information regarding operating hours at each facility in the source category can be found in Appendix 1—Emissions Inventory Support Document of the document titled *Residual Risk Assessment for the Leather Finishing Operations Source Category in Support of the December 2017 Risk and Technology Review Proposed Rule* in the docket for this rulemaking.

In our acute inhalation screening risk assessment, acute impacts are deemed negligible for HAP where acute HQs are less than or equal to 1 (even under the conservative assumptions of the screening assessment), and no further analysis is performed for these HAP. In cases where an acute HQ from the screening step is greater than 1, we consider additional site-specific data to develop a more refined estimate of the potential for acute impacts of concern. For this source category, the data refinements employed consisted of ensuring the locations where the maximum HQ occurred were off facility property and where the public could potentially be exposed. Also in estimating acute risks for the Leather Finishing Operations source category, we employed the following data refinements in calculating peak hourly emissions, as described above in this section: Used facility-specific operating hour data and developed an industry-specific multiplier based on industry-specific U.S. census data. These refinements are discussed more fully in the *Residual Risk Assessment for the Leather Finishing Operations Source Category in Support of the December 2017 Risk and Technology Review Proposed Rule,* which is available in the docket for this action.

4. How did we conduct the multipathway exposure and risk screening assessment?

The EPA conducted a tiered screening assessment examining the potential for significant human health risks due to exposures via routes other than inhalation (*i.e.,* ingestion). We first determined whether any sources in the source category emitted any HAP known to be persistent and bioaccumulative in the environment (PB–HAP), as identified in the EPA's Air Toxics Risk Assessment Library (See Volume 1, Appendix D, at *http://www2.epa.gov/fera/risk-assessment-and-modeling-air-toxics-risk-assessment-reference-library*).

For the Leather Finishing Operations source category, we did not identify emissions of any PB–HAP. Because we did not identify PB–HAP emissions, no further evaluation of multipathway risk was conducted for this source category.

5. How did we assess risks considering emissions control options?

While emission control technologies were considered, the analysis determined the available control technologies were not cost effective for reducing HAP emissions from leather finishing operations. Therefore, we did not assess risk on the emission control options. For more information regarding analysis of available control technologies, see the memorandum, *CAA section 112(d)(6) Technology Review for the Leather Finishing Source Category,* which is available in the docket for this action.

6. How did we conduct the environmental risk screening assessment?

a. Adverse Environmental Effects, Environmental HAP, and Ecological Benchmarks

The EPA conducts a screening assessment to examine the potential for adverse environmental effects as required under section 112(f)(2)(A) of the CAA. Section 112(a)(7) of the CAA defines ''adverse environmental effect'' as ''any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.''

The EPA focuses on eight HAP, which are referred to as ''environmental HAP,'' in its screening assessment: Six PB–HAP and two acid gases. The PB–HAP included in the screening assessment are arsenic compounds, cadmium compounds, dioxins/furans, polycyclic organic matter, mercury (both inorganic mercury and methyl mercury), and lead compounds. The acid gases included in the screening assessment are hydrochloric acid (HCl) and hydrogen fluoride (HF).

HAP that persist and bioaccumulate are of particular environmental concern because they accumulate in the soil, sediment, and water. The acid gases, HCl and HF, were included due to their well-documented potential to cause direct damage to terrestrial plants. In the environmental risk screening assessment, we evaluate the following four exposure media: Terrestrial soils, surface water bodies (includes water-column and benthic sediments), fish consumed by wildlife, and air. Within these four exposure media, we evaluate nine ecological assessment endpoints, which are defined by the ecological entity and its attributes. For PB–HAP (other than lead), both community-level and population-level endpoints are included. For acid gases, the ecological assessment evaluated is terrestrial plant communities.

An ecological benchmark represents a concentration of HAP that has been linked to a particular environmental effect level. For each environmental HAP, we identified the available ecological benchmarks for each assessment endpoint. We identified, where possible, ecological benchmarks at the following effect levels: Probable effect levels, lowest-observed-adverse-effect level, and no-observed-adverse-effect level. In cases where multiple effect levels were available for a particular PB–HAP and assessment endpoint, we use all of the available effect levels to help us to determine whether ecological risks exist and, if so, whether the risks could be considered significant and widespread.

For the Leather Finishing Operations source category, we did not identify emissions of any PB–HAP. Because we did not identify PB–HAP emissions, no further evaluation of ecological impacts was conducted for this source category.

For further information on how the environmental risk screening assessment was conducted, including a discussion of the risk metrics used, how the environmental HAP were identified, and how the ecological benchmarks were selected, see Appendix 9 of the *Residual Risk Assessment for Leather Finishing Operations Source Category in Support of the Risk and Technology Review December 2017 Proposed Rule,* which is available in the docket for this action.

b. Environmental Risk Screening Methodology

For the environmental risk screening assessment, the EPA first determined whether any facilities in the Leather

Finishing Operations source category emitted any of the environmental HAP. For this source category, we did not identify emissions of any of the eight environmental HAP included in the screen. Because we did not identify environmental HAP emissions, no further evaluation of environmental risk was conducted.

7. How did we conduct facility-wide assessments?

To put the source category risks in context, we typically examine the risks from the entire ''facility,'' where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, we examine the HAP emissions not only from the source category emission points of interest, but also emissions of HAP from all other emission sources at the facility for which we have data.

For this source category, we conducted the facility-wide assessment using a dataset that the EPA compiled from the 2014 NEI. We used the NEI data for the facility and did not adjust any category or ''non-category'' data. Therefore, there could be differences in the dataset from that used for the source category assessments described in this preamble. We analyzed risks due to the inhalation of HAP that are emitted ''facility-wide'' for the populations residing within 50 km of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, we made a reasonable attempt to identify the source category risks, and these risks were compared to the facility-wide risks to determine the portion of facility-wide risks that could be attributed to the source category addressed in this proposal. We also specifically examined the facility that was associated with the highest estimate of risk and determined the percentage of that risk attributable to the source category of interest. The *Residual Risk Assessment for the Leather Finishing Operations Source Category in Support of the Risk and Technology Review December 2017 Proposed Rule,* available through the docket for this action, provides the methodology and results of the facility-wide analyses, including all facility-wide risks and the percentage of source category contribution to facility-wide risks.

8. How did we consider uncertainties in risk assessment?

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health and environmentally protective. A brief discussion of the uncertainties in the RTR emissions dataset, dispersion modeling, inhalation exposure estimates, and dose-response relationships follows below. Also included are those uncertainties specific to our acute screening assessments, multipathway screening assessments, and our environmental risk screening assessments. A more thorough discussion of these uncertainties is included in the *Residual Risk Assessment for the Leather Finishing Operations Source Category in Support of the Risk and Technology Review December 2017 Proposed Rule,* which is available in the docket for this action. If a multipathway site-specific assessment was performed for this source category, a full discussion of the uncertainties associated with that assessment can be found in Appendix 11 of that document, *Site-Specific Human Health Multipathway Residual Risk Assessment Report.*

a. Uncertainties in the RTR Emissions Dataset

Although the development of the RTR emissions dataset involved QA/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors in emission estimates, and other factors. The emission estimates considered in this analysis generally are annual totals for certain years, and they do not reflect short-term fluctuations during the course of a year or variations from year to year. The estimates of peak hourly emission rates for the acute effects screening assessment were based on an emission adjustment factor applied to the average annual hourly emission rates, which are intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

We recognize there is uncertainty in ambient concentration estimates associated with any model, including the EPA's recommended regulatory dispersion model, AERMOD. In using a model to estimate ambient pollutant concentrations, the user chooses certain options to apply. For RTR assessments, we select some model options that have the potential to overestimate ambient air concentrations (*e.g.,* not including plume depletion or pollutant transformation). We select other model options that have the potential to underestimate ambient impacts (*e.g.,* not including building downwash). Other options that we select have the potential to either under- or overestimate ambient levels (*e.g.,* meteorology and receptor locations). On balance, considering the directional nature of the uncertainties commonly present in ambient concentrations estimated by dispersion models, the approach we apply in the RTR assessments should yield unbiased estimates of ambient HAP concentrations. We also note that the selection of meteorology dataset location could have an impact on the risk estimates. As we continue to update and expand our library of meteorological station data used in our risk assessments, we expect to reduce this variability.

c. Uncertainties in Inhalation Exposure Assessment

Although every effort is made to identify all of the relevant facilities and emission points, as well as to develop accurate estimates of the annual emission rates for all relevant HAP, the uncertainties in our emission inventory likely dominate the uncertainties in the exposure assessment. Some uncertainties in our exposure assessment include human mobility, using the centroid of each census block, assuming lifetime exposure, and assuming only outdoor exposures. For most of these factors, there is neither an under nor overestimate when looking at the maximum individual risks or the incidence, but the shape of the distribution of risks may be affected. With respect to outdoor exposures, actual exposures may not be as high if people spend time indoors, especially for very reactive pollutants or larger particles. For all factors, we reduce uncertainty when possible. For example, with respect to census-block centroids, we analyze large blocks using aerial imagery and adjust locations of the block centroids to better represent the population in the blocks. We also add additional receptor locations where the population of a block is not well represented by a single location.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and noncancer effects from both chronic and acute exposures. Some uncertainties are generally expressed quantitatively, and others are generally expressed in qualitative terms. We note, as a preface to this discussion, a point on dose-response uncertainty that is

stated in the EPA's *2005 Cancer Guidelines;* namely, that ''the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective'' (EPA's *2005 Cancer Guidelines,* pages 1–7). This is the approach followed here as summarized in the next paragraphs.

Cancer UREs used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk. That is, they represent a ''plausible upper limit to the true value of a quantity'' (although this is usually not a true statistical confidence limit).[13] In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[14] Chronic noncancer RfC and reference dose (RfD) values represent chronic exposure levels that are intended to be health-protective levels. To derive dose-response values that are intended to be ''without appreciable risk,'' the methodology relies upon an uncertainty factor (UF) approach (U.S. EPA, 1993 and 1994) which considers uncertainty, variability, and gaps in the available data. The UFs are applied to derive dose-response values that are intended to protect against appreciable risk of deleterious effects.

Many of the UFs used to account for variability and uncertainty in the development of acute dose-response values are quite similar to those developed for chronic durations. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute dose-response value at another exposure duration (*e.g.,* 1 hour). Not all acute dose-response values are developed for the same purpose, and care must be taken when interpreting the results of an acute assessment of human health effects relative to the dose-response value or values being exceeded. Where relevant to the estimated exposures, the lack of acute dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Uncertainty also exists in the selection of ecological benchmarks for the environmental risk screening assessment. We established a hierarchy of preferred benchmark sources to allow selection of benchmarks for each environmental HAP at each ecological assessment endpoint. We searched for benchmarks for three effect levels (*i.e.,* no-effects level, threshold-effect level, and probable effect level), but not all combinations of ecological assessment/environmental HAP had benchmarks for all three effect levels. Where multiple effect levels were available for a particular HAP and assessment endpoint, we used all of the available effect levels to help us determine whether risk exists and whether the risk could be considered significant and widespread.

Although every effort is made to identify appropriate human health effect dose-response values for all pollutants emitted by the sources in this risk assessment, some HAP emitted by this source category are lacking dose-response assessments. Accordingly, these pollutants cannot be included in the quantitative risk assessment, which could result in quantitative estimates understating HAP risk. To help to alleviate this potential underestimate, where we conclude similarity with a HAP for which a dose-response value is available, we use that value as a surrogate for the assessment of the HAP for which no value is available. To the extent use of surrogates indicates appreciable risk, we may identify a need to increase priority for an IRIS assessment for that substance. We additionally note that, generally speaking, HAP of greatest concern due to environmental exposures and hazard are those for which dose-response assessments have been performed, reducing the likelihood of understating risk. Further, HAP not included in the quantitative assessment are assessed qualitatively and considered in the risk characterization that informs the risk management decisions, including consideration of HAP reductions achieved by various control options.

For a group of compounds that are unspeciated (*e.g.,* glycol ethers), we conservatively use the most protective dose-response value of an individual compound in that group to estimate risk. Similarly, for an individual compound in a group (*e.g.,* ethylene glycol diethyl ether) that does not have a specified dose-response value, we also apply the most protective dose-response value from the other compounds in the group to estimate risk.

e. Uncertainties in Acute Inhalation Screening Assessments

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and the presence of humans at the location of the maximum concentration. In the acute screening assessment that we conduct under the RTR program, we assume that peak emissions from the source category and worst-case meteorological conditions co-occur, thus, resulting in maximum ambient concentrations. These two events are unlikely to occur at the same time, making these assumptions conservative. We then include the additional assumption that a person is located at this point during this same time period. For this source category, these assumptions would tend to be worst-case actual exposures as it is unlikely that a person would be located at the point of maximum exposure during the time when peak emissions and worst-case meteorological conditions occur simultaneously.

IV. Analytical Results and Proposed Decisions

A. What are the results of the risk assessment and analyses?

We present results of the Leather Finishing Operations source category risk assessment briefly below and in more detail in the residual risk document, *Residual Risk Assessment for the Leather Finishing Operations Source Category in Support of the December 2017 Risk and Technology Review Proposed Rule,* in the docket for this action.

1. Inhalation Risk Assessment Results

Table 2 of this preamble provides a summary of the results of the inhalation risk assessment for the source category.

[13] IRIS glossary (*https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary*).

[14] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

TABLE 2—LEATHER FINISHING OPERATIONS INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Estimated population at increased risk of cancer ≥ 1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic non-cancer TOSHI [3]		Maximum screening acute non-cancer HQ [4]
	Based on actual emissions level [2]	Based on allowable emissions level	Based on actual emissions level [2]	Based on allowable emissions level	Based on actual emissions level	Based on actual emissions level	Based on actual emissions level	Based on allowable emissions level	Based on actual emissions level
4	0	0	0	0	0	0	0.04	0.3	HQ_{REL} = 3 (propyl cellosolve and glycol ethers)

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the Leather Finishing Operations source category is the reproductive target organ.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. When an HQ exceeds 1, we also show the HQ using the next lowest available acute dose-response value.

The results of the inhalation risk modeling using actual emissions data, as shown in Table 2 of this preamble, indicate the maximum chronic noncancer TOSHI value could be up to 0.04. While we would have estimated incremental individual lifetime cancer risks as discussed in section III.C.3.b of this preamble, there were no carcinogenic HAP emissions from this source category, so the maximum lifetime individual cancer risk is 0 and the total estimated national cancer incidence from these facilities based on actual emission levels is no excess cancer cases per year.

2. Acute Risk Results

Table 2 of this preamble indicates that for the Leather Finishing Operations source category, the maximum HQ is 3, driven by propyl cellosolve and glycol ethers. The only acute dose-response value for propyl cellosolve and glycol ethers is the REL; therefore, only the HQ_{REL} is provided. Refinement of the acute risk results was performed using aerial photos to ensure that the location where the maximum risk was projected to occur was, in fact, a location where the general public could be exposed. The result of this refinement confirmed that the maximum acute risk result occurred where the public could potentially be exposed. This refinement, therefore, had no impact on the maximum HQ. For more detailed acute risk results refer to the draft residual risk document, *Residual Risk Assessment for the Leather Finishing Operations Source Category in Support of the December 2017 Risk and Technology Review Proposed Rule,* in the docket for this action.

3. Multipathway Risk Screening Results

There are no PB–HAP emitted by facilities in this source category. Therefore, we do not expect any human health multipathway risks as a result of HAP emissions from this source category.

4. Environmental Risk Screening Results

There are no ''environmental HAP'' emitted by facilities in this source category. Therefore, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

5. Facility-Wide Risk Results

An assessment of risk from facility-wide emissions was performed to provide context for the source category risks. Using the NEI data described in sections II.C and III.C of this preamble, the maximum cancer risk in the facility-wide assessment was 0.09-in-1 million and the maximum chronic noncancer HI index was 0.1 (for the reproductive system), both driven by emissions from external combustion boilers.

6. What demographic groups might benefit from this regulation?

To examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 km and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from the Leather Finishing Operations source category across different demographic groups within the populations living near facilities.[15]

Results of the demographic analysis indicate that, for 1 of the 11 demographic groups, Ages 65 and up, the percentage of the population living within 5 km of facilities in the source category is greater than the corresponding national percentage for the same demographic groups. When examining the risk levels of those exposed to emissions from leather finishing operations, we find that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic noncancer TOSHI greater than 1.

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Leather Finishing Operations,* available in the docket for this action.

B. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effects?

1. Risk Acceptability

We weigh all health risk factors in our risk acceptability determination, including the cancer MIR, the number of persons in various cancer and non-cancer risk ranges, cancer incidence, the maximum non-cancer TOSHI, the maximum acute non-cancer HQ, the extent of non-cancer risks, the distribution of cancer and non-cancer risks in the exposed population, and risk estimation uncertainties (54 FR 38044, September 14, 1989).

For the Leather Finishing Operations source category, the risk analysis indicates that the cancer risks to the individual most exposed are below 1-in-1 million from both actual and allowable emissions. These risks are considerably less than 100-in-1 million, which is the presumptive upper limit of acceptable risk. The risk analysis also shows no cancer incidence, as well as maximum chronic noncancer TOSHI value of 0.04, which is significantly below 1. In addition, the risk assessment indicates no significant potential for multi-pathway health effects. The acute

[15] Demographic groups included in the analysis are: White, African American, Native American, other races and multiracial, Hispanic or Latino, children 17 years of age and under, adults 18 to 64 years of age, adults 65 years of age and over, adults without a high school diploma, people living below the poverty level, people living two times the poverty level, and linguistically isolated people.

non-cancer risks indicate a maximum HQ of 3.

Considering all the health risk information and factors discussed above, including the uncertainties, we propose to find that the risks from the Leather Finishing Operations source category are acceptable.

2. Ample Margin of Safety Analysis

Although we are proposing that the risks from the Leather Finishing Operations source category are acceptable, risk estimates indicate the maximum acute non-cancer HQ screening estimate was greater than 1, driven by emissions of propyl cellosolve and glycol ethers and based on allowable emissions, as further discussed in section IV.A.2 of this preamble. We considered options for further reducing gaseous organic HAP emissions from leather finishing operations. The greatest reduction in organic HAP emissions that could be achieved for these operations would result from use of a concentrator followed by a regenerative thermal oxidizer (RTO), which we estimate would remove 98 percent of organic HAP emissions. Biological treatment together with use of a concentrator would achieve 84-percent removal of organic HAP emissions. Section IV.C of this preamble discusses the costs and impacts associated with use of these control technologies. The resulting cost-effectiveness values for operating the concentrator followed by a RTO and for operating the concentrator plus biological treatment are $54,000 and $62,000 per ton of HAP removed, respectively. Due to our determinations that cancer risks are below 1-in-1 million and that the maximum chronic noncancer TOSHI value is below 1, uncertainties associated with the acute screening risk estimate (refer to the risk report titled *Residual Risk Assessment for the Leather Finishing Operations Source Category in Support of the December 2017 Risk and Technology Review Proposed Rule* in the docket for this action), and the substantial costs associated with the control options, we are proposing that additional standards for this source category are not required to provide an ample margin of safety to protect public health, and that the current standards provide an ample margin of safety to protect public health.

3. Adverse Environmental Effects

We did not identify emissions of any of the eight environmental HAP included in our environmental risk screening, and we are unaware of any adverse environmental effects caused by HAP emitted by this source category. Therefore, we do not expect there to be an adverse environmental effect as a result of HAP emissions from this source category, and we are proposing that it is not necessary to promulgate a more stringent standard to prevent an adverse environmental effect, taking into consideration costs, energy, safety, and other relevant factors.

For the reasons above, we are not proposing to make any amendments to the existing NESHAP pursuant to CAA section 112(f)(2).

C. What are the results and proposed decisions based on our technology review?

As described in section III.B of this preamble, our technology review focused on identifying developments in the practices, processes, and control technologies for the Leather Finishing Operations source category. The EPA reviewed various information sources regarding emissions sources that are currently regulated by the Leather Finishing NESHAP, which include, but are not limited to, coating and spraying equipment, coating storage and mixing, and dryers.

As discussed further in sections II.C and D of this preamble, we conducted a search of the RBLC, other regulatory actions (MACT standards, area source standards, and residual risk standards) since the 2002 Leather Finishing NESHAP, literature related to research conducted for emission reductions from leather finishing operations emission sources, and state permits.

We reviewed these data sources for information on add-on control technologies, other treatment units, work practices, procedures, and process alternatives that were not considered during the development of the Leather Finishing NESHAP. We also looked for information on improvements in add-on control technology, other treatment units, work practices, procedures, and process changes or pollution prevention alternatives that have occurred since development of the Leather Finishing NESHAP.

After reviewing information from the aforementioned sources, we identified two control technologies for further evaluation that are technically feasible for use at leather finishing operations, but were not investigated during the original rule development: biological treatment and concentrators. Biological treatment was identified as a result of our literature review. In biological treatment, organic pollutants are converted to water and carbon dioxide after being consumed as food by microbes. Biological treatment can include biofilters, bio-trickling filters, and bioscrubbers among others. The use of a concentrator was identified by our review of residual risk standards. The technology review conducted for the Ship Building and Ship Repair source category identified the use of a concentrator, combined with an RTO, to control emissions from spray booths (75 FR 80239). A concentrator uses an adsorbent to remove organic pollutants from an exhaust stream. Those pollutants are then desorbed from the adsorbent material using a stream much smaller in volume than the original exhaust stream. This lower flow rate stream is then directed to an RTO to destroy the desorbed pollutants. By using a concentrator, the resulting low flow rate, higher pollutant concentration stream is more economical to treat in an RTO than a high volume low concentration stream. The economics of operating a biological treatment unit could also potentially be improved in a similar manner by use of a concentrator.

We evaluated the annual cost and emissions reductions of using biological treatment to reduce HAP emissions at each of the four leather finishing operations subject to the Leather Finishing NESHAP. Annual costs for each facility ranged from $43,000 to $417,000 per year for a total of approximately $840,000 for the industry. Assuming a control efficiency of 85 percent, HAP emissions would be reduced by approximately 0.43 tpy for the facility with the smallest projected reduction to 14 tpy for the facility with the largest projected reduction, for a cumulative total of 18 tpy for the four facilities subject to the Leather Finishing NESHAP. To install biological treatment at each facility, the resulting cost effectiveness ranged from $30,000 to $110,000 per ton of HAP reduced. Considering the high costs per ton of HAP reduced associated with the installation of biological treatment, we did not consider this technology to be cost effective for further reducing HAP emissions from leather finishing operations.

During proposal of the Leather Finishing NESHAP, we considered the use of an RTO to control HAP emissions from leather finishing operations as a ''beyond-the-floor'' option; however, we rejected it because of a significantly higher cost per ton of emissions reductions (65 FR 58706). Our technology review revealed the use of a concentrator in addition to an RTO as a potential improvement in add-on control technology. We evaluated the annual cost and emissions reductions of using a rotary concentrator combined with an RTO and, as an alternative, a rotary concentrator combined with a

biological treatment unit for a model facility. Our analysis evaluated the annual costs of only the rotary concentrator on the basis that if operation of the concentrator is not cost effective, then operating both the concentrator and an RTO or biological treatment unit is also not cost effective. We calculated a total annual cost of operating the rotary concentrator of approximately $284,000 per year. Applying a control efficiency of 98 percent for the rotary concentrator and RTO, we calculated annual HAP emission reductions of 5.2 tpy. Assuming a control efficiency of 84 percent for the rotary concentrator and biological treatment combination, we calculated an annual HAP emission reduction of 4.5 tpy. The resulting cost-effectiveness values for the concentrator plus RTO and concentrator plus biological treatment are $54,000 and $62,000 per ton of HAP reduced, respectively; however, these dollar values only represent the cost of operating the concentrator and not the RTO or biological treatment process. Considering the high costs per ton of HAP reduced associated with only the operation of the rotary concentrator, we did not consider a concentrator and RTO or a concentrator and biological treatment to be cost effective for further reducing HAP emissions from leather finishing operations. Additional information about the assumptions and methodologies used in these calculations is documented in the memorandum titled *CAA section 112(d)(6) Technology Review for the Leather Finishing Operations Source Category* in the docket for this action.

Considering the results of the technology review, we conclude that changes to the leather finishing operations emission limits are not warranted pursuant to CAA section 112(d)(6). We are, therefore, not proposing to make any amendments to the existing NESHAP pursuant to CAA section 112(d)(6). We solicit comment on our proposed decision.

D. What other actions are we proposing?

In addition to the proposed actions described above, we are proposing additional revisions. We are proposing revisions to the SSM provisions of the MACT rule in order to ensure that they are consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. We also are proposing a process to increase the ease and efficiency of performance test data submittal while improving data accessibility through the use of electronic data reporting. Finally, we are proposing clarifications to the regulatory text. Our analyses and proposed changes related to these issues are discussed below.

1. Startup, Shutdown, and Malfunction Requirements

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the Court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

The Leather Finishing NESHAP currently requires that the standards apply at all times, consistent with *Sierra Club* v. *EPA.* The NESHAP specifies in 40 CFR 63.5320(a) ''All affected sources must be in compliance with the requirements of this subpart at all times, including periods of startup, shutdown, and malfunction.'' However, the NESHAP includes provisions related to SSM that are not consistent with *Sierra Club* v. *EPA or* 40 CFR 63.5320(a). For example, Table 2 to the Leather Finishing NESHAP (*i.e.,* the General Provisions applicability table, hereafter referred to as the ''General Provisions table to subpart TTTT'') incorporates all of the introductory paragraph to 40 CFR 63.6(e), which provides that the standards do not apply at all times: ''The general duty to minimize emissions during a period of startup, shutdown, or malfunction does not require the owner or operator to achieve emission levels that would be required by the applicable standard at other times if this is not consistent with safety and good air pollution control practices, nor does it require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved.'' Further, the introductory paragraph to 40 CFR 63.6(e) refers to the SSM plan, which is not consistent with the NESHAP's exclusion (as specified in the General Provisions table to subpart TTTT) of the SSM plan in 40 CFR 63.6(e)(3), SSM recordkeeping in 40 CFR 63.10(b)(2), and SSM reporting in 40 CFR 63.10(d)(5). In order to remove these inconsistencies within the NESHAP, to clarify the EPA's original intent that the standards apply at all times, and to ensure that the subpart requirements are consistent with the court decision cited above, we are proposing to unincorporate all General Provisions related to the SSM exemption and move any applicable portion of these General Provisions to the NESHAP.

As is explained in more detail below, we are proposing two revisions to the General Provisions table to subpart TTTT to eliminate two General Provisions that include rule language providing an exemption for periods of SSM. Additionally, we are proposing to eliminate language related to SSM that treats periods of startup and shutdown the same as periods of malfunction, as explained further below. Finally, we are proposing to revise the Deviation Notification Report and related records as they relate to malfunctions, as further described below.

The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully done so.

The current rule specifies that the standards apply at all times. In promulgating the original NESHAP for Leather Finishing Operations, the EPA took into account startup and shutdown periods by applying a standard based on total coating used and HAP content and requiring a mass balance compliance method that was applicable for all operations, even periods of startup and shutdown. As a result, the EPA is not proposing any changes to the current requirement that all standards apply during those periods. However, as noted above and discussed further below, the current rule incorporates two general provisions that include rule language providing an exemption for periods of SSM, and the rule includes language that differentiates between normal operations, startup and shutdown, and malfunction events in describing the general duty, and these provisions are not necessary or appropriate in light of the requirement that the standards apply at all times. Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment. (40 CFR 63.2) (Definition of malfunction). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of

malfunction to be factored into development of CAA section 112 standards and this reading has been upheld as reasonable by the Court in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016). Under CAA section 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation ''achieved'' by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level ''achieved'' by the best performing sources when setting emission standards. As the Court has recognized, the phrase ''average emissions limitation achieved by the best performing 12 percent of'' sources ''says nothing about how the performance of the best units is to be calculated.'' *Nat'l Ass'n of Clean Water Agencies* v. *EPA,* 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a ''normal or usual manner,'' and no statutory language compels the EPA to consider such events in setting CAA section 112 standards.

As the Court recognized in *U.S. Sugar Corp,* accounting for malfunctions in setting standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. Id. at 608 (''the EPA would have to conceive of a standard that could apply equally to the wide range of possible boiler malfunctions, ranging from an explosion to minor mechanical defects. Any possible standard is likely to be hopelessly generic to govern such a wide array of circumstances.''). As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See, *e.g., Sierra Club* v. *EPA,* 167 F.3d 658, 662 (D.C. Cir. 1999) (''The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.' '') See also, *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99-percent removal goes off-line as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the control device was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations. As such, the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

Although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible. For example, in the Petroleum Refinery Sector RTR, the EPA established a work practice standard for unique types of malfunction that result in releases from pressure relief devices or emergency flaring events because we had information to determine that such work practices reflected the level of control that applies to the best performing sources. 80 FR 75178, 75211–14 (December 1, 2015). The EPA will consider whether circumstances warrant setting standards for a particular type of malfunction and, if so, whether the EPA has sufficient information to identify the relevant best performing sources and establish a standard for such malfunctions. We also encourage commenters to provide any such information.

For the Leather Finishing Operations source category, it is unlikely that a malfunction would result in a violation of the standards. There are no instances where pollution control equipment could malfunction because none of the four leather finishing operations subject to the standard use pollution control equipment. Further, the standards are expressed as a yearly rolling average, and compliance is primarily dependent on the coating's HAP composition. Therefore, a malfunction of process equipment is not likely to result in a violation of the standards, and we have no information to suggest that it is feasible or necessary to establish standards for any type of malfunction associated with leather finishing operations. We encourage commenters to provide any such information.

In the unlikely event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, sudden, infrequent, not reasonably preventable, and was not instead caused in part by poor maintenance or careless operation. 40 CFR 63.2 (definition of malfunction).

If the EPA determines in a particular case that an enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In summary, the EPA interpretation of the CAA and, in particular, CAA section 112, is reasonable and encourages practices that will avoid malfunctions. Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those

situations. *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016).

a. 40 CFR 63.5320(b) General Duty

We are proposing to revise the General Provisions table to subpart TTTT (table 2) entry for 40 CFR 63.6(e) by combining all of paragraph (e) into one row and changing the ''yes'' in column four to ''no.'' Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the existing requirement that the standards apply at all times, as specified in 40 CFR 63.5320(a). Additional language in 40 CFR 63.6(e)(1)(ii) imposes requirements that are not necessary if the SSM exemption does not apply. We are proposing instead to add general duty regulatory text at 40 CFR 63.5320(b) that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. If the SSM exemption does not apply, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. Therefore, the language the EPA is proposing for 40 CFR 63.5320(b) does not include that language from 40 CFR 63.6(e)(1).

b. 40 CFR 63.5360(b) Compliance With Standards

We are proposing to eliminate the sentence ''This includes periods of startup, shutdown, and malfunction.'' in 40 CFR 63.5360(b), which refers to the requirement to report each instance in which you, a source, did not meet the standard. This sentence was originally included to clarify the EPA's intent at the time regarding the standards applying at all times; however, this clarifying language is no longer necessary or appropriate in light of the proposed new General Duty language discussed in section IV.D.1.a of this preamble because the language differentiates between normal operations, startup and shutdown, and malfunction events.

c. 40 CFR 63.5380 Performance Testing

We are proposing to revise the General Provisions table to subpart TTTT (table 2) entry for 40 CFR 63.7(e)(1) by adding a separate row for 40 CFR 63.7(e)(1) and specifying ''no'' in column four. Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.5380(b). The performance testing requirements we are proposing to add differ from the General Provisions performance testing provisions in several respects. The regulatory text does not include the language in 40 CFR 63.7(e)(1) that restates the SSM exemption and language that precluded startup and shutdown periods from being considered ''representative'' for purposes of performance testing. The proposed performance testing provisions will not allow performance testing during startup or shutdown. Note that no facilities subject to the Leather Finishing NESHAP will conduct a performance test because none use a control device to comply with the standards. Further, as in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of normal operating conditions. However, in eliminating this reference to 40 CFR 63.7(e) in the General Provisions table to subpart TTTT, we are removing a requirement that the owner or operator make available to the Administrator such records ''as may be necessary to determine the condition of the performance test.'' The EPA is proposing to add a similar requirement back into the Leather Finishing NESHAP. The proposed language requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such records an explanation to support that such conditions represent normal operation. Section 63.7(e) does not specifically require the information to be recorded, but the regulatory text the EPA is proposing to add to 40 CFR 63.5380(b) builds on that requirement and makes explicit the requirement to record the information.

d. 40 CFR 63.5430 Recordkeeping

As discussed in section IV.D.1.e of this preamble, the EPA is proposing to revise the Deviation Notification Report to include two new reporting elements: (1) An estimate of the quantity of HAP emitted during the 12-month period of the report in excess of the standard, and (2) the cause of the events that resulted in the deviation from the standard (including unknown cause, if applicable). The EPA is proposing that any source submitting a Deviation Notification Report also keep a record of this information. The source would also be required to include a record of the actions taken to minimize emissions. The EPA is proposing to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard. Further, the EPA is clarifying related records already required under 40 CFR 63.5430(b) as part of the Deviation Notification Report under 40 CFR 63.5420(b)(3), but not clearly listed, by specifically listing those required records in 40 CFR 63.5430(h) as: (1) The 12-month period in which the exceedance occurred, and, (2) each type of leather product process operation performed during the 12-month period in which the exceedance occurred.

Finally, we are proposing to revise the General Provisions table to subpart TTTT (table 2) entry for 40 CFR 63.10(b)(2) to clarify the recordkeeping requirements for facilities that deviate from the standards as a result of a malfunction. In column five, we are proposing to replace the sentence ''Subpart TTTT has no recordkeeping requirements for startup, shutdown, and malfunction events'' with the phrase ''See § 63.5360 for CMS recordkeeping requirements if there is a deviation from the standard.'' This revision clarifies that certain records (*e.g.,* a record of the Deviation Notification Report) must be retained if there is a deviation from the standards due to a malfunction.

e. 40 CFR 63.5420 Reporting

We are proposing to revise the General Provisions table to subpart TTTT (table 2) entry for 40 CFR 63.10(d)(5) to clarify the reporting requirements for facilities that deviate from the standards as a result of a malfunction. In column five, we are proposing to replace the sentence ''Subpart TTTT has no startup, shutdown, and malfunction reporting requirements'' with the sentence ''See § 63.5420(b) for reporting requirements if there is a deviation from the standard.'' This revision clarifies that the Deviation Notification Report must be submitted if there is a deviation from the standards due to a malfunction. We are also proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the Deviation Notification Report already required under this rule. The Leather Finishing NESHAP currently requires this report to include (under 40 CFR 63.5420(b)(3)) each type of leather product process operation performed

during the 12-month period of the report. We are proposing a revision to 40 CFR 63.5420(b)(3) to clarify that this information should include an indication of the 12-month period of the report. We are also proposing that the report must contain two new reporting elements: (1) The cause of the events that resulted in the source failing to meet the standard as determined under 40 CFR 63.5330 (*i.e.,* the compliance ratio exceeds 1.00) during the 12-month period (including unknown cause, if applicable) and (2) an estimate of the quantity of HAP (in pounds) emitted during the 12-month period of the report in excess of the standard. As required in 40 CFR 63.5330, sources must determine compliance on a monthly basis based on a facility-wide average. Sources are required to establish on a monthly basis that the compliance ratio for the previous 12-month period is less than or equal to 1.00. This compliance ratio is calculated as required in 40 CFR 63.5330 by dividing the ''Actual HAP Loss'' (calculated as specified in 40 CFR 63.5335) by the ''Allowable HAP Loss'' (calculated as specified in 40 CFR 63.5340) (see Equation 1 of 40 CFR part 63, subpart TTTT). If the compliance ratio for the leather finishing operation exceeds 1.00, the source is ''deviating from compliance with the applicable HAP emission limits of subpart TTTT for the previous month'' as specified in 40 CFR 63.5330(b)(2), and is required to submit a Deviation Notification Report under 40 CFR 63.5420(b). We are proposing that such a source be required to estimate the quantity of HAP (in pounds) emitted during the 12-month period of the report in excess of the standard by subtracting the ''Allowable HAP Loss'' from the ''Actual HAP Loss.'' The difference between these two values would be the reported estimate of the quantity of HAP (in pounds) emitted during the 12-month period of the report in excess of the standard. The EPA is proposing these requirements to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

f. 40 CFR 63.5460 Definitions

We are proposing that the definition of ''Deviation'' be revised to remove language that was originally included to clarify the EPA's intent at the time regarding the standards applying at all times; however, it is no longer necessary or appropriate to use this language in light of the proposed new General Duty language discussed in section IV.D.1.a of this preamble because the language differentiates between normal operations, startup, and shutdown, and malfunction events. The current definition of ''Deviation'' is ''any instance in which an affected source subject to this subpart, or an owner or operator of such a source: (1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limits or work practice standards; or (2) fails to meet any emission limits, operating limits, or work practice standards in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.'' We are proposing to eliminate the second criteria for the reasons stated above. The proposed new definition reads: ''Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source, fails to meet any requirement or obligation established by this subpart, including, but not limited to, any emission limits or work practice standards.''

2. Electronic Reporting Requirements

Through this proposal, the EPA is proposing that owners or operators of leather finishing operations submit electronic copies of required performance test reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). The EPA believes that the electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability, will further assist in the protection of public health and the environment, and will ultimately result in less burden on the regulated community. Under current requirements, paper reports are often stored in filing cabinets or boxes, which make the reports more difficult to obtain and use for data analysis and sharing. Electronic storage of such reports make data more accessible for review, analysis, and sharing. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to affected facilities, air agencies, the EPA, and the public.

The EPA estimates that no existing leather finishing operation subject to the Leather Finishing NESHAP uses a control device to comply with the NESHAP. As such, no existing leather finishing operation is required to conduct performance tests or submit test reports, or would be required to submit electronic copies of test reports.

In 2011, in response to Executive Order 13563, the EPA developed a plan [16] to periodically review its regulations to determine if they should be modified, streamlined, expanded, or repealed in an effort to make regulations more effective and less burdensome. The plan includes replacing outdated paper reporting with electronic reporting. In keeping with this plan and the White House's Digital Government Strategy,[17] in 2013, the EPA issued an Agency-wide policy specifying that new regulations will require reports to be electronic to the maximum extent possible.[18] By requiring electronic submission of specified reports in this proposed rule, the EPA is taking steps to implement this policy.

The EPA Web site that stores the submitted electronic data, WebFIRE, is easily accessible to everyone and provides a user-friendly interface that any stakeholder can access. By making data readily available, electronic reporting increases the amount of data that can be used for many purposes. One example is the development of emissions factors. An emissions factor is a representative value that attempts to relate the quantity of a pollutant released to the atmosphere with an activity associated with the release of that pollutant (*e.g.,* kilograms of particulate emitted per megagram of coal burned). Such factors facilitate the estimation of emissions from various sources of air pollution and are an important tool in developing emissions inventories, which in turn are the basis for numerous efforts, including trends analysis, regional and local scale air quality modeling, regulatory impact assessments, and human exposure modeling. Emissions factors are also widely used in regulatory applicability determinations and in permitting decisions.

[16] EPA's *Final Plan for Periodic Retrospective Reviews,* August 2011. Available at: *https://www.epa.gov/laws-regulations/documents-retrospective-review.*

[17] *Digital Government: Building a 21st Century Platform to Better Serve the American People,* May 2012. Available at: *https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html.*

[18] *E-Reporting Policy Statement for EPA Regulations,* September 2013. Available at: *https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

The EPA has received feedback from stakeholders asserting that many of the EPA's emissions factors are outdated or not representative of a particular industry emission source. While the EPA believes that the emissions factors are suitable for their intended purpose, we recognize that the quality of emissions factors varies based on the extent and quality of underlying data. We also recognize that emissions profiles on different pieces of equipment can change over time due to a number of factors (fuel changes, equipment improvements, industry work practices), and it is important for emissions factors to be updated to keep up with these changes. The EPA is currently pursuing emissions factor development improvements that include procedures to incorporate the source test data that we are proposing be submitted electronically. By requiring the electronic submission of the reports identified in this proposed action, the EPA would be able to access and use the submitted data to update emissions factors more quickly and efficiently, creating factors that are characteristic of what is currently representative of the relevant industry sector. Likewise, an increase in the number of test reports used to develop the emissions factors will provide more confidence that the factor is of higher quality and representative of the whole industry sector.

Additionally, by making the records, data, and reports addressed in this proposed rulemaking readily available, the EPA, the regulated community, and the public will benefit when the EPA conducts its CAA-required technology and risk-based reviews. As a result of having performance test reports and air emission data readily accessible, our ability to carry out comprehensive reviews will be improved and achieved within a shorter period of time. These data will provide useful information on control efficiencies being achieved and maintained in practice within a source category and across source categories for regulated sources and pollutants. These reports can also be used to inform the technology-review process by providing information on improvements to add-on control technology and new control technology.

Under an electronic reporting system, the EPA's OAQPS would have air emissions and performance test data in hand; OAQPS would not have to collect these data from the EPA Regional offices or from delegated air agencies or industry sources in cases where these reports are not submitted to the EPA Regional offices. Thus, we anticipate fewer or less substantial ICRs in conjunction with prospective CAA-required technology and risk-based reviews may be needed. We expect this to result in a decrease in time spent by industry to respond to data collection requests. We also expect the ICRs to contain less extensive stack testing provisions, as we will already have stack test data electronically. Reduced testing requirements would be a cost savings to industry. The EPA should also be able to conduct these required reviews more quickly, as OAQPS will not have to include the ICR collection time in the process or spend time collecting reports from the EPA Regional offices. While the regulated community may benefit from a reduced burden of ICRs, the general public benefits from the agency's ability to provide these required reviews more quickly, resulting in increased public health and environmental protection.

Electronic reporting minimizes submission of unnecessary or duplicative reports in cases where facilities report to multiple government agencies and the agencies opt to rely on the EPA's electronic reporting system to view report submissions. Where air agencies continue to require a paper copy of these reports and will accept a hard copy of the electronic report, facilities will have the option to print paper copies of the electronic reporting forms to submit to the air agencies, and, thus, minimize the time spent reporting to multiple agencies. Additionally, maintenance and storage costs associated with retaining paper records could likewise be minimized by replacing those records with electronic records of electronically submitted data and reports.

Air agencies could benefit from more streamlined and automated review of the electronically submitted data. For example, because performance test data would be readily-available in a standard electronic format, air agencies would be able to review reports and data electronically rather than having to conduct a review of the reports and data manually. Having reports and associated data in electronic format facilitates review through the use of software ''search'' options, as well as the downloading and analyzing of data in spreadsheet format. Additionally, air agencies would benefit from the reported data being accessible to them through the EPA's electronic reporting system wherever and whenever they want or need access (as long as they have access to the Internet). The ability to access and review reports electronically assists air agencies in determining compliance with applicable regulations more quickly and accurately, potentially allowing a faster response to violations, which could minimize harmful air emissions. This benefits both air agencies and the general public.

The proposed electronic reporting of data is consistent with electronic data trends (*e.g.,* electronic banking and income tax filing). Electronic reporting of environmental data is already common practice in many media offices at the EPA. The changes being proposed in this rulemaking are needed to continue the EPA's transition to electronic reporting.

Additionally, we have identified two broad circumstances in which electronic reporting extensions may be provided. In both circumstances, the decision to accept your claim of needing additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible.

In 40 CFR 63.5420(c)(4), we address the situation where an extension may be warranted due to outages of the EPA's CDX or CEDRI which preclude you from accessing the system and submitting required reports. If either the CDX or CEDRI is unavailable at any time beginning 5 business days prior to the date that the submission is due, and the unavailability prevents you from submitting a report by the required date, you may assert a claim of EPA system outage. We consider 5 business days prior to the reporting deadline to be an appropriate timeframe because, if the system is down prior to this time, you still have one week to complete reporting once the system is back online. However, if the CDX or CEDRI is down during the week a report is due, we realize that this could greatly impact your ability to submit a required report on time. We will notify you about known outages as far in advance as possible by CHIEF Listserv notice, posting on the CEDRI Web site, and posting on the CDX Web site so that you can plan accordingly and still meet your reporting deadline. However, if a planned or unplanned outage occurs and you believe that it will affect or it has affected your ability to comply with an electronic reporting requirement, we have provided a process to assert such a claim.

In 40 CFR 63.5420(c)(5), we address the situation where an extension may be warranted due to a force majeure event, which is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically as required by this rule.

Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility. If such an event occurs or is still occurring or if there are still linger effects of the event in the five business days prior to a submission deadline, we have provided a process to assert a claim of force majeure.

We are proposing these potential extensions to protect facilities from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons outside of their control as described above. We are not proposing an extension for other instances. Facilities should register for CEDRI far in advance of the initial compliance date, in order to make sure that they can complete the identity proofing process prior to the initial compliance date. Additionally, we recommend facilities start developing reports early, in case any questions arise during the reporting process.

3. Clarifications and Correction to the Rule

We are proposing revisions to clarify the monitoring, recordkeeping, and reporting requirements for control devices and the provisions for alternative schedules. We are also proposing one correction to the rule. Our proposed changes related to these issues are discussed below.

Since the original Leather Finishing NESHAP was promulgated, no leather finishing operations have elected to use a control device to comply with the standards, and we do not anticipate that any facilities will elect to use a control device in the foreseeable future; however, we are taking this opportunity to propose clarifying text to assist any facility that elects in the future to use a control device to comply with the standards. Currently, the Leather Finishing NESHAP (*i.e.,* in 40 CFR 63.5360(a)(2)) requires facilities using a control device to comply with the NEHSAP to meet the requirements in ''40 CFR part 63, subpart SS''; however, the Leather Finishing NESHAP does not provide any reference to the applicable section within subpart SS. To aid a facility in locating the requirements in subpart SS, we are proposing to replace the current general reference to subpart SS with a more specific reference to ''40 CFR 63.982(a)(2) (subpart SS),'' which provides all applicable requirements for control devices (*e.g.,* monitoring requirements, data reduction procedures, and recordkeeping and reporting requirements). This proposed change would affect both 40 CFR 63.5360(a)(2) and 63.5430(g). We are also proposing related revisions to the General Provisions table to subpart TTTT (table 2). For table entry 40 CFR 63.8, we propose to replace the text ''Subpart TTTT does not require monitoring other than as specified therein'' in the fifth column with the text ''See § 63.5360(a)(2) for monitoring requirements.'' For table entries 40 CFR 63.9(g), 63.10(c), and 63.10(e), we propose to replace the text ''Subpart TTTT does not require CMS'' in the fifth column with the text ''See § 63.5360(a)(2) for monitoring requirements.'' These revisions would clarify that monitoring requirements apply if a facility were to elect to use a control device to comply with the standard. Further, in 40 CFR 63.5375, we are proposing to change the rule language ''and can be used to comply with the HAP emission requirements of this subpart'' to ''and will be used to comply with the HAP emission requirements of this subpart'' because ''can'' could be interpreted to require a facility that owns a control device, which is not used to comply with the Leather Finishing NESHAP, but could be used to comply with the NESHAP (*e.g.,* the control device is used to comply with a different regulation in its operating permit), to be required to conduct the performance test required in 40 CFR 63.5375, even though the device is not used to comply with the NESHAP.

We are also proposing to clarify in two ways the language in 40 CFR 63.5420(b)(4) regarding alternative schedules. First, by replacing ''responsible agency'' with ''Administrator,'' because ''Administrator'' is defined in 40 CFR 63.2 to include ''a State that has been delegated the authority to implement the provisions of this part'' (and the definition is incorporated by the Leather Finishing NESHAP). Second, by replacing ''does not object'' with ''approves an alternative schedule'' in order to require an affirmative action by the Administrator rather than affirmation by non-action.

Finally, we are proposing a correction to the title of Table 2 to 40 CFR part 63, subpart TTTT. The current title is ''Table 2 to Subpart TTTT of Part 63—Leather Finishing HAP Emission Limits for Determining the Allowable HAP Loss,'' and the proposed title is ''Table 2 to Subpart TTTT of Part 63—Applicability of General Provisions to Subpart TTTT.''

E. What compliance dates are we proposing?

The EPA is proposing that all of the amendments being proposed in this action would be effective upon publication of the final rule. The tasks necessary for existing facilities to comply with these proposed amendments related to SSM periods would require no time or resources. No facilities will be subject to the requirement to submit reports electronically. Therefore, the EPA believes that existing facilities will be able to comply with these proposed amendments related to SSM periods and the use of the electronic reporting tool (ERT), as soon as the final rule is effective, which will be the date of publication of the final rule. The EPA is specifically soliciting comment and additional data on the burden of complying with these proposed amendments.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

The EPA determined that four leather finishing operations are currently subject to the Leather Finishing NESHAP. This determination was based on reviews on various online databases and information sources, as well as permits, company Web sites, and other online sources as discussed in section 3.2 of the memorandum titled *Leather Finishing: Residual Risk Modeling File Supporting Documentation* in the docket for this action. The EPA estimates that all four leather finishing operations currently subject to the Leather Finishing NESHAP would be affected by the proposed requirement to review the final rulemaking, and none of the facilities would be affected by the proposed revisions to recordkeeping and reporting requirements related to the Deviation Notification Report or electronic reporting of performance tests. The EPA is not currently aware of any planned or potential new or reconstructed leather finishing operations.

B. What are the air quality impacts?

The EPA estimates that annual organic HAP emissions from the four leather finishing operations subject to the rule are approximately 22.5 tpy. In this proposal, we recommend no new emission limits and require no additional controls; therefore, no air quality impacts are expected as a result of the proposed amendments.

C. What are the cost impacts?

The four leather finishing operations subject to this proposal will incur costs to review the final rule. Nationwide annual costs associated with the proposed requirements are estimated to be a total of $705 for the initial year only. We believe that the four leather finishing operations which are known to be subject to this proposed rule can meet these proposed requirements without incurring additional capital or operational costs. Therefore, the only costs associated with this proposed rule are related to reviewing the rule. For further information on the proposed requirements for this rule, see section IV of this preamble. For further information on the costs associated with the proposed requirements of this rule, see the document titled *Supporting Statement for Leather Finishing Operations* and the memorandum titled *Costs for the Leather Finishing Operations Source Category Risk and Technology Review, both in the docket for this action.* The memorandum titled *CAA section 112(d)(6) Technology Review for the Leather Finishing Source Category* in the docket for this action. These documents present cost estimates associated with the regulatory options that were not selected for inclusion in this proposed rule.

D. What are the economic impacts?

The total national cost to comply with this proposed rule is estimated to be $705 in 2016 dollars, which is a one-time cost that will be incurred in the first year following promulgation of the final amendments. There are no additional emission control costs or additional emission reductions associated with this rule. The estimated cost of $705 is comprised of equal costs incurred by each of the four affected facilities, with each facility estimated to incur one-time labor costs of approximately $176 in order to become familiar with the rule. These costs are not expected to result in business closures, significant price increases, or substantial profit loss. No impacts on employment are expected given the minimal economic impact of the action on the affected firms. For further information on the economic impacts associated with the proposed requirements of this rule, see the memorandum titled *Proposal Economic Impact Analysis for the Reconsideration of the Risk and Technology Review: Leather Finishing Operations Source Category* in the docket for this action.

E. What are the benefits?

While the proposed amendments would not result in reductions in emissions of HAP, this action, if finalized, will improve implementation of the Leather Finishing NESHAP by clarifying the rule requirements as discussed in sections IV.D.1 and 3 of this preamble. Also, by adding electronic reporting of test reports for any control devices used to comply with the rule will provide the benefits discussed in section IV.D.2 of this preamble, including assisting state and local agencies that elect to use ERT to track compliance of the rule.

VI. Request for Comments

We solicit comments on all aspects of this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the risk assessments and other analyses. We are specifically interested in receiving any improvements to the data used in the site-specific emissions profiles used for risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII of this preamble provides more information on submitting data.

VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses and instructions are available for download on the RTR Web site at *http://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.* The data files include detailed information for each HAP emissions release point for the facilities in the source category.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any ''improved'' data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR Web site, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information.
2. Fill in the commenter information fields for each suggested revision (*i.e.,* commenter name, commenter organization, commenter email address, commenter phone number, and revision comments).
3. Gather documentation for any suggested emissions revisions (*e.g.,* performance test reports, material balance calculations, etc.).
4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID No. EPA–HQ–OAR–2003–0194 (through the method described in the **ADDRESSES** section of this preamble).
5. If you are providing comments on a single facility or multiple facilities, you need only submit one file for all facilities. The file should contain all suggested changes for all sources at that facility (or facilities). We request that all data revision comments be submitted in the form of updated Microsoft® Excel files that are generated by the Microsoft® Access file. These files are provided on the RTR Web site at *http://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.*

VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to OMB for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 1985.07. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

Proposed costs are to review the final rule in the initial year. We are proposing no new reporting or recordkeeping requirements to the Leather Finishing Operations source category.

Respondents/affected entities: Leather Finishing Operations.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart TTTT).

Estimated number of respondents: Four leather finishing operations.

Frequency of response: Initially.

Total estimated burden: 9 hours (per year) for the responding facilities and 0 hours (per year) for the Agency.

Total estimated cost: $705 (per year).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than April 13, 2018. The EPA will respond to any ICR-related comments in the final rule.

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. The small entities subject to the requirements of this action are small businesses. The Agency has determined that each of the three small entities impacted by this action may experience an impact of less than 0.01 percent of sales. Details of this analysis are presented in the memorandum titled *Proposal Economic Impact Analysis for the Reconsideration of the Risk and Technology Review: Leather Finishing Operations Source Category* in the docket for this action.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531– 1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. No tribal facilities are known to be engaged in the leather finishing operations industry that would be affected by this action. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III and IV of this preamble and further documented in the risk report titled *Residual Risk Assessment for the Leather Finishing Operations Source Category in Support of the December 2017 Risk and Technology Review Proposed Rule* in the docket for this action.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This action involves technical standards. Therefore, the EPA conducted searches for the Leather Finishing Operations Sector Risk and Technology Review through the Enhanced National Standards Systems Network Database managed by the American National Standards Institute. We also contacted voluntary consensus standards (VCS) organizations and accessed and searched their databases. We conducted searches for EPA Methods 24 and 311. The following VCS were identified as potentially acceptable alternatives to the EPA test methods for the purpose of this rule.

The VCS California Air Resources Board (CARB) Method 310 ''Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products'' was identified as potentially applicable for EPA Method 311. The EPA decided not to use this VCS because the method is impractical as an alternative to EPA Method 311 because it targets chemicals that are VOC and are not HAP.

Five VCS were identified as potentially applicable for EPA Method 24, as follows:

- ASTM D2369–01 ''Standard Test Method for Volatile Content of Coatings'';
- ASTM D2697–86 (1998) ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings'';
- ASTM D6093–97 (Reapproved 2003) ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer'';
- ASTM D2111–95 (2000) ''Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures''; and
- ASTM D1963–85 (1996) Standard Test Method for Specific Gravity of Drying Oils, Varnishes, Resins, and Related Materials at 25/25°C.

The EPA is proposing not to use these methods. The use of ASTM D2369–01, ASTM D2697–86 (1998), ASTM D6093–97 (Reapproved 2003), and ASTM D1963–85 (1996) would be impractical for this NESHAP because they address only a portion of Method 24 and do not address density, which is the only portion of Method 24 used for compliance with the Leather Finishing NESHAP. Further, though ASTM D2111–95 (2000), ''Standard Test Methods for Specific Gravity and Density of Halogenated Organic Solvents and Their Admixtures,'' provides an alternative method for measuring density, this version of the ASTM method has expired. A thorough summary of the search conducted and results are included in the memorandum titled *Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations* in the docket for this action.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low income populations, and/or indigenous peoples, as specified in Executive Order 12898 (58 FR 7629, February 16, 1994).

The documentation for this decision is contained in section IV.A of this preamble and the technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Leather Finishing Operations* in the docket for this action.

As discussed in section IV.A of this preamble, we performed a demographic analysis, which is an assessment of risks to individual demographic groups, of the population close to the facilities (within 50 km and within 5 km). In this analysis, we evaluated the distribution of HAP-related cancer risks and

noncancer hazards from the leather finishing operations across different social, demographic, and economic groups within the populations living near operations identified as having the highest risks.

The analysis indicates that the minority population living within 50 km (4,632,781 people, of which 25 percent are minority) and within 5 km (158,482 people, of which 13 percent are minority) of the four leather finishing operations facilities is less than the minority population found nationwide (38 percent). The proximity results indicate that the population percentage for the ''Native American'' demographic group within 5 km of leather finishing operations emissions is slightly greater than the corresponding nationwide percentage for that same demographic. The percentage of people ages 65 and older residing within 5 km of leather finishing operations (18 percent) is 4 percentage points higher than the corresponding nationwide percentage (14 percent). The other demographic groups included in the assessment within 5 km of leather finishing operations emissions were the same or lower than the corresponding nationwide percentages.

When examining the cancer risk levels of those exposed to emissions from the four leather finishing operations, we find that there are no people within a 50-km radius of modeled facilities exposed to a cancer risk greater than or equal to 1-in-1 million as a result of emissions from leather finishing operations. When examining the noncancer risk levels, we find that there are no people within a 50-km radius of modeled facilities exposed to a noncancer risk (in this analysis, reproductive HI) greater than 1 as a result of emissions from leather finishing operations.

The EPA has determined that this proposed rule does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples because the health risks based on actual emissions are low (below 2-in-1 million), the population exposed to risks greater than 1-in-1 million is relatively small (750 persons), and the rule maintains or increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority, low-income, or indigenous populations. Further, the EPA believes that implementation of this rule will provide an ample margin of safety to protect public health of all demographic groups.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 28, 2018.

E. Scott Pruitt,

Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency proposes to amend title 40, chapter I, part 63 of the Code of Federal Regulations as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart TTTT—National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations

■ 2. Section 63.5320 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.5320 How does my affected major source comply with the HAP emission standards?

(a) All affected sources must be in compliance with the requirements of this subpart at all times.

(b) At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the affected source.

* * * * *

■ 3. Section 63.5360 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 63.5360 How do I demonstrate continuous compliance with the emission standards?

(a) * * *

(2) If you use an emission control device, you must comply with 40 CFR part 63.982(a)(2) (subpart SS) and collect the monitoring data as specified therein.

* * * * *

(b) You must report each instance in which you did not meet the emission standards in § 63.5305. These deviations must be reported according to the requirements in § 63.5420(b).

* * * * *

■ 4. Section 63.5375 is revised to read as follows:

§ 63.5375 When must I conduct a performance test or initial compliance demonstration?

You must conduct performance tests after the installation of any emission control device that reduces HAP emissions and will be used to comply with the HAP emission requirements of this subpart. You must complete your performance tests not later than 60 calendar days before the end of the 12-month period used in the initial compliance determination.

■ 5. Section 63.5380 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.5380 How do I conduct performance tests?

(a) Each performance test must be conducted according to the requirements in § 63.7(e)(2) through (4) and the procedures of § 63.997(e)(1) and (2).

(b) Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 6. Section 63.5420 is amended by revising the introductory text of paragraph (b) and paragraphs (b)(3) and

(4), and adding paragraphs (b)(5), (b)(6), and (c) to read as follows:

§ 63.5420 What reports must I submit and when?

* * * * *

(b) You must submit a Deviation Notification Report for each compliance determination you make in which the compliance ratio exceeds 1.00, as determined under § 63.5330. Submit the deviation report by the fifteenth of the following month in which you determined the deviation from the compliance ratio. The Deviation Notification Report must include the items in paragraphs (b)(1) through (6) of this section:

* * * * *

(3) The 12-month period covered by the report and each type of leather product process operation performed during the 12-month period.

(4) The compliance ratio comprising the deviation. You may reduce the frequency of submittal of the Deviation Notification Report if the Administrator of these NESHAP approves an alternative schedule.

(5) An estimate of the quantity of HAP (in pounds) emitted during the 12 months specified in paragraph (b)(3) of this section in excess of the allowable HAP loss. Calculate this estimate of excess emissions by subtracting the allowable HAP loss determined as specified in § 63.5340 from the actual HAP loss determined as specified in § 63.5335.

(6) The cause of the events that resulted in the source failing to meet an applicable standard (including unknown cause, if applicable).

(c) Within 60 days after the date of completing each performance test (as defined in § 63.2) required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (c)(1) through (3) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronicreporting-air-emissions/electronicreporting-tool-ert*) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*).) Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13 unless the Administrator agrees to or specifies an alternate reporting method.

(3) If you claim that some of the performance test information being submitted under paragraph (c)(1) is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage medium to the EPA. The electronic medium must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (c)(1) of this section.

(4) If you are required to electronically submit a report through the Compliance and Emissions Data Reporting Interface (CEDRI) in the EPA's Central Data Exchange (CDX), and due to a planned or actual outage of either the EPA's CEDRI or CDX systems within the period of time beginning 5 business days prior to the date that the submission is due, you will be or are precluded from accessing CEDRI or CDX and submitting a required report within the time prescribed, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description identifying the date, time and length of the outage; a rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved. The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) If you are required to electronically submit a report through CEDRI in the EPA's CDX and a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due, the owner or operator may assert a claim of force majeure for failure to timely comply with the reporting requirement. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.*, hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.*, large scale power outage). If you intend to assert a claim of force majeure, you must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs. The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

■ 7. Section 63.5430 is amended by revising the introductory text and paragraph (g), and adding paragraphs (h) and (i) to read as follows:

§ 63.5430 What records must I keep?

You must satisfy the recordkeeping requirements in paragraphs (a) through (i) of this section by the compliance date specified in § 63.5295.

* * * * *

(g) If you use an emission control device, you must keep records of monitoring data as specified at § 63.982(a)(2) (subpart SS).

(h) In the event that the compliance ratio exceeded 1.00, as determined under § 63.5330, keep a record of the information specified in paragraphs (h)(1) through (5) of this section for each exceedance.

(1) The 12-month period in which the exceedance occurred, as reported in § 63.5420(b).

(2) Each type of leather product process operation performed during the 12-month period in which the exceedance occurred, as reported in § 63.5420(b).

(3) Estimate of the quantity of HAP (in pounds) emitted during the 12 months specified in § 63.5420(b)(3) in excess of the allowable HAP loss, as reported in § 63.5420(b).

(4) Cause of the events that resulted in the source failing to meet an applicable standard (including unknown cause, if applicable), as reported in § 63.5420(b).

(5) Actions taken to minimize emissions in accordance with § 63.5320(b), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(i) Any records required to be maintained by this part that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

■ 8. Section 63.5460 is amended by revising the definition for ''Deviation'' to read as follows:

§ 63.5460 What definitions apply to this subpart?

* * * * *

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source fails to meet any requirement or obligation established by this subpart, including, but not limited to, any emission limits or work practice standards.

* * * * *

■ 9. Table 2 to Subpart TTTT of Part 63 is revised to read as follows:

Table 2 to Subpart TTTT of Part 63—Applicability of General Provisions to Subpart TTTT

As required in § 63.5450, you must meet the appropriate NESHAP General Provision requirements in the following table:

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions, notifications.	Yes.	
§ 63.2	Definitions	Definitions for Part 63 standards	Yes	Except as specifically provided in this subpart.
§ 63.3	Units and abbreviations.	Units and abbreviations for Part 63 standards.	Yes.	
§ 63.4	Prohibited activities and circumvention.	Prohibited activities; compliance date; circumvention, severability.	Yes.	
§ 63.5	Construction/reconstruction.	Applicability; applications; approvals	Yes	Except for paragraphs of § 63.5 as listed below.
§ 63.5(c)	[Reserved].			
§ 63.5(d)(1)(ii)(H)	Application for approval.	Type and quantity of HAP, operating parameters.	No	All sources emit HAP. Subpart TTTT does not require control from specific emission points.
§ 63.5(d)(1)(i)	[Reserved].			
§ 63.5(d)(1)(iii), (d)(2), (d)(3)(ii).		Application for approval	No	The requirements of the application for approval for new and reconstructed sources are described in § 63.5320(b). General provision requirements for identification of HAP emission points or estimates of actual emissions are not required. Descriptions of control and methods, and the estimated and actual control efficiency of such do not apply. Requirements for describing control equipment and the estimated and actual control efficiency of such equipment apply only to control equipment to which the subpart TTTT requirements for quantifying solvent destroyed by an add-on control device would be applicable.
§ 63.6	Applicability of general provisions.	Applicability of general provisions	Yes	Except for paragraphs of § 63.6 as listed below.
§ 63.6(b)(1)–(3)	Compliance dates, new and reconstructed sources.		No	Section § 63.5283 specifies the compliance dates for new and reconstructed sources.
§ 63.6(b)(6)	[Reserved].			
§ 63.6(c)(3)–(4)	[Reserved].			
§ 63.6(d)	[Reserved].			
§ 63.6(e)(1)	Operation and maintenance requirements.		No	See § 63.5320(b) for general duty requirement.
§ 63.6(e)(2)	[Reserved].			

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
§ 63.6(e)(3)	Operation and maintenance requirements.	Startup, shutdown, and malfunction plan requirements.	No	Subpart TTTT does not have any startup, shutdown, and malfunction plan requirements.
§ 63.6(f)–(g)	Compliance with nonopacity emission standards except during SSM.	Comply with emission standards at all times except during SSM.	No	Subpart TTTT does not have nonopacity requirements.
§ 63.6(h)	Opacity/visible emission (VE) standards.		No	Subpart TTTT has no opacity or visual emission standards.
§ 63.6(i)	Compliance extension.	Procedures and criteria for responsible agency to grant compliance extension.	Yes.	
§ 63.6(j)	Presidential compliance exemption.	President may exempt source category from requirement to comply with subpart.	Yes.	
§ 63.7	Performance testing requirements.	Schedule, conditions, notifications and procedures.	Yes	Except for paragraphs of § 63.7 as listed below. Subpart TTTT requires performance testing only if the source applies additional control that destroys solvent. § 63.5311 requires sources to follow the performance testing guidelines of the General Provisions if a control is added.
§ 63.7(a)(2) (i) and (iii).	Performance testing requirements.	Applicability and performance dates	No	§ 63.5310(a) of subpart TTTT specifies the requirements of performance testing dates for new and existing sources.
§ 63.7(e)(1)	Conduct of performance tests.	Defines representative conditions; provides an exemption from the standards for periods of startup, shutdown, and malfunction; requires that, upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.	No	See § 63.5380.
§ 63.8	Monitoring requirements.	Applicability, conduct of monitoring, operation and maintenance, quality control, performance evaluations, use of alternative monitoring method, reduction of monitoring data.	No	See § 63.5360(a)(2) for monitoring requirements.
§ 63.9	Notification requirements.	Applicability and State delegation	Yes	Except for paragraphs of § 63.9 as listed below.
§ 63.9(e)	Notification of performance test.	Notify responsible agency 60 days ahead	Yes	Applies only if performance testing is performed.
§ 63.9(f)	Notification of VE/opacity observations.	Notify responsible agency 30 days ahead	No	Subpart TTTT has no opacity or visual emission standards.
§ 63.9(g)	Additional notifications when using a continuous monitoring system (CMS).	Notification of performance evaluation; notification using COMS data; notification that exceeded criterion for relative accuracy.	No	See § 63.5360(a)(2) for CMS requirements.
§ 63.9(h)	Notification of compliance status.	Contents	No	§ 63.5320(d) specifies requirements for the notification of compliance status.
§ 63.10	Recordkeeping/reporting.	Schedule for reporting, record storage	Yes	Except for paragraphs of § 63.10 as listed below.
§ 63.10(b)(2)	Recordkeeping	CMS recordkeeping; CMS records of startup, shutdown, and malfunction events.	No	See § 63.5360 for CMS recordkeeping requirements, except see 63.5430(h) for CMS recordkeeping requirements if there is a deviation from the standard.
§ 63.10(c)	Recordkeeping	Additional CMS recordkeeping	No	See § 63.5360(a)(2) for CMS recordkeeping requirements.
§ 63.10(d)(2)	Reporting	Reporting performance test results	Yes	Applies only if performance testing is performed.
§ 63.10(d)(3)	Reporting	Reporting opacity or VE observations	No	Subpart TTTT has no opacity or visible emission standards.
§ 63.10(d)(4)	Reporting	Progress reports	Yes	Applies if a condition of compliance extension.
§ 63.10(d)(5)	Reporting	Startup, shutdown, and malfunction reporting.	No	See § 63.5420(b) for reporting requirements if there is a deviation from the standard.

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
§ 63.10(e)	Reporting	Additional CMS reports	No	See § 63.5360(a)(2) for monitoring requirements.
§ 63.11	Control device requirements.	Requirements for flares	Yes	Applies only if your source uses a flare to control solvent emissions. Subpart TTTT does not require flares.
§ 63.12	State authority and delegations.	State authority to enforce standards	Yes.	
§ 63.13	State/regional addresses.	Addresses where reports, notifications, and requests are sent.	Yes.	
§ 63.14	Incorporation by reference.	Test methods incorporated by reference	Yes.	
§ 63.15	Availability of information and confidentiality.	Public and confidential information	Yes.	

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Part III

Federal Housing Finance Agency

12 CFR Parts 1290 and 1291

Affordable Housing Program Amendments; Proposed Rule

FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1290 and 1291

RIN 2590–AA83

Affordable Housing Program Amendments

AGENCY: Federal Housing Finance Agency.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing notice and providing an opportunity for the public to comment on proposed amendments to its regulation on the Federal Home Loan Banks' (Banks) Affordable Housing Program (AHP or Program). The proposed amendments would provide the Banks additional authority to allocate their AHP funds; authorize the Banks to establish special competitive funds that target specific affordable housing needs in their districts; provide the Banks authority to design and implement their own project selection scoring criteria, subject to meeting certain FHFA-prescribed outcome requirements; remove the requirement for retention agreements for owner-occupied units; further align the project monitoring requirements with those of other federal government funding programs; clarify the provisions on remediating AHP noncompliance; clarify certain operational requirements; and streamline and reorganize the regulation.

DATES: Written comments must be received on or before May 14, 2018.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AA83, by any one of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590–AA83.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA83, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. Deliver the package at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA83, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

FOR FURTHER INFORMATION CONTACT: Ted Wartell, Manager, Office of Housing and Community Investment, 202–649–3157, *ted.wartell@fhfa.gov;* Marcea Barringer, Senior Policy Analyst, Office of Housing and Community Investment, 202–649–3275, *marcea.barringer@fhfa.gov;* Marshall Adam Pecsek, Senior Counsel, Office of General Counsel, 202–649–3380, *marshall.pecsek@fhfa.gov;* or Sharon Like, Managing Associate General Counsel, Office of General Counsel, 202–649–3057, *sharon.like@fhfa.gov.* These are not toll-free numbers. The mailing address is: Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule. A list of FHFA's requests for comments on specific issues appears in Section V. Please identify the specific request for comment to which you are responding by its request number. Copies of all comments will be posted without change, and will include any personal information you provide such as your name, address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

II. Background

A. Overview of Current Program

The Federal Home Loan Bank Act (Bank Act) requires each Bank to establish an affordable housing program, the purpose of which is to enable Bank members to provide subsidies for long-term, low- and moderate-income, owner-occupied and affordable rental housing.[1] The Banks may provide AHP subsidies to finance: Homeownership by families with incomes at or below 80 percent of area median income (AMI); and the purchase, construction, or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households.[2] ''Affordable for very low-income households'' is defined to mean that rents charged to tenants for units made available for occupancy by low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of AMI, with adjustment for family size.[3] FHFA's regulation implementing the Bank Act's AHP requirements is set forth at 12 CFR part 1291.

The AHP has played an important role in facilitating the Banks' support of their members' efforts to meet the affordable housing needs of their communities. Between 1990 and 2016, the Banks awarded approximately $5.4 billion in AHP subsidies to assist the financing of over 827,000 housing units through two programs—the Competitive Application Program and the Homeownership Set-Aside Program. From 1990 to 2016, the Banks awarded approximately $4.4 billion under the Competitive Application Program, assisting over 660,000 units, 71 percent of which were for very low-income households. From 1995 to 2016, the Banks awarded almost $1 billion under the Homeownership Set-Aside Program, assisting the financing of approximately 167,000 owner-occupied units.[4] AHP subsidies have proven effective in funding projects that present underwriting challenges, such as projects for the homeless and special needs populations, including persons with disabilities and the elderly. One strength of the AHP is its capacity to leverage additional public and private resources for affordable housing. For example, the AHP has been used effectively by project sponsors with a number of different federal and state funding sources, including Low-Income Housing Tax Credits (LIHTC or tax credits), an important funding source for rental housing for very low-income households.

B. AHP Regulatory History

FHFA and one of its predecessor agencies, the Federal Housing Finance Board (Finance Board), have engaged in

[1] 12 U.S.C. 1430(j)(1).

[2] 12 U.S.C. 1430(j)(2).

[3] 12 U.S.C. 1430(j)(13)(D).

[4] The Competitive Application Program began in 1990, and the Homeownership Set-Aside Program began in 1995.

numerous rulemakings over the years to revise, clarify, and streamline the AHP requirements as the program has evolved and housing markets have changed. In the early years of the Program, the Finance Board designed the AHP regulation to address affordable housing needs from a national policy perspective. The regulation contained scoring criteria (referred to as ''regulatory priorities'') that represented specific housing needs existing in all of the Bank districts that the Finance Board viewed as national policy priorities. The Banks would review and forward the AHP applications to the Finance Board's Board of Directors, who would approve eligible applications in accordance with the regulation's competitive scoring system. Subsequent AHP rulemakings progressively devolved specific approval and governance authorities to the Banks in order to enhance the ability of the Banks to address specific affordable housing needs in their respective districts. Highlighted among these regulatory amendments are the following:

- 1995—The rule authorized the Banks to establish Homeownership Set-Aside Programs to provide grants for households purchasing or rehabilitating homes. The Finance Board increased the maximum permissible annual funding allocation for these optional programs several times after 1995.
- 1997—The rule transferred approval authority over the AHP applications from the Finance Board to the Banks. The rule also substantially modified the scoring system, including establishing five regulatory priorities selected by the Finance Board, and allowing the Banks greater input in selecting scoring criteria and scoring points allocations based on their district housing needs. This included authority to select ''Bank First District Priority'' scoring criteria (from a list of specific housing needs identified in the regulation) and a ''Bank Second District Priority'' scoring criterion (a specific district housing need identified by the Bank), which together accounted for a maximum of 50 scoring points out of 100. The regulation also established specific initial and long-term project monitoring requirements.
- 2006—The rule provided the Banks with more discretion to establish project monitoring and other requirements and authorized the use of AHP subsidies with revolving loan funds and loan pools.
- 2009—The rule expanded the Banks' authority to target specific affordable housing needs in their districts by allowing the Banks to identify and include multiple district housing needs under their Bank Second District Priority scoring criterion.

The AHP regulation currently authorizes the Banks to establish and administer two programs: A mandatory Competitive Application Program; and an optional Homeownership Set-Aside Program. Each Bank generally is required to allocate annually at least 65 percent of its required annual AHP contribution to its Competitive Application Program.[5] Under the Competitive Application Program, Bank members apply to the Banks for AHP subsidies on behalf of project sponsors, which are typically nonprofit affordable housing developers, but may include for-profit organizations. The regulation requires the Banks to develop and implement a Competitive Application Program scoring system subject to requirements in the regulation, which serves as a tool for evaluating and selecting the project applications that will receive a limited supply of AHP subsidies. During the 28 years that the Programs have operated, the demand for the AHP subsidies has always exceeded the amount available. In 2016, the Banks approved, on average, 43 percent of applications received. In total, the Banks awarded $283.4 million in AHP subsidies under their Competitive Application Programs in 2016 to help finance the purchase, construction, or rehabilitation of 25,530 rental and owner-occupied housing units.

The regulation also provides that each Bank may allocate annually up to the greater of $4.5 million or 35 percent of its required annual AHP contribution to fund its Homeownership Set-Aside Program. Under this program, members apply to the Banks for AHP subsidies, which are provided to low- or moderate-income homebuyers or homeowners for the purchase or rehabilitation of homes. In 2016, the Banks provided members a combined total of $85.5 million through their Homeownership Set-Aside Programs, which assisted 13,555 low- or moderate-income homebuyers or homeowners.

C. Bank and Stakeholder Input

In accordance with FHFA's five-year regulatory review plan, FHFA published a Notice of Regulatory Review in the **Federal Register** in 2013 requesting comment on FHFA's existing regulations for purposes of improving their effectiveness and reducing their burden.[6] In response, the Banks jointly submitted a letter to FHFA commenting on the AHP and other FHFA regulations.[7] Addressing the AHP regulation, the letter argued that prescriptive, outdated, or ambiguous provisions of the regulation created inefficiencies and uncertain risk exposures, and recommended that FHFA review the regulation and consider clarifications and enhancements to further empower the Banks in the management of their Programs.

In response to the Banks' recommendations, FHFA undertook a comprehensive review of the AHP regulation, including AHP issues on which FHFA had provided regulatory guidance. To further inform the review, FHFA held a number of discussions separately or jointly with the Banks' Community Investment Officers (CIOs), the Bank Presidents' Housing Committee, leadership of the Banks' Affordable Housing Advisory Councils, and other AHP stakeholders including Bank member institutions and representatives of several national and regional nonprofit housing organizations. The Banks and stakeholders uniformly expressed support for the AHP, viewing the program's affordable housing mission favorably and acknowledging its longstanding reputation as a well-managed program and the critical role it plays in affordable housing initiatives throughout the country.

At the same time, the CIOs and stakeholders offered a number of specific recommendations to improve the operation of the AHP. The recommendations were directed largely at (1) expanding the Banks' authority to allocate their AHP funds; (2) providing the Banks authority to devise their own project selection methods, including the use of non-competitive processes; (3) clarifying the requirements for determining a project's need for AHP subsidy; (4) aligning the project monitoring requirements with those of other major funding sources; (5) clarifying the Banks' authorities to resolve project noncompliance; (6) clarifying certain operational requirements; and (7) codifying FHFA regulatory guidance in the regulation. Although a majority of the CIOs and stakeholders expressed the view that the existing regulatory requirements for scoring AHP applications limit a Bank's ability to effectively target specific housing needs within its district, others stated that the project scoring system

[5] Where a Bank allocates the alternative maximum amount of $4.5 million to its Homeownership Set-Aside Program, the Bank may allocate less than 65 percent of its total AHP funds to its Competitive Application Program.

[6] *See* 78 FR 23507 (April 19, 2013).

[7] *See* Comment Letter from 12 Banks to FHFA, dated June 18, 2013.

provides the Banks sufficient scoring flexibility and does not need revision.

After reviewing all of the specific recommendations, FHFA determined that a number of the recommended changes are already permissible under the current regulation and, therefore, do not require regulatory amendments. A number of other recommendations are clearly impermissible under the Bank Act and, therefore, cannot be authorized in the AHP regulation without statutory amendments. The remaining recommendations generally require revisions to the AHP regulation. FHFA analyzed these recommendations to determine whether they were appropriate from a policy standpoint and consistent with the statutory requirements. FHFA also considered the impact that adopting these recommendations would have on populations in greatest need of affordable housing assistance, the AHP's reputation as a well-managed program, and FHFA's ability to supervise, examine, and monitor the Banks' Programs. Based on FHFA's analyses of the recommendations and its review of the Programs, FHFA is proposing to amend the AHP regulation as further discussed below.

The proposed rule would authorize the Banks to develop and implement an ''outcome-based approach'' for administering their competitive application programs (the proposed General Fund and any Targeted Funds established by a Bank discussed below). This approach would differ significantly from the existing project selection scoring process, which requires Banks to allocate a majority of the points for scoring applications to several pre-determined housing needs priorities. Instead, the proposed rule would require each Bank to design and implement its own system to address specific housing needs in its district. However, the scoring system would need to result in the Bank awarding a majority of its AHP funds to certain regulatory priorities established by FHFA as well as the housing priorities specified in the Bank Act. The Banks would be required to support their reasons for choosing specific housing needs with empirical data in their Targeted Community Lending Plans.

FHFA is also proposing to provide the Banks additional flexibility to allocate their total annual AHP funds. The Banks would be authorized to allocate a portion of their total annual AHP funds to a maximum of three competitive Targeted Funds that enhance the Banks' ability to target specific affordable housing needs within their districts that are unmet, have proven difficult to address through the existing Competitive Application Program, or align with objectives identified in the strategic plans adopted by each Bank's board of directors. The amount each Bank could allocate to its Targeted Funds would be limited to a maximum of 40 percent of the Bank's total annual AHP funds. The Banks would be required to establish and support the need for the Targeted Funds in their Targeted Community Lending Plans.

In addition, the proposed rule would increase the percentage of total annual AHP funds that the Banks could allocate to their noncompetitive Homeownership Set-Aside Programs. The current regulation authorizes each Bank to allocate annually up to the greater of 35 percent of its total annual AHP funds or $4.5 million to fund its Homeownership Set-Aside Programs. The proposed rule would increase the maximum allocation percentage to 40 percent, while retaining the alternate $4.5 million threshold. To account for high-cost areas and high rehabilitation costs, as well as housing price appreciation since the last time the set-aside percentage threshold was increased, the maximum set-aside grant that a Bank could provide to a household would increase from $15,000 to $22,000 and would be subject to annual increases according to FHFA's Housing Price Index.

FHFA is also proposing to further align the AHP project monitoring requirements with those of other government funding programs. The proposed rule would remove certain back-up documentation requirements for the initial monitoring of AHP projects that have received LIHTC funding. It would also remove certain back-up documentation requirements for initial and long-term monitoring of AHP projects that have received funding under other federal government programs, which would be specified in FHFA guidance.

FHFA is also proposing to clarify the responsibilities of the various parties in the event of AHP noncompliance.

III. Analysis of the Proposed Rule

Reorganization of Regulatory Text

To provide greater clarity for users of the AHP regulation and to take into account the proposed new provisions, the proposed rule would reorganize the current regulation. Existing and new regulatory sections would be grouped under new Subpart headings according to similar subject matter, which would result in renumbering of most sections of the current regulation. In addition, the numbering of the sections would not be consecutive from Subpart to Subpart in order to reserve room within Subparts for the addition of new sections in the future, as necessary. Specific organizational changes are discussed below under the applicable regulatory amendments.

Subpart A—General

Proposed § 1291.1 Definitions

Proposed § 1291.1 would retain most of the definitions currently in § 1291.1. The proposed rule would revise some of the definitions and add definitions, which are discussed below in the context of the related regulatory amendments.

In addition, the proposed rule would make the following technical changes:

- A definition of ''AHP'' would be added, which means the Affordable Housing Program required to be established by the Banks pursuant to 12 U.S.C. 1430(j) and this part.
- The definition of ''Homeownership Set-Aside Program'' would include a reference that establishment of such a program is in the Bank's discretion and is a noncompetitive program.
- The definition of ''net earnings of a Bank'' would be revised by removing the requirement to deduct the Bank's annual contribution to the Resolution Funding Corporation, as the Banks are no longer required to make annual contributions to the Resolution Funding Corporation.[8]
- In the definition of ''rental project,'' the term ''manufactured housing'' would be changed to ''manufactured housing communities,'' which more accurately describes this type of housing in the context of rental projects.
- References to the ''competitive application program'' would be changed to the General Fund and any Targeted Funds established by the Bank. References to the ''homeownership set-aside programs'' would be capitalized and would highlight that they are discretionary and noncompetitive.

Subpart B—Program Administration and Governance

Proposed § 1291.10 Required Annual AHP Contribution

Consistent with current § 1291.2(a), proposed § 1291.10(a) would contain the Bank Act requirement that each Bank contribute annually to its AHP 10 percent of its net income for the preceding year, subject to a minimum annual combined contribution by all of the Banks of $100 million.[9]

[8] 12 U.S.C. 1441b.

[9] *See* 12 U.S.C. 1430(j)(5)(C).

Proposed § 1291.11 Temporary Suspension of AHP Contributions

Existing § 1291.11 on the temporary suspension of AHP contributions would not be changed.

Proposed § 1291.12 Allocation of Required Annual AHP Contribution

Proposed § 1291.12 would revise existing § 1291.2(b) governing the required and permissible allocations of the Banks' required annual AHP contributions. Section 1291.2(b)(1) currently requires each Bank to allocate annually to its Competitive Application Program that portion of its required annual AHP contribution that is not set aside by the Bank to fund Homeownership Set-Aside Programs. Section 1291.2(b)(2) provides that each Bank may allocate annually, in the aggregate, up to the greater of $4.5 million or 35 percent of its annual required AHP contribution to Homeownership Set-Aside Programs. Therefore, a Bank generally is required to allocate at least 65 percent of its required annual AHP contribution to its Competitive Application Program depending on the amount of AHP funds it allocates, if any, to Homeownership Set-Aside Programs.[10]

The proposed rule would revise the required and permissible annual maximum AHP funding allocations as follows:

(1) General Fund—A Bank must allocate annually at least 50 percent of its required annual AHP contribution to a General Fund (a mandatory competitive application program but with significant changes from the current Competitive Application Program, as further discussed below);

(2) Homeownership Set-Aside Programs—A Bank may allocate annually, in the aggregate, up to the greater of $4.5 million or 40 percent of its required annual AHP contribution to Homeownership Set-Aside Programs (the same optional Homeownership Set-Aside Programs as in the current regulation but with proposed changes discussed below);

(3) Targeted Funds—A Bank may allocate annually, in the aggregate, up to 40 percent of its required annual AHP contribution to a maximum of three Targeted Funds (a new type of optional competitive application program discussed below).

If a Bank chooses not to establish Homeownership Set-Aside Programs or Targeted Funds in a given year, it would allocate 100 percent of its required annual AHP contribution to its General Fund. If a Bank chooses to allocate the maximum 40 percent to Homeownership Set-Aside Programs, it could allocate up to 10 percent for Targeted Funds (after allocating the required 50 percent for the General Fund). If a Bank chooses to allocate the maximum 40 percent to Targeted Funds, it could allocate up to 10 percent for Homeownership Set-Aside Programs (after allocating the required 50 percent for the General Fund).

The proposed rule would provide that a Bank's board of directors may not delegate to a committee of the board, Bank officers, or other Bank employees the responsibility for adopting the policies for its General Fund and any Targeted Funds and Homeownership Set-Aside Programs established by the Bank. The purpose of this provision is to encourage increased engagement in the AHP and increased integration of the Banks' low-income housing and community development activities and issues, as well as Advisory Council input, into the overall strategic planning of the Bank. FHFA anticipates the board committee's work to remain largely the same as it is currently, but also for the full board to have more engagement with the board committee's recommendations. The full board could still delegate limited responsibilities to the board committee for non-strategic types of AHP issues that a board committee is well suited to address within the parameters of its delegation of authority, such as project modification requests for AHP subsidy increases.

The reasons for the proposed AHP funding allocations are discussed below.

Allocation to General Fund. The proposed rule would reduce the minimum percentage of a Bank's required annual AHP contribution that must be allocated annually to the General Fund to 50 percent. All projects would be eligible to apply for AHP subsidies under the General Fund, as under the current Competitive Application Program. FHFA believes that the Banks should be required to continue administering a competitive application program that attracts numerous applications that address a broad array of affordable housing needs. The proposed 50 percent threshold would still ensure that at least half of the AHP funds are made available to address a broad spectrum of affordable housing needs within the Bank district, while enabling a Bank to simultaneously target additional specific affordable housing needs in its district through allocation of up to an additional 40 percent of the total AHP funds to Targeted Funds or Homeownership Set-Aside Programs. FHFA considered whether to allow the Banks complete discretion regarding the allocation of their AHP funds but rejected this approach for the reasons in the discussion of proposed § 1291.25.

Allocation to Homeownership Set-Aside Programs

Maximum permissible AHP funding allocation. FHFA is proposing to increase the maximum percentage allocation amount for the Homeownership Set-Aside Program from 35 to 40 percent, and to retain the alternative maximum allocation amount at $4.5 million.

The Homeowner Set-Aside Programs have helped expand homeownership opportunities for very low-, and low- or moderate-income households since 1995. From 1995 through 2016, the programs provided approximately $953 million in grants, supporting approximately 167,000 households. In 2016, the 11 Banks, in the aggregate, allocated approximately 27 percent of their total annual required AHP contributions to Homeownership Set-Aside Programs. A number of Banks consistently allocate the maximum permissible amount of 35 percent or $4.5 million. For example, in 2016, four Banks allocated 35 percent, and one Bank allocated $4.5 million. In 2015, six Banks allocated the maximum permissible amount. FHFA considered whether to eliminate or raise the maximum permissible allocation amounts because the demand for set-aside funds has far exceeded the amount the Banks are currently authorized to allocate to these programs.

Authorizing the Banks to allocate more funds to Homeownership Set-Aside Programs would enable the Banks and their members to meet more of the demand for set-aside funds and to provide more assistance to low- or moderate-income homebuyers and homeowners, including first-time homebuyers, than occurs under the Competitive Application Program. The current regulation allows Banks to establish more than one Homeownership Set-Aside Program. A number of Banks establish multiple Homeownership Set-Aside Programs each year to address the homeownership needs of different populations, such as military veterans or disaster victims. The proposed changes to the regulation would enable the Banks to serve even more low- or moderate-income homebuyers and homeowners.

[10] As noted earlier, where a Bank allocates the alternate maximum amount of $4.5 million to its Homeownership Set-Aside Programs, the Bank may allocate less than 65 percent of its total AHP funds to its Competitive Application Program.

The Homeownership Set-Aside Programs not only assist low- or moderate-income households by providing grants for home purchase or rehabilitation, but assist Bank members by providing them a way to access a wider customer base and originate new mortgages for low- or moderate-income households. Member participation in the program can result in new potential household customers and increased goodwill for Bank members. Members' participation in the AHP, including the Homeownership Set-Aside Program, also enables them to receive favorable consideration under the federal Community Reinvestment Act. Increasing the maximum permissible percentage allocation could result in more opportunities for members to fulfill those obligations.

In addition, the lack of a competitive scoring process and minimal monitoring requirements at subsidy disbursement make the Homeownership Set-Aside Programs easy to administer and cost-effective. Further, no long-term monitoring is required because the AHP-assisted households currently are only subject to five-year retention agreements governing the sale or refinancing of the home, although determining and managing the repayments of AHP subsidies by households who sell or refinance their homes during the five-year period entails some administrative responsibilities on the Banks and members. As discussed below, FHFA is proposing to remove the requirement for retention agreements on owner-occupied units.

Increasing the maximum percentage amount for the Homeownership Set-Aside Program would enable the Banks to allocate less funds to their Competitive Application Programs, resulting potentially in less funding of rental projects, which are funded under those programs. However, in light of the significant demand for set-aside funds, which exceeds the current maximum percentage amount, FHFA believes that increasing this amount would be a reasonable approach to address the demand. As noted above, one of the main goals of the proposed rule is to enhance the Banks' ability to target specific housing needs in their districts through the AHP. Each Bank would weigh the specific homeownership and rental housing needs in its district and determine what the appropriate relative funding allocations should be for those needs under its AHP.

FHFA is not proposing to remove the maximum permissible allocation limits for the Homeownership Set-Aside Program because this could result in the Banks allocating all of their annual AHP funds to the Homeownership Set-Aside Program, which would be contrary to the statutory intent that both homeownership and rental projects be funded. The proposed rule would continue to require that the Banks allocate the majority of their total annual AHP funds (at least 60 percent under the proposed rule) to competitive application programs—the proposed General Fund and any Targeted Funds, which are likely to be targeted to more types of housing needs including rental housing. This may ensure that a significant percentage of AHP funds continue to support rental projects.[11] FHFA believes that it is extremely important that a substantial portion of AHP funds continue to assist in the development of rental housing for lower income households given the need for more affordable rental housing throughout the nation.

FHFA is proposing to retain the existing alternative maximum allocation amount of $4.5 million because it has enabled smaller Banks, as well as some larger Banks with lower earnings, to provide more funds than would be permissible under the maximum percentage limit to their Homeownership Set-Aside Programs to address district housing needs. For these Banks, $4.5 million may be greater than 35 or 40 percent. FHFA analyzed the impact that a proposed increase from 35 to 40 percent would have on each Bank, using each Bank's annual total AHP funding allocations for 2016 and 2017, to determine whether revisions to the $4.5 million limit would be necessary in conjunction with the percentage increase. FHFA found that the proposed increase from 35 to 40 percent would not have altered the Banks' need for, or use of, the $4.5 million maximum during those two years. Accordingly, FHFA is not proposing an increase in the $4.5 million maximum.

One-third first-time homebuyer allocation requirement. The current regulation also requires that at least one-third of a Bank's aggregate annual funding allocation to its Homeownership Set-Aside Programs be to assist first-time homebuyers. The proposed rule would make a technical revision to clarify that the one-third allocation requirement applies to the amount of set-aside funds ''allocated'' by the Bank for first-time homebuyers, not the amount of set-aside funds actually used by them, because the Bank cannot control whether sufficient numbers of first-time homebuyers ultimately request set-aside funds in a given year. If an insufficient number of first-time homebuyers request set-aside subsidies, a Bank would not be considered in violation of the allocation requirement as long as it allocated the required amount.

In addition, the proposed rule would make a substantive revision to the one-third allocation requirement to allow the Banks to include owner-occupied rehabilitation as a permissible use within the one-third allocation. FHFA considered whether to eliminate the one-third first-time homebuyer allocation requirement, which would enable Banks, in their discretion, to provide additional set-aside funds to households for owner-occupied rehabilitation. While the Banks currently may establish specific Homeownership Set-Aside Programs for owner-occupied rehabilitation using some or all of the remaining two-thirds set-aside funding allocation, eliminating the one-third first-time homebuyer allocation would enable allocation of even more set-aside funds for owner-occupied rehabilitation. A substantial need for owner-occupied rehabilitation funds exists in many Bank districts, and demand is likely to increase as the country's population ages.[12] Expanding the scope of the one-third allocation requirement to include owner-occupied rehabilitation could facilitate additional funding for home repairs and accessibility modifications for households including the elderly, persons with disabilities, and military veterans.

While FHFA recognizes the substantial need for more funds for owner-occupied rehabilitation for low- or moderate-income households, it is also important that all Banks continue to support the entry of first-time homebuyers into the homeownership market. The national homeownership rate has fallen from its peak of 69.2 percent at the end of 2004 to 63.9 percent as of September 30, 2017.[13] The

[11] A Bank would be required to allocate at least 50 percent of its total annual AHP funds to its General Fund, and may allocate up to 40 percent of its total annual AHP funds to Homeownership Set-Aside Programs. If the Bank allocates the maximum 40 percent to the latter programs, then it has 10 percent remaining for allocation to its General Fund and any Targeted Funds. That amounts to 60 percent if only a General Fund is established, or 60 percent total for both the General Fund and any Targeted Funds established.

[12] *Housing America's Older Adults,* Harvard Joint Center for Housing Studies, September 2, 2014. *http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs-housing_americas_older_adults_2014-ch4.pdf.*

[13] *Quarterly Residential Vacancies and Homeownership,* Third Quarter 2017, October 31, 2017, U.S. Census Bureau. *https://www.census.gov/housing/hvs/files/currenthvspress.pdf.*

significant need for funding for first-time homebuyers is demonstrated by the fact that the Banks consistently have exceeded the one-third allocation requirement for first-time homebuyers since 1995, the year Homeownership Set-Aside Programs were first authorized by regulation. The 11 Banks have provided more than 80 percent of their set-aside funds each year to first-time homebuyers. In 2016, approximately 90 percent of the households receiving set-aside funds were first-time homebuyers.

Accordingly, rather than eliminating the one-third first-time homebuyer allocation requirement, the proposed rule would expand the scope of the requirement to include households for owner-occupied rehabilitation. While the proposed change could allow a Bank to allocate its entire one-third allocation to households for owner-occupied rehabilitation, FHFA believes this is highly unlikely in light of the Banks' record of allocating most of their set-aside funds to first-time homebuyers. Notably, in 2016, the Banks allocated only 10 percent of their total set-aside funds for owner-occupied rehabilitation. The proposed change could encourage Banks to increase their set-aside funding allocations for owner-occupied rehabilitation, while continuing their support for first-time homebuyers.

The proposed rule would also provide that a Bank's board of directors may not delegate to a committee of the board the responsibility for adopting its Homeownership Set-Aside Program policies, for the reasons discussed earlier.

Allocation to Targeted Funds. Proposed § 1291.12(c)(1) would provide the Banks with a new authority to allocate annually, in the aggregate, up to 40 percent of a Bank's required annual AHP contribution to a maximum of three Targeted Funds established by the Bank. Targeted Funds would be administered through a competitive application scoring process developed by each Bank, pursuant to the requirements in proposed § 1291.25. The purpose of the Targeted Funds is to enable a Bank to target specific affordable housing needs within its district that are either unmet, have proven difficult to address through the existing Competitive Application Program, or align with objectives identified in the Bank's strategic plan. Proposed § 1291.12(c)(2) would require the Banks to transfer any uncommitted Targeted Fund amounts to the General Fund for awards to alternates in the General Fund in the same calendar year.

Permitting the Banks to establish Targeted Funds would help address challenges the Banks experience when trying to target specific affordable housing needs within their districts, especially in a single AHP funding period. Banks report that the existing regulatory scoring requirements can affect their efforts to fully address affordable housing needs within their districts. For example, Banks have indicated that they would like greater ability to target the affordable housing needs of specific geographic areas or populations, or to act in response to a disaster. The use of Targeted Funds focused on a specific geographic area or population or in response to a disaster could serve this purpose.

FHFA's regulations require each Bank's board of directors to adopt a strategic business plan that describes how its business activities will achieve its mission. The regulations require that each plan describe how the Bank will maximize activities that further the Bank's housing finance and community lending mission.[14] The Banks would be able to use Targeted Funds to improve their ability to address their strategic objectives related to affordable housing.

The current regulation already provides the Banks a degree of flexibility to address multiple housing priorities within a given AHP funding period. The Banks can allocate up to 50 points out of a total of 100 under the Bank First and Second District Priorities to emphasize multiple housing needs in their districts. However, some Banks have indicated that they find it difficult to allocate points, test, adjust, and balance the different scoring criteria in a manner that enables them to award subsidies to multiple housing priorities in the same funding period. Establishing a Targeted Fund with a dedicated funding allocation, for example, to a particular housing need, would guarantee that projects serving that housing need receive awards pursuant to the competitive process under that Fund, while other projects would receive awards under the competitive General Fund, thereby serving multiple housing needs in the same funding period.

FHFA believes that the use of Targeted Funds would be appropriate provided they are operated pursuant to a competitive scoring process to ensure a transparent and objective process for awarding funds. FHFA also believes that limitations should be imposed on the size of the Targeted Funds to ensure that funds continue to be available to address a broad spectrum of affordable housing needs within each district under the General Fund. Accordingly, the proposed rule would authorize each Bank to allocate annually up to 40 percent of its total annual AHP funds to Targeted Funds subject to a phase-in period.

FHFA is mindful that the use of Targeted Funds could introduce new risks to the Banks given the targeted nature of each Fund. Proposed § 1291.20(c)(1) would require the Banks adopt and implement controls for ensuring that each Targeted Fund is designed to receive sufficient numbers of applicants for the amount of AHP funds allocated to the Targeted Fund to facilitate a genuinely competitive scoring process so that specific project sponsors or members are not specially advantaged. To further address the potential new risks, proposed § 1291.20(b) would authorize each Bank to establish initially only one Targeted Fund, but would enable the Bank to increase the number of its Targeted Funds to a maximum of three pursuant to a phase-in period. In addition, as provided in proposed § 1291.13(a) and (b), a Bank would not be allowed to establish or administer a Targeted Fund unless at least 12 months have passed since the publication of the Targeted Community Lending Plan and the Bank identifies in the Plan the affordable housing needs to be addressed by that Targeted Fund. This advance notice would help ensure that the Targeted Fund is designed in an open and objective manner to generate sufficient interest for holding a competitive scoring funding round. The advance notice also may serve to encourage potential sponsors to consider developing projects that address the affordable housing needs set by the Targeted Fund and submit applications to the Fund.

Although FHFA is not proposing that the Banks' Targeted Community Lending Plans be subject to approval by FHFA, FHFA may request that the Banks submit an advance copy to FHFA before releasing it to the public. This would provide FHFA an opportunity to review the Plans and provide comments as needed, particularly in the initial years of the Funds. Proposed § 1290.6(c) would also require that the Targeted Community Lending Plans be published on the Banks' public websites, consistent with current practice at most Banks.

The Banks would identify in their Targeted Community Lending Plans the specific affordable housing needs, supported by empirical data, that the Targeted Funds will address. The Banks' AHP Implementation Plans would describe how the Targeted Funds will address these housing needs

[14] 12 CFR 1239.31.

through the specific funding allocations and scoring criteria.

FHFA specifically requests comments on the benefits and risks of allowing the Banks to establish Targeted Funds. FHFA also requests comments on whether the proposed allocation of 40 percent of total annual AHP funds to Targeted Funds is an appropriate percentage, or whether the percentage should be higher or lower.

Acceleration of funding. Current § 1291.2(b)(3) containing the discretionary authority for a Bank to accelerate future required annual AHP contributions to its current year's Program would move unchanged to proposed § 1291.12(d) except for certain clarifying technical edits.

Proposed § 1291.13 Targeted Community Lending Plan; AHP Implementation Plan

Targeted Community Lending Plan. The Banks' boards of directors currently are required to adopt Targeted Community Lending Plans as part of their community support programs under FHFA's Community Support regulation. These Plans are focused largely on targeted economic development needs in the Banks' districts. As discussed, the proposed rule would amend § 1290.6(a)(5) of the Community Support regulation [15] to require the Banks to include in their Plans market research on affordable housing needs in their districts, and their identification and assessment of those affordable housing needs that are significant. The Banks would be required to specify, from among those identified needs, the affordable housing needs they will address through their funding allocations and scoring criteria under their General Funds and any Bank Targeted Funds and Homeownership Set-Aside Programs, as further discussed under the AHP Implementation Plans below. The identified needs to be addressed through the Banks' General Funds and Homeownership Set-Aside Programs must be included in their Targeted Community Lending Plans at least six months before the beginning of the Plan year.

In addition, the proposed rule would amend the Community Support regulation to provide that a Bank's board of directors may not delegate to a committee of the board, Bank officers, or other Bank employees the responsibility to adopt or amend the Targeted Community Lending Plan as previously discussed.

[15] *See* 12 CFR 1290.6(a)(5).

The proposed rule would also make technical changes to the language in § 1290.6(a)(5) to clarify the Plan requirements.

The proposed changes discussed above would ensure that the Targeted Community Lending Plans are results-oriented and useful to FHFA in assessing the Banks' progress towards addressing the housing challenges of low- or moderate-income households in their districts. The proposed changes would increase the emphasis on accountability and results in the Targeted Community Lending Plans.

FHFA specifically requests comments on the benefits of the proposed expansion of the contents of the Targeted Community Lending Plans and their linkage to the AHP Implementation Plans. In addition, FHFA requests comments on whether the proposed expansion of the contents of the Targeted Community Lending Plans will impede the Banks' ability to respond to disasters through the AHP.

AHP Implementation Plan

Requirements for each Fund. The current provision containing the requirements for the Banks' AHP Implementation Plans would move from § 1291.3 to proposed § 1291.13(b). Currently, each Bank must include in its AHP Implementation Plan its requirements for its Competitive Application Program, including its scoring methodology, and any Homeownership Set-Aside Programs. The proposed rule would require a Bank to include those requirements in its AHP Implementation Plan for its General Fund and any Targeted Funds established by the Bank. For a Targeted Fund, a Bank would also be required to include in its AHP Implementation Plan controls that ensure the Targeted Fund is designed to receive sufficient numbers of applicants for the amount of AHP funds allocated to the Fund to facilitate a genuinely competitive scoring process, as required in § 1291.20(c)(1).

Linkage to Targeted Community Lending Plan. The proposed rule would require that a Bank include in its AHP Implementation Plan the specific funding allocation amounts for its General Fund and any Bank Targeted Funds and Homeownership Set-Aside Program, including how the one-third allocation for the Homeownership Set-Aside Program will be apportioned with respect to first-time homebuyers and households for owner-occupied rehabilitation. The Banks' scoring criteria for each Fund must flow logically from the analyses and identified housing needs in the Banks' Targeted Community Lending Plans, which should lead ultimately to AHP awards meeting those housing needs.

Applications to multiple Funds. The proposed rule would require a Bank to include in its AHP Implementation Plan the Bank's policy on how it will decide under which Fund to approve a project that applies to more than one Fund and is competitive under all of them, pursuant to § 1291.24(d).

Optional Bank district eligibility requirements. Consistent with the existing requirement in § 1291.5(c)(15), the proposed rule would also provide in the AHP Implementation Plan section of the regulation (proposed § 1291.13(b)(7)) that a Bank must include in its AHP Implementation Plan any optional Bank district eligibility requirements adopted by the Bank pursuant to proposed § 1291.24(c).

Re-use of repaid AHP direct subsidy. The requirement in current § 1291.3(a)(7) for a Bank to include in its AHP Implementation Plan its requirements for re-use of repaid AHP direct subsidy, if adopted by the Bank pursuant to current § 1291.8(f)(2), would be removed. Repayment of subsidy under § 1291.8(f)(2) depends upon an AHP-assisted household selling its home during the AHP five-year retention period, as required under the AHP owner-occupied retention agreement. As elaborated below under the Agreements section, FHFA is proposing to remove the owner-occupied retention agreement requirement. Therefore, there would be no repayment of subsidy by the household and § 1291.8(f)(2) would become moot.

Retention agreements. As noted above, because FHFA is proposing to remove the owner-occupied retention agreement requirement, the Banks' requirements for such retention agreements would no longer be required to be included in the AHP Implementation Plan. The Banks' retention agreement requirements for rental projects would continue to be included in the AHP Implementation Plan.

No delegation. Current § 1291.3(a) prohibits a Bank's board of directors from delegating to Bank officers or other Bank employees the responsibility to adopt, and make any amendments to, the AHP Implementation Plan. The proposed rule would also provide that the Bank's board of directors may not delegate these responsibilities to a committee of the board.

Proposed § 1291.14 Advisory Councils

The current provisions addressing the membership and duties of the Banks'

Advisory Councils would move from § 1291.4 to proposed § 1291.14, with several clarifications.

Representatives from for-profit organizations. The Bank Act requires that each Bank appoint an Advisory Council of persons drawn from ''community and not-for-profit organizations'' actively involved in providing or promoting low- and moderate-income housing in its district.[16] Consistent with long-standing agency guidance, the proposed rule would clarify that ''community organizations'' may include for-profit organizations.

Recommendations on Bank Targeted Community Lending Plans. FHFA's Community Support regulation requires the Banks to consult with their Advisory Councils and other groups in developing and implementing their Targeted Community Lending Plans. *See* 12 CFR 1290.6(a)(5)(iii). Proposed § 1291.14(d)(1)(ii)(A) would include the parallel requirement for the Advisory Councils to provide recommendations to the Banks on their Targeted Community Lending Plans, and any amendments thereto.

No delegation. The proposed rule would clarify that a Bank's board of directors may delegate to a committee of the board, but not to Bank officers or other Bank employees, the responsibility to appoint persons as members of the Advisory Council. However, for the reasons discussed above, the proposed rule would provide that a Bank's board of directors may not delegate to a committee of the board, Bank officers, or other Bank employees the responsibility to meet with the Advisory Council at the quarterly meetings required by the Bank Act.[17]

Proposed § 1291.15 Agreements

Current § 1291.9 governing the AHP contractual agreements that must be in place between the Banks and members, and between the members and project sponsors or project owners, would move to proposed § 1291.15. The proposed rule would make a number of changes and clarifications to the provisions in this section, as discussed below.

Notice to Bank of LIHTC project noncompliance. Current § 1291.9(a)(5)(ii) requires that members' AHP agreements with project sponsors state that such parties shall meet the AHP project monitoring requirements. The AHP monitoring requirements do not require the Banks to conduct monitoring of AHP projects that received LIHTCs during the AHP 15-year retention period. Nor are LIHTC project sponsors required to send reports to the Banks of LIHTC noncompliance. Noncompliance with LIHTC income-targeting and rent requirements is the same as or substantially equivalent to noncompliance with AHP income-targeting and rent requirements. Although LIHTC project noncompliance is rare, instances of noncompliance with LIHTC income-targeting or rent requirements can occur during the AHP retention period, which would mean that the projects' incomes or rents likely are also in noncompliance with similar AHP requirements. However, the noncompliance would not come to the attention of a Bank during the AHP retention period because it is not monitoring the projects.

To address the possibility of such noncompliance by LIHTC projects, proposed § 1291.15(a)(5)(ii) would require the members' AHP agreements with LIHTC project sponsors to include a provision requiring the sponsors to agree to provide prompt written notice to the Bank if the project is in noncompliance with the LIHTC income-targeting or rent requirements at any time during the AHP 15-year retention period. A corresponding requirement that the Bank review such LIHTC project noncompliance notices received from project sponsors during the AHP retention period would be included in proposed § 1291.50(c)(1)(ii).

FHFA specifically requests comments on the practicality of this requirement, and whether it should also be required of project sponsors in the event of noncompliance by projects with the income-targeting or rent requirements of the government housing programs discussed under Monitoring below.

Owner-occupied retention agreements. The proposed rule would eliminate the requirement in current § 1291.9(a)(7) for a retention agreement under which AHP-assisted households must repay AHP subsidy to the Bank if they sell or refinance their homes under certain circumstances during the AHP five-year retention period. The proposed rule would also make conforming changes to remove references to the owner-occupied retention agreements elsewhere in the regulation.

The owner-occupied retention agreement provides, specifically, that in the event of a sale or refinancing of the home by the AHP-assisted household during the five-year retention period, an amount equal to a pro rata share of the AHP subsidy that financed the purchase or rehabilitation of the unit, reduced for every year the household owned the unit, shall be repaid by the household to the Bank from any net gain realized upon the sale or refinancing, unless:

(A) The unit was assisted with a permanent mortgage loan funded by an AHP subsidized advance;

(B) the unit is sold to a very low-, or low- or moderate-income household; or

(C) following a refinancing, the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph.

The purpose of the retention agreement is to discourage ''flipping'' of the home by requiring households to repay AHP subsidy if they sell the home during the AHP retention period, unless one of the exceptions applies. The AHP provides subsidies which enable very low- and low- or moderate-income households to purchase or rehabilitate their homes and reap the benefits of wealth creation from homeownership. The AHP subsidy is not intended to be used by investors or landlords to purchase or rehabilitate and quickly sell homes to take advantage of rapidly appreciating housing prices in a neighborhood. The AHP retention agreement requirement is consistent with the retention agreement requirements of other government housing programs, such as HUD's HOME Investment Partnerships Program (HOME), for households receiving subsidy for purchasing or rehabilitating owner-occupied units.

FHFA recognizes the moral hazard risk that may be associated with using subsidy intended to provide housing to low- or moderate-income households to flip properties. However, homes purchased by AHP-assisted households, by virtue of their low prices, are not typically located in neighborhoods with rapidly appreciating housing prices that would encourage flipping, especially given the low amount of AHP subsidy provided to the households—averaging $6,311 per household in 2016—although exceptions may exist. Most AHP-assisted households do not sell their homes during the five-year retention period and, if they do, they usually sell to another low- or moderate-income household or have no net gain, so the retention agreement does not apply in most situations, making its value questionable. Moreover, the underlying policy of the AHP has always been that the purpose of the AHP subsidy is to enable low- or moderate-income households to receive the benefits of homeownership including appreciation in the value of their homes and, thus, to minimize any AHP subsidy repayments. Repayments of AHP subsidy may be a financial burden on the households.

[16] *See* 12 U.S.C. 1430(j)(11).

[17] 12 U.S.C. 1430(j)(11).

The Banks have also cited the administrative burdens on themselves and their members of having to obtain and track repayments of generally very small amounts of subsidy, obtaining the documentation to calculate whether there is a ''net gain'' on the sale, and determining whether the subsequent purchaser is a low- or moderate-income household. In particular, the Banks have noted the complications of trying to determine the net gain where a household used the AHP subsidy to rehabilitate its home without an accompanying purchase.

These considerations appear to outweigh the potential for deterring rare instances of flipping. Accordingly, FHFA is proposing to eliminate the retention agreement requirement for owner-occupied units. FHFA specifically requests comments on whether a retention agreement of some duration is necessary or desirable to ensure that AHP funds are being used for the statutorily-intended purposes and whether there are viable ways to deter potential flipping and address moral hazard risks other than through retention agreements (*e.g.,* a prohibition against flipping in the AHP subsidy documentation). FHFA also requests comments on whether the proposed increase in the maximum permissible grant to households from $15,000 to $22,000 under the Homeownership Set-Aside Program, discussed below, should impact this decision.

If, based on the comments received and other relevant factors, FHFA decides to retain an owner-occupied retention agreement requirement in the final rule, FHFA is raising a number of issues below for consideration.

Notice to the Bank. FHFA requests comments on whether a retention agreement, if retained in the final rule, should require that notice of a sale or refinancing be provided to both the Bank and its designee (typically the member), rather than to one or the other. This would facilitate Program operations by giving the Bank simultaneous notice. Also, it could facilitate repayment of AHP subsidy to the Bank in cases where a member subsequently fails and is subject to receivership actions by other federal agencies. Some Banks already require notice to the Bank.

AHP subsidy repayment calculation. FHFA requests comments on what subsidy repayment method should be required, if a retention agreement requirement is retained in the final rule. The current regulation requires the household to repay a pro rata portion of the subsidy from any net gain (unless an exception applies), but does not define ''net gain.'' A majority of the Banks calculate the net gain as the sales price minus the original purchase price, purchaser and seller paid costs, and capital improvement costs, and then apply the pro rata repayment requirement. Other Banks calculate the subsidy repayment amount using net proceeds identified on the Closing Statement, deducting the outstanding senior mortgage debt from the sales price, but adding the full amount of the AHP subsidy originally provided to the household. The calculation does not credit the household with its investments (principal payments, down payment, and substantive capital improvements), meaning there are always net proceeds (*i.e.,* the amount of the AHP subsidy).

FHFA reviewed the subsidy repayment requirements of other government housing programs and, in particular, HUD's HOME Investment Partnership Program (HOME). One approach under this program calculates net proceeds as the sales price minus outstanding superior debt and seller paid costs, with the household recovering its entire investment first from the net proceeds, the Bank then recovering the subsidy on a pro rata basis, and any remaining net proceeds returned to the household. FHFA requests comments on the merits and disadvantages of this approach and the net gain approach discussed above from the standpoint of the AHP-assisted households and the Banks, and whether there are other subsidy repayment approaches FHFA should consider if a retention agreement requirement is retained in the final rule.

Proxies for determining that a subsequent purchaser is low- or moderate-income. FHFA also requests comments on what approaches should be specified in the retention agreement, if retained in the final rule, that would provide a reasonable basis to assume that the subsequent purchaser of an AHP-assisted unit is likely to be low- or moderate-income, including proxies that could serve this purpose. The subsequent purchaser of an AHP-assisted unit is not receiving any AHP subsidy and, therefore, has no reason or obligation to provide income documentation to the Bank or member indicating whether it is low- or moderate-income. This has made it difficult for the Banks and their members to determine subsequent purchaser incomes in order to apply the subsidy repayment exception.

FHFA requests comments on what proxies would be reasonable for assuming a subsequent purchaser's income, including the following: Certification from the subsequent purchaser or a third party that the subsequent purchaser's income is at or below the low- or moderate-income limit; evidence that the subsequent purchaser is receiving direct homebuyer assistance from another government program with household income targeting requirements substantially equivalent to those of the AHP; purchase price of the AHP-assisted unit is less than the median home price in the area; the AHP-assisted unit is located in a census tract or block group where at least 51 percent of the households are low- or moderate-income; or Federal Housing Administration (FHA) or other underwriting standards indicate that the income required to purchase the AHP-assisted unit at the purchase price is low- or moderate-income.

AHP subsidy repayment exception for $1,000 amount. FHFA also requests comments on whether there should be an exception to subsidy repayment in the retention agreement, if retained in the final rule, where the amount of AHP subsidy subject to repayment, after calculating the net proceeds or net gain, is $1,000 or less.

As discussed above, maintaining a subsidy repayment requirement in the retention agreement could help deter potential, but rare, flipping during the retention period. Setting a *de minimis* threshold of $1,000 may promote the goal of deterring flipping, while at the same time not financially burdening low- or moderate-income borrowers who may opt to sell their homes during their retention periods. It would also reduce the administrative obligations of the Banks and members associated with calculating and collecting pro rata shares of the AHP subsidies.

Termination of AHP subsidy repayment obligation. FHFA also requests comments on whether, if a retention agreement requirement is retained in the final rule, the rule should clarify that the obligation to repay AHP subsidy to a Bank shall terminate not only after any event of foreclosure, but also after transfer by deed in lieu of foreclosure, assignment of an FHA mortgage to HUD, or death of the owner(s) of the unit, which would be consistent with agency guidance.

Retention agreements for rental projects. The AHP 15-year retention agreement requirement for rental projects in current § 1291.9(a)(8) would be retained in proposed § 1291.15(a)(7), with several proposed changes discussed below. Current § 1291.9(a)(8) provides that if a rental project is sold or refinanced during the 15-year retention period, the full amount of the

AHP subsidy must be repaid to the Bank, unless the project continues to be subject to a retention agreement incorporating the income-eligibility and affordability restrictions committed to in the AHP application for the duration of the retention period, or the households are relocated under certain circumstances specified in the regulation. The requirement to repay the full amount of AHP subsidy, instead of a pro rata amount, is intended to discourage rental projects from being sold before the end of the retention period and converted to projects with market rate rents that low- or moderate-income households can no longer afford.

Notice to the Bank. As with owner-occupied agreements discussed above, FHFA requests comments on whether the retention agreement for rental projects should require that notice of a sale or refinancing of the rental project during the AHP 15-year retention period be provided to both the Bank and its designee, rather than to one or the other. This would facilitate Program operations by giving the Bank simultaneous notice, and could facilitate repayment of AHP subsidy to the Bank in cases where a member subsequently fails and is subject to receivership actions by other federal agencies.

Transfer or assignment. Proposed 1291.15(a)(7) would clarify that the retention agreement would apply not only to a sale of the rental project, but also to a transfer or assignment of title or deed, during the retention period, as these forms of conveyance are the functional equivalent of sales.

Project sponsor qualifications. Current § 1291.5(c)(10) provides that a project sponsor must be qualified and able to perform its responsibilities as committed to in the AHP application. Proposed § 1291.21(b) on eligible applicants would clarify that a project sponsor includes all affiliates and team members such as the general contractor.

In addition, the proposed rule would add a requirement in the Agreements section at proposed § 1291.15(b)(2) that the Bank's AHP subsidy application or other related form include project sponsor qualifications criteria that evaluate the ability of the project sponsor (including all affiliates and team members such as the general contractor) to perform the responsibilities committed to in the AHP application. The project sponsor qualifications section of the form would be required to include a requirement for the project sponsor to provide certifications or respond to specific questions about whether the project sponsor (and affiliates and team members such as the general contractor) have engaged in misconduct as defined and imputed in FHFA's Suspended Counterparty Program regulation,[18] or as defined by the Bank. The Bank's AHP subsidy disbursement or other related form would also be required to include a requirement for similar certifications or questions for the project sponsor to complete prior to each disbursement of AHP subsidy.

The purpose of these requirements is to enable a Bank to identify any misconduct by the project sponsor so that the Bank can determine whether it should accept the AHP application or approve requests from the sponsor for disbursement of AHP subsidy. The proposed rule would provide that the project sponsor's affiliates and team members such as the general contractor must also meet the project sponsor qualification requirements in order for the project sponsor to be eligible for AHP subsidy.

The Suspended Counterparty Program regulation defines ''covered misconduct'' generally to mean a conviction or administrative sanction imposed by a federal agency involving fraud, embezzlement, theft, conversion, forgery, bribery, perjury, making false statements or claims, tax evasion, obstruction of justice, or any similar offense, in connection with a mortgage, mortgage business, mortgage securities, or other lending product. For AHP project sponsor qualifications purposes, a Bank may choose to define ''covered misconduct'' more broadly to also include, for example, convictions or administrative sanctions imposed by a state agency, pending investigations, noncompliance by the project sponsor (and affiliates and team members such as the general contractor) with other funders' requirements, pending claims, pending litigation, settlements of criminal or administrative charges, or criminal activity involving financial transactions more generally.

Application to existing AHP projects and units. Current § 1291.9(c) on the application of AHP regulatory amendments to existing AHP projects would move to proposed § 1291.15(c). Under this section, the provisions of the AHP regulation, as they may be amended from time to time, are deemed incorporated into all agreements between Banks, members, project sponsors, and project owners receiving AHP subsidies. However, no amendment to the regulation affects the legality of actions taken prior to the effective date of the amendment. Thus, if the owner-occupied retention agreements are eliminated in the final rule, households that currently have such agreements would no longer be subject to them upon the effective date of the final rule. Where households repaid AHP subsidy prior to the effective date of the final rule, they would not be entitled to a refund of their payments because the final rule would not have retroactive effect.

Proposed § 1291.16 Conflicts of Interest

Current § 1291.10 addressing conflicts of interest by Bank directors, Bank employees and Advisory Council members would move unchanged to proposed § 1291.16.

Subpart C—General Fund and Targeted Funds

Proposed § 1291.20 Establishment of Programs

General Fund. Proposed § 1291.20 would replace existing § 1291.5(a) by requiring that instead of establishing a Competitive Application Program, each Bank would be required to establish a General Fund pursuant to the requirements of this part.

Targeted Funds. Proposed § 1291.20(b) would provide that a Bank may establish, in its discretion, a maximum of three Targeted Funds pursuant to the requirements of this part.

To address the risks of Targeted Funds, given their targeted nature, the proposed rule would include phase-in requirements for the Funds. Specifically, unless otherwise directed by FHFA, a Bank would be permitted to establish:

(1) One Targeted Fund;

(2) Two Targeted Funds to be administered concurrently, provided that the Bank administered at least one Targeted Fund in any preceding year; or

(3) Three Targeted Funds to be administered concurrently, provided that the Bank administered at least two Targeted Funds in any preceding year.

In addition, as discussed under the funding allocation provisions in proposed § 1291.12(c)(1) above, the allocations to Targeted Funds would be subject to phase-in requirements.

Eligibility requirements. As discussed earlier, proposed § 1291.20(c)(1) would require the Bank to adopt and implement controls, as specified in its AHP Implementation Plan, for ensuring that each Targeted Fund is designed to receive sufficient numbers of applicants for the amount of AHP funds allocated to the Targeted Fund to facilitate a genuinely competitive scoring process.

[18] 12 CFR part 1227.

In addition, as under the current regulation, a Bank would not be authorized to adopt additional eligibility requirements for the General Fund and any Targeted Funds established by the Bank except as specifically authorized in the regulation.

Proposed § 1291.21 Eligible Applicants

Member applicants. The eligibility requirement for member applicants in existing § 1291.5(b)(2) would move unchanged to proposed § 1291.21(a), with the exception that the reference to the Competitive Application Program would be replaced with references to the General Fund and any Targeted Funds established by the Bank.

Project sponsor qualifications. The eligibility requirements in existing § 1291.5(c)(10) for project sponsors applying for AHP funds in conjunction with members would move to proposed § 1291.21(b), with the addition of the proposed documentation requirements discussed in the Agreements section above under proposed § 1291.15(b)(2). The purpose of these requirements is to enable a Bank to identify any misconduct by the project sponsor so that the Bank can determine whether it should accept the AHP application or approve requests from the sponsor for disbursement of AHP subsidy. The proposed rule would provide that the project sponsor's affiliates and team members such as the general contractor must also meet the project sponsor qualification requirements for the project sponsor to be eligible for AHP subsidy.

Proposed § 1291.22 Funding Periods; Application Process

The funding period and application process requirements in existing § 1291.5(b)(1), (b)(3), and (b)(4) would move unchanged to proposed § 1291.22.

Proposed § 1291.23 Eligible Projects

Eligibility requirements. Proposed § 1291.23 would be a new section setting forth the eligibility requirements for AHP projects, but comprising a number of existing provisions related to what constitutes an eligible project in current § 1291.5(c). This section would include the eligibility requirements for owner-occupied and rental housing projects, project feasibility, timing of AHP subsidy use, retention agreements for rental projects, and compliance with fair housing laws. The existing eligibility requirement for a five-year retention agreement for owner-occupied projects in § 1291.5(c)(9)(i) would be removed, as discussed earlier.

Tenant income qualification in rental projects. FHFA considered altering the requirement in current § 1291.5(c)(1)(ii) for tenant income qualification in rental projects that are occupied at the time of the application for AHP subsidy. Under the current provision, for rental projects that are not occupied at the time of application and are approved for AHP subsidy, the households must have incomes meeting the income targeting commitments in the approved AHP application upon initial occupancy of the rental units. For projects involving the purchase or rehabilitation of rental housing that are occupied at the time of AHP application, the households must have incomes meeting the income targeting commitments in the approved AHP application at the time of the AHP application. The purpose of qualifying current occupants' incomes at the time of AHP application is to discourage displacement of occupants whose incomes are higher than the income commitments in the approved AHP application.

FHFA considered allowing occupied projects to satisfy income targeting commitments at initial occupancy as with unoccupied projects. This change would increase the chances of occupied projects scoring successfully under the AHP where they target lower incomes than the current income mix of the occupants in the project. This could encourage more AHP subsidy awards for preservation of affordable rental housing through purchase or rehabilitation, which is an important housing priority in many areas. It would also account for tenant moves during the renovation process and the fact that new residents at different income levels may occupy the project at initial occupancy, when the rehabilitation is complete.

At the same time, FHFA is concerned that such a change could encourage displacement of current occupants whose incomes exceed those committed to in the approved AHP application because the project sponsor must meet its income targeting commitments. To mitigate this concern, proposed § 1291.23(a)(2)(ii) would provide that, in order for the project to satisfy the income targeting commitments at initial occupancy, the project must have a relocation plan for those occupants not meeting the income targeting commitments that is approved by one of the project's primary funders. In the absence of a relocation plan, the households in the project must satisfy the income targeting commitments at the time of AHP application, as required in the current regulation.

FHFA specifically requests comments on how to encourage preservation of rental projects through the AHP while discouraging displacement of current occupants with higher incomes, including whether the proposed requirement for a relocation plan approved by the primary funder is reasonable.

Proposed § 1291.24 Eligible Uses

Eligible uses of AHP subsidy. Proposed § 1291.24 would group together a number of provisions in current § 1291.5(c) related to the eligible uses of AHP subsidy. These include the use of the AHP subsidy for purchase, construction, or rehabilitation of owner-occupied or rental housing, the need for AHP subsidy determination, reasonable project costs determinations, reasonable financing costs determinations, eligible counseling costs, eligible refinancing, optional Bank district eligibility requirements, and calculation of the AHP subsidy.

Prohibited uses of AHP subsidy. Proposed § 1291.24 would also include the prohibited uses of AHP subsidy set forth in current § 1291.5(c)(16). These prohibited uses are certain prepayment fees, fees for Bank cancellation of a subsidized advance commitment, and processing fees charged by members for providing AHP direct subsidies to a project.

Proposed § 1291.24(b)(4) would add that, consistent with current practice, capitalized reserves, periodic deposits to reserve accounts, operating expenses, and supportive services expenses are not eligible uses of AHP subsidy.

Need for AHP subsidy. The need for AHP subsidy eligibility requirement in current § 1291.5(c)(2) would move to proposed § 1291.24(a)(3), with clarifying changes. The current regulation requires that to be eligible for AHP subsidy, rental projects must demonstrate: (1) A need for the AHP subsidy; (2) developmental and operational feasibility; and (3) cost reasonableness. The regulation states that the estimated sources of funds for a project must equal its estimated uses of funds, as reflected in the project's development budget. Where the project's uses of funds exceed its sources of funds, the difference demonstrates a funding gap and a need for AHP subsidy.

Some stakeholders have pointed to the regulatory language, as well as preamble language from an earlier AHP rulemaking, to support their contention that, for rental projects, the Banks are only required to review the project's development budget and not its operating pro forma in determining its need for AHP subsidy. However, long-standing policy and practice has been that the Banks review both the project

development budget and the operating pro forma in determining the project's need for AHP subsidy.

As a policy matter, it is important for the Banks to review a rental project's operating pro forma as well as its development budget. The Bank must review the project's development budget to confirm a funding gap between the sources and uses of funds. The Bank must review the project's operating pro forma to assess the reasonableness of cash flow. A debt coverage ratio or cash flow amount that exceeds the Bank's feasibility standards can indicate that the project does not need the full amount of AHP subsidy requested, especially in cases where the primary funder's requirements or special project circumstances do not explain or justify the excess.

The following discussion clarifies how the Banks should evaluate under the proposed rule that a project's cash flow and costs are reasonable, and how the Banks should perform the need for subsidy analysis in cases where (1) capitalized reserves exceed a Bank's project cost guidelines; (2) supportive services are provided; and (3) the cash flow or debt coverage ratio exceeds a Bank's project cost guidelines.

Capitalized Reserves in Projects' Development Budgets. Development budgets frequently include capitalized reserves, although AHP subsidy may not be used to fund such reserves under the Bank Act and AHP regulation. At reasonable levels, capitalized reserves are appropriate to ensure that projects remain viable throughout their AHP 15-year retention periods. Project development budgets must incorporate all capitalized costs, including reserves.

When capitalized reserves exceed the project cost guidelines established by a Bank, the Bank must evaluate the reasonableness of these reserves. Such analysis includes assessing whether the capitalized reserves are required by the project's primary funders. However, the Bank has the discretion to determine that the reserves are not reasonable even if they are required or permitted by a project's primary funders.

In very rare instances with non-LIHTC projects, a Bank may allow a project to exceed the Bank's project cost guidelines for capitalized reserves even when the primary funders do not require additional reserves. For LIHTC projects, the limited partnership agreement typically serves as the final determinant on the maximum allowable amount of capitalized reserves.

Supportive Services Expenses in Operating Pro Formas. AHP subsidy may not fund supportive services expenses under the Bank Act and AHP regulation. As part of the project application review, FHFA expects the Banks to require a separate supportive services budget that captures income and expenses for all supportive services activities to ensure they can be reasonably offered. However, for projects where a government entity provides operating subsidies that fund both housing operating costs and supportive services and these operating subsidies cannot be readily bifurcated, the supportive services income and expenses should be captured in the project's operating pro forma.

When a project expects to pay for supportive services expenses from cash flow, the supportive services budget should indicate project cash flow as the income source. A Bank must review the supportive services budget to determine whether there is adequate income to pay for the supportive services.

Cash Flow and Its Impact on Need for AHP Subsidy. In instances where a project's operating pro forma reflects cash flow or a debt coverage ratio that exceeds the Bank's feasibility guidelines, the Bank must assess whether the excess cash flow could have reasonably been used for debt service on a larger loan and thereby could supplant part, or all, of the AHP subsidy. FHFA acknowledges that it is difficult for a completed affordable housing project to obtain an increase in its debt commitments. In such cases, the Bank should determine if the project continues to require the full amount of the AHP subsidy and recapture subsidy as appropriate. A project may exceed a Bank's feasibility guidelines for cash flow or debt coverage ratio when the underwriting guidelines of the primary funder of the project require higher thresholds and the Bank concurs that the requirements are reasonable or when reasonable written support from the project sponsor demonstrates that circumstances require additional cash flow or a higher debt coverage ratio to maintain the operational viability of the project.

In summary, FHFA proposes to clarify in the regulation that the Banks must base the need for AHP subsidy determination for rental projects on both the project's development budget and its operating pro forma. This will help ensure that projects will not be over-subsidized through AHP funds.

Sponsor-provided permanent financing to homeowners. The requirements in current § 1291.5(c)(2)(ii) for sponsor-provided permanent financing would move unchanged to proposed § 1291.24(a)(3)(ii). The regulation provides that when a Bank determines the need for AHP subsidy in homeownership projects where the sponsor extends permanent financing to the homebuyer, the sponsor's cash contribution (which is included in the project's cash sources of funds) shall include the present value of any payments the sponsor is to receive from the buyer, including any cash down payment from the buyer, plus the present value of any purchase note the sponsor holds on the unit. If the note carries a market interest rate commensurate with the credit quality of the buyer, the present value of the note equals the face value of the note. If the note carries an interest rate below the market rate, the present value of the note shall be determined using the market rate to discount the cash flows.

Some stakeholders requested that FHFA remove this provision, citing the complexity of the calculation. Others suggested that the sponsors should be treated like revolving loan funds under the regulation, as their financing model essentially operates as a revolving loan fund. As further discussed below under proposed § 1291.29, FHFA is considering undertaking a separate rulemaking for revolving loan funds, which could include sponsor-provided permanent financing. FHFA specifically requests comments on whether the current AHP requirements for sponsor-provided permanent financing are reasonable, including whether the sponsors have a need for AHP subsidy in light of their particular financing model, and whether the current method in the regulation for determining their need for AHP subsidy understates or overstates the amount of AHP subsidy needed. FHFA also requests comments on whether sponsors using this financing model should be considered revolving loan funds and, if so, whether they should be subject to current or different AHP revolving loan fund requirements.

Optional Bank district eligibility requirements—maximum subsidy limits. Proposed § 1291.24(c) would retain the provision in current § 1291.5(c)(15) allowing a Bank, in its discretion, to adopt a requirement that the amount of AHP subsidy requested for a project does not exceed limits established by the Bank as to the maximum amount of AHP subsidy available per member, per project, or per project unit in a single AHP funding period, with several proposed changes. Any such eligibility requirements adopted by a Bank would be required to be included in its AHP Implementation Plan.

Maximum subsidy limit per member each year. The proposed rule would remove the reference to ''per member

each year'' as unnecessary because it can be factored into the subsidy limit per member in a single AHP funding period, especially as no Bank currently conducts more than one AHP funding period per year.

Maximum subsidy limit per project sponsor. The proposed rule would revise the regulation to allow a Bank to adopt a maximum subsidy limit per project sponsor in a single AHP funding period. A Bank might choose to establish such a limit in order to provide opportunities for smaller or less experienced project sponsors to compete successfully for AHP subsidies. On the other hand, a project sponsor limit could prevent worthy projects developed by larger, more experienced sponsors from receiving AHP subsidy. FHFA specifically requests comments on the potential advantages and disadvantages of allowing the Banks to impose a maximum subsidy limit per project sponsor.

Number of maximum subsidy limits per Fund. Consistent with agency guidance for the Competitive Application Program, the proposed rule would provide that a Bank may establish only one maximum AHP subsidy limit per member, per project, or per project unit for the General Fund and for each Targeted Fund, which shall apply to all applicants to the specific Fund. This would also apply to the proposed maximum subsidy limit per sponsor. The purpose of this requirement is to ensure consistency, clarity, and a level playing field for all applicants to a specific Fund, and reduce administrative burden for the Banks in trying to determine different subsidy limits for different regions or types of projects.

The proposed rule would further provide that the maximum AHP subsidy limit per project or per project unit may differ for each Fund. This is intended to allow the Banks to create maximum subsidy limits for each Fund that address the specific characteristics of project applicants for that Fund. For instance, a Bank may want to establish a higher maximum subsidy limit per project for a Targeted Fund focused on certain geographies or development types in light of differences in housing development costs, such as high-cost areas or projects where most units contain three or more bedrooms to accommodate larger households.

Applications to multiple Funds—subsidy amount. Proposed § 1291.24(d) would provide that if an AHP application for the same project is submitted to more than one Fund in the same AHP funding period, each application must be for the same amount of AHP subsidy. This would ensure that the project demonstrates the same need for subsidy in each application. If the project sponsor applied for a different amount of subsidy in each application, it would raise questions about whether the project would be over-subsidized if awarded the higher amount of subsidy.

Proposed § 1291.25 Scoring Methodology

Bank scoring methodology. The proposed rule would revise current § 1291.5(d) by removing the required scoring framework specified in the regulation, with its mandatory scoring criteria, minimum scoring points allocations and related definitions, and requiring each Bank to devise its own scoring methodology. Each Bank's scoring methodology would be required to set forth competitive application scoring criteria, related definitions and point allocations under a 100-point scale for the Bank's General Fund and any Targeted Fund. The Bank would be required to score applications received for a particular Fund pursuant to the applicable scoring methodology for that Fund.

The Bank's scoring methodology may be different for each Fund. The Bank's scoring criteria for each Fund must be justified in the Bank's Targeted Community Lending Plan and specified in its AHP Implementation Plan. The Bank would need to design its scoring criteria and point allocations to ensure that the Bank will meet the outcome requirements for the statutory and regulatory priorities under proposed § 1291.48, as further discussed below. Each scoring methodology may include scoring criteria addressing specific affordable housing needs in the Bank's district (Bank district priorities) that differ from the affordable housing needs specified under the statutory and regulatory priorities, as long as the outcome requirements specified in proposed § 1291.48 are achieved.

FHFA considered whether to allow the Banks complete discretion to determine how to allocate and award their AHP funds by removing the scoring criteria for the current Competitive Application Program and the current minimum and maximum AHP funding allocation requirements for that program and the Homeownership Set-Aside Program. While such discretion might enable the Banks to better target specific affordable housing needs in their districts, it is not included in the proposed rule for several reasons.

First, it would allow a Bank to allocate and approve all of its AHP funds through noncompetitive processes. In contrast, the current regulation requires each Bank generally to award at least 65 percent of its total AHP funds through the Competitive Application Program,[19] which helps ensure access to the limited pool of AHP funds available each year for a wide variety of applicants. Second, it would allow a Bank to allocate all of the AHP funds for only one purpose, such as homeownership or rental housing, which would be inconsistent with the statute which requires that both homeownership and rental housing be funded.[20] Third, it would contravene the statutory requirement that FHFA establish priorities for the use of the AHP funds, as only the Banks would be establishing such priorities.[21]

In-district projects. The proposed rule would retain the option under the Bank First District Priority in current § 1291.5(d)(5)(vi)(L) for a Bank to adopt in its scoring methodology a scoring criterion for housing located in the Bank's district, but would provide at proposed § 1291.25(c) that a Bank shall not use the scoring criterion as a way to exclude all out-of-district projects from its General Fund. This provision strengthens the statement in the preamble to the 2006 AHP final rule that a Bank should not use the scoring criterion in this way by explicitly prohibiting it in the regulation.

Scoring tie-breaker policy. The proposed rule would require the Banks to establish scoring tie-breaker policies to address the possibility of two or more applications receiving identical scores in the same AHP funding period where there is insufficient AHP subsidy to approve all of the tied applications. The proposed requirements for the scoring tie-breaker policies are consistent with guidance FHFA has provided to the Banks.

Proposed § 1291.26 Approval of AHP Applications

Approvals generally. Consistent with the application approval requirements in the current regulation, the proposed rule would provide generally that a Bank's board of directors shall approve (*i.e.,* award) applications for AHP subsidy under the General Fund and any Bank Targeted Funds that meet all of the applicable AHP eligibility requirements, in descending order

[19] As discussed previously, if a Bank with lower earnings allocates the alternative maximum amount of $4.5 million to its Homeownership Set-Aside Programs, it may allocate less than 65 percent of its total AHP funds through its Competitive Application Program.

[20] 12 U.S.C. 1430(j).

[21] 12 U.S.C. 1430(j)(9)(B).

starting with the highest scoring application until the total funding amount for the particular AHP funding period, except for any amount insufficient to fund the next highest scoring application, has been approved.

Alternates. As under the current Competitive Application Program, for the General Fund, the Bank's board of directors would be required to approve at least the next four highest scoring applications as alternates, but in a change from the current regulation, would be required to fund those alternates within one year of approval if any previously committed AHP subsidies become available. This is intended to ensure that Banks award AHP funds to alternates in the General Fund as opposed to selecting alternates but transferring AHP funds from the General Fund to the Bank's Homeownership Set-Aside Program or Targeted Funds instead. The Banks may need to consider selecting more than four alternates under their General Fund in order to be able to fully commit any uncommitted funds that transfer from their Targeted Funds to their General Fund. For any Bank Targeted Funds, the Bank may, in its discretion, approve alternates.

As discussed above under the scoring tie-breaker policies in proposed § 1291.25(d), and consistent with current FHFA guidance to the Banks, where there is insufficient AHP subsidy to approve all tied applications, the Bank must approve a tied application as an alternate if it does not prevail under the scoring tie-breaker methodology, or if it is tied with another application but requested more subsidy than the amount of AHP funds that remain to be awarded.

Applications to multiple Funds—approval under one Fund. The proposed rule would provide that if an application for the same project is submitted to more than one Fund at a Bank in an AHP funding period and the application scores high enough to be approved under each Fund, the Bank shall approve the application under only one of the Funds, which the Bank shall select pursuant to the Bank's policy established in its AHP Implementation Plan. For example, a Bank's policy could provide that any project that is competitive in multiple Funds will be approved under the General Fund.

Re-ranking of scored applications and alternates. To satisfy the outcome requirements for the statutory and regulatory priorities in proposed § 1291.48, a Bank would be permitted to deviate from the normal descending ranking selection order only to the minimum extent necessary by re-ranking scored applications and alternates meeting the outcome requirements above the lowest scoring applications and alternates not meeting the outcome requirements. A Bank would be required to describe the possibility of re-ranking in its AHP Implementation Plan.

FHFA specifically requests comments on possible approaches for re-ranking applications to meet the outcome requirements while at the same time maximizing the extent to which the highest scoring applications are approved.

No delegation. The proposed rule would provide that a Bank's board of directors may not delegate to a committee of the board the responsibility to approve or disapprove the AHP subsidy applications and alternates under the Bank's General Fund and any Targeted Funds, for the reasons discussed above.

Proposed § 1291.27 Modifications of Approved AHP Applications

The provisions for modifications of approved AHP applications would be moved from current § 1291.5(f) to proposed § 1291.27, and would include a number of clarifying and other changes.

Approval of modifications. The proposed rule would provide that if the requirements for a modification (other than a request for AHP subsidy increase) are satisfied, the Bank must approve the modification request. This a change from the current regulation which allows for Bank discretion in approving a modification request. One of the requirements for approving a modification is that the project, as modified, must rescore successfully in its original AHP funding period. If a project rescores successfully and other modification requirements are satisfied, there should be no reason for the Bank to fail to approve the modification.

Cure of noncompliance. The proposed rule would add a requirement that before a Bank may approve a modification request, it must have first requested that the project cure any AHP noncompliance, and subsequent to the request, the cure was unsuccessful within a reasonable period of time. This is consistent with the proposed new ''waterfall'' provisions for remedying project noncompliance discussed in the Remedial Actions for Noncompliance section. The proposed waterfall provision would provide that in the event of project noncompliance, a project must first attempt to cure the noncompliance within reasonable period of time before the Bank may consider approving a project modification or recapturing AHP subsidy from the project.

Rescoring of application. The current regulation includes a requirement that the application, as reflective of the changes requested, must continue to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank. Questions have arisen as to what it means to score high enough where a Bank also approved applications as alternates during the original funding period. The proposed rule would clarify that the application must continue to score as high as the lowest ranking alternate that was not just selected as an alternate but approved for funding by the Bank in the application's original funding period.

Good cause. The current regulation also requires that there be good cause for a modification, with the Bank's analysis and justification for the modification documented in writing. The proposed rule would clarify that remediation of project noncompliance is not, in and of itself, good cause for a modification. There must be some other reasonable justification for the modification, such as a change in market conditions, or loss of a major employer in the community, that makes it difficult to find households at the incomes committed to in the project's AHP application to occupy the targeted units in the project. Otherwise, there would be less of an incentive to cure noncompliance if project sponsors knew they could simply request a modification of the project terms to no longer be in noncompliance.

The proposed rule would also make technical changes to the language to clarify any ambiguity about the requirement that requests for subsidy increase modifications must also meet the requirements for approval in paragraph (a) of this section.

Proposed § 1291.28 Procedures for Funding

The procedures for AHP funding would carry over from existing § 1291.5(g) to proposed § 1291.28 with two proposed changes.

Notification under subsidy re-use programs. Current § 1291.5(g)(6) requiring project sponsor notification to the Bank and member of the reuse of repaid AHP direct subsidy where the Bank has authorized a subsidy re-use program under § 1291.8(f)(2) would be removed. Subsidy re-use programs would no longer be operable if subsidy repayment obligations are removed in conjunction with discontinuation of the owner-occupied retention agreements.

Bank board duties and delegation. Current § 1291.5(h) addressing Bank board duties and delegations would be removed as the duties and delegations would be addressed elsewhere in the proposed rule.

Proposed § 1291.29 Lending and Re-Lending of AHP Direct Subsidy by Revolving Loan Funds

Current § 1291.5(c)(13) addressing the requirements for lending and re-lending of AHP direct subsidies by revolving loan funds would move to proposed § 1291.29, with proposed changes related to the proposed elimination of the owner-occupied retention agreement requirement and other issues discussed below.

The authority for the Banks to provide AHP direct subsidies to revolving loan funds for purposes of lending and re-lending was added in the AHP regulation in 2006. The revolving loan fund provisions were designed for distinct projects in specific locations, or for pipelines of expected projects meeting specific criteria that the revolving loan fund anticipates funding and that would be specified in its AHP application. Under the regulation, the revolving loan fund may be scored on the specific criteria it establishes in its AHP application for its pipeline of projects, without having to actually identify specific projects in the AHP application.

These types of revolving loan funds that were expected to be able to participate in the AHP either no longer exist or have evolved into different financing models. Current revolving loan funds are financing programs that utilize interest and principal payments on current loans to make new loans. The sources and uses of revolving loan funds are typically hypothetical in nature, based on future lending expectations, and the prospective households requiring assistance are yet to be determined. Revolving loan funds have faced challenges meeting certain AHP eligibility requirements, such as the subsidy repayment requirement under the five-year owner-occupied retention agreement, and receiving sufficient numbers of points under certain scoring criteria to receive an AHP award for purposes of lending and re-lending the grant. Revolving loan funds have received AHP grants for use as a one-time pass-through to identified projects, not for lending and re-lending of the subsidy to such projects or anticipated future projects.

To address these challenges, FHFA is considering undertaking a separate rulemaking on the current AHP revolving loan funds provisions. FHFA requests comments on the current AHP revolving loan fund provisions and how the financing mechanisms of revolving loan funds could be used successfully with AHP subsidies. FHFA specifically requests comments on why certain AHP scoring criteria have been difficult to meet, how the AHP retention periods could be satisfied, how AHP subsidy would be repaid in the event of project noncompliance, and how the revolving loan fund can demonstrate a need for the AHP subsidy. FHFA also requests comments on whether and how the proposed outcome requirements for the statutory and regulatory priorities discussed under proposed § 1291.48 might facilitate use of AHP subsidies by revolving loan funds.

The proposed rule would eliminate the requirement for retention agreements for all owner-occupied units, including those funded by revolving loan funds. FHFA specifically requests comments on the potential positive or negative impacts of eliminating the owner-occupied retention agreement requirement for revolving loan funds.

Proposed § 1291.30 Use of AHP Subsidy in Loan Pools

Current § 1291.5(c)(14) addressing the requirements for use of AHP subsidies in loan pools would move to proposed § 1291.30, with the proposed change to remove the requirement for owner-occupied retention agreements in current paragraph § 1291.5(c)(14)(iii).

The authority for the Banks to provide AHP subsidy to loan pools was added in the AHP regulation in 2006. The regulation establishes specific conditions under which a Bank may provide AHP subsidies under its Competitive Application Program for the origination of first mortgage loans or rehabilitation loans with subsidized interest rates to AHP-eligible households through a purchase commitment by an entity that will purchase and pool the loans.

FHFA is not aware that any loan pools meeting these conditions have applied for AHP subsidy since the regulatory authority was added in 2006. FHFA is also unaware of any loan pools of this type currently existing in the housing market. Therefore, FHFA is considering removing the loan pool provisions from the regulation. FHFA specifically requests comments on whether there are loan pools currently operating in the market that meet the conditions in the regulation, how the loan pools are addressing current housing market needs, and the potential positive or negative impacts of eliminating the owner-occupied retention agreement requirement for loan pools.

Subpart D—Homeownership Set-Aside Programs

Proposed § 1291.40 Establishment of Programs

The current provision addressing Bank establishment of Homeownership Set-Aside Programs would move from § 1291.6(a) to proposed § 1291.40. The proposed rule would emphasize that these programs are optional by adding that a Bank may establish such programs ''in its discretion.'' The proposed rule would also include a requirement that a Bank's justifications for establishing such programs be included in its Targeted Community Lending Plan, as provided in proposed § 1291.13(a).

Proposed § 1291.41 Eligible Applicants

The proposed rule would move the current provision on applications from members unchanged from § 1291.6(b) to proposed § 1291.41.

Proposed § 1291.42 Eligibility Requirements

The provisions in current § 1291.6(c) on eligibility requirements would move to proposed § 1291.42, with several proposed changes discussed below.

Adoption of additional eligibility requirements. FHFA has provided informal guidance to Banks about the extent to which the Banks may adopt eligibility requirements under their Homeownership Set-Aside Programs beyond those set forth in this section. Consistent with the guidance, the proposed rule would clarify that the Banks may not adopt additional eligibility requirements under their Homeownership Set-Aside Programs except those related to household eligibility, pursuant to proposed § 1291.42(b)(3).

One-third allocation requirement—first-time homebuyers and owner-occupied rehabilitation. As discussed in the funding allocation section under proposed § 1291.12(b) above, the current regulation requires that at least one-third of a Bank's annual Homeownership Set-Aside Program funding allocation be for first-time homebuyers. The proposed rule would authorize the Banks to include first-time homebuyers and households receiving set-aside funds for owner-occupied rehabilitation in the one-third allocation. Conforming language for households receiving set-aside funds for owner-occupied rehabilitation would be added in this section of the proposed rule.

Maximum grant amount. Current § 1291.6(c)(3) states that members may provide set-aside grants to households in an amount up to a maximum of $15,000 per household, as established by the Bank in its AHP Implementation Plan, which limit shall apply to all households. The proposed rule would authorize the Banks to provide up to $22,000 per household, subject to automatic annual upward adjustment in accordance with FHFA's Housing Price Index (HPI).

The purpose of the proposed increase in the subsidy limit is to respond to increases in the costs associated with buying or rehabilitating homes in high cost areas, as well as the high costs of certain types of rehabilitation generally. It would also bring the subsidy limit in line with changes in the HPI since 2002, when the $15,000 subsidy limit was established in the regulation. For example, the HPI shows that $15,000 in January 2002 has approximately the same buying power as $21,500 today.[22] The proposed rule would also clarify that a Bank may establish a different maximum subsidy per household limit for each Homeownership Set-Aside Program it establishes.

Many of the Banks have set their subsidy limits below $15,000, with a number of Banks at $5,000. In 2016, the average set-aside grant per household was $6,311. Several stakeholders recommended that FHFA increase the subsidy limit due to increases in the costs associated with buying or rehabilitating homes in high cost areas, which in some areas are substantially higher than the rest of the country. Banks located in high cost areas are more likely to take advantage of a higher subsidy limit because of the higher costs in their districts.

Increasing the subsidy limit could also have a significant impact on housing rehabilitation in all districts. The demand for rehabilitation is likely to increase as the country's population ages.[23] Expenses for certain types of rehabilitation, such as replacing a roof, windows, doors, or HVAC system, or installing a wheelchair ramp, often exceed $15,000. The older a home, the more likely it needs repairs and systems replaced. According to the U.S. Census Bureau, 18.7 percent of all housing units in the United States were built before 1950 and are, therefore, more likely to require rehabilitation.[24] A higher subsidy limit would increase the Banks' ability to address high costs associated with buying and rehabilitating homes. While lower subsidy limits help ensure that more households have access to set-aside subsidies, the households may need to find additional sources of funds to help them pay for the full costs associated with buying or rehabilitating a home.

Bank adoption of the proposed higher subsidy limit could result in fewer households receiving set-aside subsidies, but Banks could choose to offset this by increasing the maximum amount of AHP funds they allocate to their set-aside programs from 35 to 40 percent, as would be permitted under the proposed rule. In addition, most Banks have established subsidy limits below the current $15,000 limit. Thus, FHFA believes that an increase in the subsidy limit to $22,000 is not likely to result in a significant overall reduction in the number of households assisted by the Banks under their set-aside programs.

The proposed rule would provide that the $22,000 subsidy limit would be subject to an automatic annual upward adjustment only, in accordance with the HPI. As noted above, the current $15,000 subsidy limit was established in the regulation in 2002. The regulation does not provide for an automatic HPI adjustment. Increasing the subsidy limit to $22,000 would reflect increases in the HPI since that time. Rather than periodically revise the subsidy limit by regulation to account for future housing price increases, the proposed rule would provide for automatic HPI upward adjustments to the subsidy limit. The subsidy limit would adjust upward, but not downward, in response to changes in the HPI. In the event of a decrease in the HPI, the subsidy limit would remain at its then-current level until the HPI increased above the subsidy limit, at which point the subsidy limit would adjust to that higher level. FHFA would notify the Banks annually of the maximum subsidy amount based on the HPI.

FHFA specifically requests comments on any potential positive and negative impacts of increasing the subsidy limit from $15,000 to $22,000, including whether the subsidy limit should be higher or lower. FHFA also requests comments on use of the HPI to automatically adjust the subsidy limit upward over time, and whether other housing price adjustment indices would be preferable and why.

Proposed § 1291.43 Approval of AHP Applications

Current § 1291.6(d) would move unchanged to proposed § 1291.43. It provides that a Bank shall approve applications for AHP direct subsidy under its Homeownership Set-Aside Program in accordance with the Bank's criteria governing the allocation of funds.

Proposed § 1291.44 Procedures for Funding

Current § 1291.6(e) on the procedures for funding would move unchanged to proposed § 1291.44.

Subpart E—Outcome Requirements for Statutory and Regulatory Priorities

Proposed § 1291.48 Outcome Requirements for Statutory and Regulatory Priorities

The current regulation's point-based project selection system serves as a means of ensuring that project awards reflect housing priorities established by the Bank Act.[25] The regulation achieves prioritization of these statutory priorities by requiring each Bank, in developing its 100-point scoring system, to allocate at least 5 points each to two statutory priorities—a combined 10 points minimum.[26] The Bank Act also requires that FHFA establish priorities for the use of the AHP funds.[27] To implement this requirement, the current regulation includes five regulatory priorities addressing specific housing needs, with each such scoring criterion required to receive a minimum of 5 points, except for one scoring criterion receiving a minimum of 20 points—a combined 40 points minimum. The remaining maximum of 50 points are allocated by the Banks to priority housing needs in the Banks' district that are selected by the Banks.

There are a number of benefits associated with the current scoring system. It establishes a degree of uniformity among various scoring criteria that all of the Banks must include, thereby prioritizing certain pressing affordable housing needs existing throughout the country, and facilitating project sponsors' applications for AHP subsidy at multiple Banks. In addition, it provides flexibility for the Banks in how they allocate the points beyond the required minimums to target specific housing needs in their districts, the ability to

[22] *See* FHFA HPI, *https://www.fhfa.gov/DataTools/Downloads/pages/house-price-index.aspx.*

[23] *Housing America's Older Adults,* Harvard Joint Center for Housing Studies, September 2, 2014. *http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs-housing_americas_older_adults_2014-ch4.pdf.*

[24] *See* U.S. Census Bureau, *2015 American Community Survey, https://www.census.gov/programs-surveys/ahs/.*

[25] 12 U.S.C. 1430(j)(3).

[26] 12 CFR 1291.5(d)(5)(i), (ii).

[27] 12 U.S.C. 1430(j)(9)(B).

choose which types of populations to target within certain scoring criteria, and the ability to include other district housing needs selected by the Banks, which may be allocated up to half of all points.

After considering input from Bank CIOs and stakeholders, FHFA believes that the Banks may be able to more effectively target specific housing needs in their districts through a more flexible scoring system. FHFA considered how to incorporate in the regulation greater flexibility for the Banks to design their own scoring systems, while at the same time to ensure that FHFA is establishing priorities for the use of the AHP funds as required by the statute. FHFA believes that the proposed rule would achieve an appropriate balance between these two objectives by authorizing the Banks to design their own scoring systems, subject to each Bank's AHP awards under its scoring system meeting specific outcome requirements established by FHFA in the regulation. The Banks would be required to demonstrate satisfaction of the outcome requirements each year. FHFA notes that comparable housing programs (*e.g.,* HUD's HOME Investment Partnerships Program and Housing Opportunities for Persons with HIV/AIDS) are administered pursuant to outcome-based evaluation criteria. The proposed AHP outcome requirements are further discussed below.

Statutory Priorities for Government Properties and Project Sponsorship

Proposed § 1291.48(a) would require that, each year, each Bank must award at least 55 percent of the total AHP funds allocated to its General Fund and any Bank Targeted Funds to projects that meet the priority for the use of donated or conveyed government-owned or other properties (''government properties priority''), or the priority for projects sponsored by a not-for-profit organization or government entity (''project sponsorship priority''). These priorities, which correspond to those established by the Bank Act,[28] would be retained unchanged from current § 1291.5(d)(5)(i), (ii). While certain projects may meet both of these priorities, any awards counted towards meeting one of the priorities could not also be counted towards meeting the other priority, in order not to distort the calculation of the 55 percent.

Under the proposed standard, a Bank could satisfy the outcome requirement if it awarded 55 percent or more of total funds to projects meeting one of the priorities, and none to the other priority. FHFA considered requiring a Bank to award a specified minimum percentage of total funds to each priority. However, in the Program's experience, a relatively limited number of projects satisfy the government properties priority. During the period 2012 through 2016, for example, only 2.5 percent of total AHP funds were awarded to projects that used properties meeting the government properties priority. Most AHP projects currently meet the project sponsorship priority. Accordingly, FHFA expects that the overwhelming majority of projects that would satisfy the proposed outcome requirement would do so by meeting the project sponsorship priority.

FHFA also considered requiring a Bank to award at least 55 percent of its required annual AHP contribution (which includes the funds allocated not only to its General Fund and any Bank Targeted Funds but also to any Bank Homeownership Set-Aside Programs) to these two statutory priorities. FHFA anticipates that most Banks will take advantage of the opportunity to expand their allocations of AHP funds to their Homeownership Set-Aside Programs if the proposed increase in the annual set-aside allocation from 35 to 40 percent is adopted in the final rule. However, grant recipients under the Homeownership Set-Aside Program are households, not project sponsors, and therefore cannot meet the project sponsorship priority. In addition, the households generally do not purchase government properties. Thus, funds awarded under Homeownership Set-Aside Programs generally could not be counted towards meeting these statutory priorities. To enable the Banks to take full advantage of the proposed higher set-aside allocation, the proposed rule would limit this proposed outcome requirement to 55 percent of total funds allocated to the General Fund and any Bank Targeted Funds.

Statutory Priority for Purchase of Homes by Low- or Moderate-Income Households

Proposed § 1291.48(b) would require that, each year, each Bank must award at least 10 percent of its annual required AHP contribution to low- or moderate-income households, or to projects targeting such households, for the purchase by such households of homes under any or some combination of the Bank's General Fund, any Bank Targeted Funds, and any Bank Homeownership Set-Aside Programs. This is consistent with the priority in the Bank Act for the purchase of homes by low- or moderate-income families (''home purchase priority'').[29]

Based on the Banks' widespread use of Homeownership Set-Aside Programs since their authorization, the home purchase priority has been consistently prioritized by the Banks, and FHFA expects this to continue given the continuing and significant demand by households for set-aside funds for home purchases. However, because the establishment of Homeownership Set-Aside Programs is optional for the Banks, and under the proposed regulatory priorities outcome requirements discussed below, a Bank would have discretion not to choose home purchase as a housing need in its scoring system, the proposed rule would require that at least 10 percent of a Bank's annual required AHP contribution be awarded to home purchases by low- or moderate-income households.

FHFA specifically requests comments on whether 10 percent of a Bank's annual required AHP contribution constitutes sufficient prioritization for the home purchase priority or whether the percentage should be higher or lower.

Regulatory Priority for Very Low-Income Targeting for Rental Units

The proposed rule would establish an outcome requirement for a regulatory priority for very low-income targeting for rental units. Proposed § 1291.48(c) would provide that, each year, each Bank must ensure that at least 55 percent of all rental units in rental projects receiving AHP awards under the Bank's General Fund and any Bank Targeted Funds are targeted to very low-income households (households with incomes at or below 50 percent of AMI). Targeting for very low-income renters is prioritized in the current regulation through the income-targeting scoring criterion.[30] The proposed rule would maintain a priority for such households through this proposed income-targeting outcome approach.

FHFA specifically requests comments on the utility of this proposed outcome approach, including whether the proposed 55 percent threshold, applicability solely to rental units, and income-targeting at 50 percent of AMI are appropriate.

[28] 12 U.S.C. 1430(j)(3)(B), (C).

[29] 12 U.S.C. 1430(j)(3)(A).

[30] 12 CFR 1291.5(d)(5)(iii).

Regulatory Priorities for Underserved Communities and Populations; Creating Economic Opportunities; and Affordable Housing Preservation

Proposed § 1291.48(d) would establish outcome requirements for three regulatory priorities for housing needs that FHFA considers current and pressing throughout the country. These regulatory priorities are underserved communities and populations; creating economic opportunities; and affordable housing preservation. The proposed outcome requirements for these regulatory priorities would satisfy the statutory requirement that FHFA establish priorities for the use of the AHP funds. Each regulatory priority would comprise a number of specified housing needs identified by FHFA, some of which are in the current regulation. FHFA could also identify other specific housing needs under the regulatory priorities by separate guidance, as new housing needs arise.

The proposed rule would provide that, every year, each Bank shall ensure that at least 55 percent of the Bank's required annual AHP contribution is awarded under the Bank's General Fund and any Bank Targeted Funds to projects that, in the aggregate, meet at least two of the three regulatory priorities by meeting one or more of the specified housing needs included under the regulatory priority, and awarding at least 10 percent of the funds to projects meeting each of such regulatory priorities. If an awarded project meets more than one of the regulatory priorities, it may be counted towards meeting only one of them. If an awarded project meets more than one specified housing need under a regulatory priority, it may be counted towards meeting only one of those housing needs. In addition, an award to a project may not be counted towards meeting a regulatory priority unless the specified housing need that it meets is identified in the Bank's Targeted Community Lending Plan as an affordable housing need the Bank indicated it would address through its AHP scoring criteria.

The specified housing needs proposed under each regulatory priority are described below.

1. Underserved Communities and Populations

Housing for Homeless Households

The current regulation includes housing for homeless households as a mandatory scoring criterion. The proposed rule would retain this housing need under this proposed regulatory priority, but increase the minimum threshold for the number of units reserved for homeless households from 20 to 50 percent to encourage projects dedicated to serving the needs of homeless households. FHFA specifically requests comments on whether this proposed increase is appropriate.

Housing for Special Needs Populations

The current regulation includes housing for special needs populations as one of the eligible housing needs under the Bank First District Priority. The proposed rule would retain this housing need under this proposed regulatory priority, with the following changes. The proposed rule would include only projects that provide supportive services or access to supportive services for the specific special needs populations being served.

These populations have special needs associated with their particular life circumstances that could be addressed by targeted supportive services. Research by the Corporation for Supportive Housing estimates that 1.1 million homes are required for people with special needs, not including the need for units for households experiencing homelessness.[31] The proposed rule also would increase the minimum threshold for the number of units reserved for households with a specific special need from 20 to 50 percent to encourage projects dedicated to serving these populations. FHFA specifically requests comments on whether this proposed increase is appropriate.

The proposed rule would continue to include the elderly, persons recovering from physical abuse or alcohol or drug abuse, persons with AIDS, persons with disabilities, and housing that is visitable by persons with physical disabilities who are not occupants of such housing as special need populations. The proposed rule would expand the list of special needs populations to include formerly incarcerated persons; victims of domestic violence, dating violence, sexual assault or stalking; and unaccompanied youth. These populations could particularly benefit from housing with supportive services targeted to address their specific needs.

In addition, the proposed rule would update the reference to ''persons with AIDS'' to ''persons with HIV/AIDS'' to more closely align it with common nomenclature and in recognition of the fact that persons with HIV experience comparable housing needs to persons with AIDS. The term ''mentally or physically disabled persons'' in the current regulation would similarly be updated to ''persons with disabilities,'' to reflect more commonly acceptable terminology.

Housing for Other Targeted Populations

The proposed rule would also include housing for other targeted populations under this proposed regulatory priority. In contrast to housing for special needs populations, this housing need would include housing that does not necessarily provide supportive services or access to supportive services, as there are specific populations in need of housing who may not require such services. The proposed rule would include as other targeted populations—agricultural workers, military veterans, persons with disabilities, Native Americans, multi-generational households, and households requiring large units. The proposed rule would set the minimum threshold for the number of units reserved for such targeted populations at 50 percent to encourage projects dedicated to serving the needs of these populations. FHFA specifically requests comments on whether the proposed minimum 50 percent threshold is appropriate.

The inclusion of agricultural workers and Native Americans would align with other FHFA goals and programs, specifically, FHFA's Duty to Serve regulation that applies to Fannie Mae and Freddie Mac, under which agricultural workers and Native Americans are identified as high-needs rural populations.[32] Agricultural workers face significant housing challenges due in large part to their low income levels.[33] Migrant and seasonal agricultural workers often have difficulty finding adequate housing and are likely to live in over-crowded conditions.[34] Native Americans also have significant housing needs. According to the U.S. Interagency Council on the Homeless, nearly one in

[31] *http://www.csh.org/wp-content/uploads/2016/10/Total-10-12-16.pdf.*

[32] *See generally,* 12 CFR part 1282.

[33] Sixteen percent of workers earned less than $10,000 from agricultural employment during the previous calendar year, 33 percent had earnings of $10,000 to $19,999, 22 percent earned 20,000 to 29,999, and eight percent earned $30,000 or more. Sixteen percent of respondents reported no income from agricultural employment the previous year. *See https://www.doleta.gov/naws/pages/research/docs/NAWS_Research_Report_12.pdf.*

[34] Crowding is often an issue within agricultural worker housing, as an estimated 31 percent of non-dormitory/barrack-style farmworker housing units are crowded—meaning there is more than one occupant per room, excluding bathrooms. This estimate is over six times the national rate of crowded housing units. Agricultural workers and their families are also more likely to encounter pesticide-related environmental hazards when compared to other populations. *http://www.ruralhome.org/storage/documents/farmworkers.pdf.*

five people residing on tribal lands live in overcrowded conditions. Native Americans also disproportionally live in shelters relative to their population size.[35]

Persons with disabilities would be included as other targeted populations in recognition of the benefits that features such as wheelchair-accessibility and enhancements for people with visual or hearing impairments can provide so that persons with disabilities can live independently.

Military veterans would be included as other targeted populations due to their significant housing needs. The Veterans Administration's *January 2017 Point in Time* counted over 40,000 veterans who were experiencing homelessness on a single night in January 2017. Further, there has been a 1.5 percent increase in the estimated number of homeless veterans nationwide since 2016.[36]

Households requiring large units would be included as other targeted populations in light of the scarcity of affordable 3-, 4- and 5-bedroom unit apartments required to adequately house large households, for example, families with more than three children or with several related adult members.

Finally, multi-generational households would be included as other targeted populations because of their special housing needs. For example, grandparents raising grandchildren may benefit from housing that includes features of elderly projects (such as handrails in bathrooms and hallways) as well as features of family housing (such as outdoor play spaces).

Housing in Rural Areas

The current regulation includes housing in rural areas as one of the eligible housing needs under the Bank First District Priority, and the Banks have discretion to define ''rural area.'' The proposed rule would retain this housing need under this regulatory priority, but would define ''rural area'' according to the definition in FHFA's Duty to Serve regulation in order to align with other FHFA goals and programs.[37] Rural populations generally experience significant and particularized housing needs. According to data in the Housing Assistance Council's Rural Data Portal, the poverty rate for individuals in rural areas is 17.7 percent, compared to 15.4 percent for individuals in the United States as a whole.[38] The Harvard Joint Center for Housing Studies' report, America's Rental Housing 2017, notes that despite the fact that housing costs tend to be lower in rural areas, 40 percent of rural renters across the country are cost burdened.[39]

Rental Housing for Extremely Low-Income Households

The proposed rule would include rental projects in which at least 20 percent of the units are reserved for extremely low-income households under this proposed regulatory priority. A definition of ''extremely low-income household'' would be added in § 1291.1 to mean a household with an income at or below 30 percent of AMI. According to HUD's *2017 Worst Case Housing Needs Report* to Congress, households at the extremely low-income level have severe challenges in obtaining affordable housing. The report notes that only 38 of every 100 affordable units are available for extremely low-income renters, and that the vacancy rate for units affordable to renters with extremely low incomes was less than 4 percent.[40]

This housing need would be measured in dollars awarded to AHP projects in which at least 20 percent of the units are reserved for extremely low-income households to conform to the other housing needs under this proposed regulatory priority, which are also measured in dollars. In contrast, the regulatory priority in proposed § 1291.48(c) for very low-income targeting for rental units, described above, would be measured in the number of rental units reserved for very low-income households. FHFA specifically requests comments on whether the proposed 20 percent minimum threshold for units reserved for extremely low-income households is appropriate.

2. Creating Economic Opportunity

Promotion of Empowerment

The current regulation includes promotion of empowerment as a mandatory scoring criterion. The proposed rule would retain this housing need under this proposed regulatory priority, with the following changes. The proposed rule would add to the list of empowerment services—child care; adult daycare services; afterschool care; tutoring; health services; and workforce preparation and integration.

The current regulation includes daycare as an eligible empowerment service. The proposed rule would replace daycare with child care, which encompasses daycare but is broader in that it includes programs offered not only during the day but outside of work hours and during summers, and programs that target older children. Residents of AHP projects may benefit from having such programs for their children depending on their work schedules and other commitments, thereby enabling them to work and improve their economic situations. Where child care programs are education-based, they may enhance the future economic opportunities of the children residing in AHP projects.

The proposed rule would add adult daycare services as an eligible empowerment service. These services can assist residents in AHP projects who may be caring for parents, or adult children with disabilities, who require supervised care so that the residents may work outside of the home.

Afterschool care would be added as an eligible empowerment service in recognition of the benefits of supervised afterschool programs for children and teens residing in AHP projects. For example, these programs may increase younger residents' future economic opportunities by assisting with schoolwork, encourage interest in the arts or community service, or teach job skills. Further, adult residents may benefit from the knowledge that their children are supervised in the hours before they return from work.

Tutoring would be included as an eligible empowerment service in light of the benefits that supplemental academic assistance may provide to children and teens for educational attainment. Tutoring may also be beneficial to adult residents who require tutoring in basic remedial education or English for limited-English-proficiency residents, for example, in order to obtain or retain work.

Health services would be added as an eligible empowerment service based on the research demonstrating the benefits of integrating health services into affordable housing, thereby enabling residents to stay healthy and continue to work. For example, early findings from a three-year research study by the Center for Outcomes Research and Education and Providence Health and Services in 145 affordable housing projects in Oregon found that integration of health care services (including access to healthy food, health care, nutrition counseling, and mental and behavioral health services) led to a

[35] *https://www.usich.gov/resources/uploads/asset_library/Expert_Panel_on_Homelessness_among_American_Indians%2C_Alaska_Natives%2C_and_Native_Hawaiians.pdf.*

[36] *https://www.va.gov/HOMELESS/pit_count.asp.*

[37] 12 CFR 1282.1.

[38] *http://www.ruraldataportal.org/search.aspx.*

[39] *http://www.jchs.harvard.edu/americas-rental-housing.*

[40] *See https://www.huduser.gov/portal/sites/default/files/pdf/Worst-Case-Housing-Needs.pdf.*

12 percent decrease in health costs per resident per month.[41]

Finally, workforce preparation and integration services would be included as eligible empowerment services because of the benefit that these programs may yield to residents to obtain and retain work. Workforce integration services may help residents with disabilities obtain and retain jobs. Workforce preparation may assist residents with no previous work experience in obtaining skills helpful to securing a job, such as interviewing techniques or other communication techniques, and skills necessary to retain work, such as conflict resolution strategies.

Residential Economic Diversity

The current regulation includes economic diversity as one of the eligible housing needs under the Bank First District Priority. The proposed rule would retain this housing need as empowerment, but would refer to it as ''residential economic diversity'' to align with the usage in FHFA's Duty to Serve regulation and would define it in accordance with the Duty to Serve definition and FHFA's Duty to Serve Evaluation Guidance.

3. Affordable Housing Preservation

Affordable Rental Housing Preservation

The current regulation does not include any scoring criteria specifically for affordable rental housing preservation, but some Banks have included this housing need under their Bank Second District Priority. The proposed rule would include this housing need under the this proposed regulatory priority, and would include the specific affordable rental housing preservation programs and housing needs identified in FHFA's Duty to Serve regulation in order to align with related FHFA goals and programs. These are:

(a) Rental housing with energy or water efficiency improvements;

(b) Section 8. The project-based and tenant-based rental assistance housing programs under section 8 of the U.S. Housing Act of 1937;[42]

(c) Section 236. The rental and cooperative housing program for lower income families under section 236 of the National Housing Act;[43]

(d) Section 221(d)(4). The housing program for moderate-income and displaced families under section 221(d)(4) of the National Housing Act;[44]

(e) Section 202. The supportive housing program for the elderly under section 202 of the Housing Act of 1959;[45]

(f) Section 811. The supportive housing program for persons with disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act;[46]

(g) McKinney-Vento Homeless Assistance. Permanent supportive housing projects subsidized under Title IV of the McKinney-Vento Homeless Assistance Act;[47]

(h) Section 515. The rural rental housing program under section 515 of the Housing Act of 1949;[48]

(i) Low-income housing tax credits. Low-income housing tax credits under section 42 of the Internal Revenue Code of 1986;[49] and

(j) Other comparable state or local affordable housing programs.

Affordable Homeownership Preservation

The current regulation does not include scoring criteria specifically for affordable homeownership preservation, but some Banks have included this housing need, *e.g.,* housing with energy efficiency features, under their Bank Second District Priority. The proposed rule would include this housing need under this proposed regulatory priority, and would specify certain affordable preservation programs that are included in FHFA's Duty to Serve regulation—shared equity homeownership programs and owner-occupied housing with energy or water efficiency improvements.

FHFA specifically requests comments on whether the three proposed regulatory priorities—underserved communities and populations, creating economic opportunities, and affordable housing preservation—constitute significant housing priorities that should be included in the regulation, or whether other housing priorities should be included. FHFA also requests comments on whether the specified housing needs identified under each regulatory priority, or other specific housing needs, should be included in the regulation.

Annual Report

Proposed § 1291.48(e) would require each Bank to submit an annual report to FHFA demonstrating the Bank's compliance with the outcome requirements.

Proposed § 1291.49 Determination of Compliance With Outcome Requirements; Notice of Determination

Under proposed § 1291.49, the Director of FHFA would be required to determine annually each Bank's compliance with the outcome requirements for the statutory and regulatory priorities under proposed § 1291.48. Proposed § 1291.49 would establish procedures, including time periods, for the compliance determination process. These procedures would include issuance of a notice of preliminary determination, an opportunity for the Bank to respond, and issuance of a final determination and whether compliance was feasible, taking into consideration market and economic conditions and the financial condition of the Bank. These proposed procedures are generally analogous to those in the Enterprise Housing Goals regulation.[50]

Requests for Comments on Current Regulatory Scoring System

As discussed above, in determining whether to revise the current AHP regulatory scoring system, FHFA considered how the current mandatory and discretionary scoring criteria address housing priorities established by FHFA and impact the Banks' ability to address specific housing needs in their districts. FHFA requests comments on whether the Banks have sufficient flexibility under the current scoring system to target specific housing needs in their districts, including awarding subsidy to address multiple housing needs in a single AHP funding period. If they do, FHFA requests comments on whether the current regulatory scoring system should be maintained without change, or whether any of the current mandatory scoring criteria and minimum required point allocations should be modified to reflect other specific housing needs. FHFA also requests comments on whether the Bank First and Second District Priorities should be combined and the list of housing needs in the Bank First District Priority eliminated. FHFA notes that the Banks do not currently allocate the full 45 points available to their Bank Second District Priority, and they include multiple housing needs under this Priority, resulting in no one housing need effectively receiving priority under the current scoring system.

[41] *See https://www.nhchc.org/wp-content/uploads/2016/06/linking-health-and-housing-improving-resident-health-and-reducing-health-care-costs-through-affordable-housing-saul.pdf.*

[42] 42 U.S.C. 1437f.

[43] 12 U.S.C. 1715z–1.

[44] 12 U.S.C. 1715l.

[45] 12 U.S.C. 1701q.

[46] 42 U.S.C. 8013.

[47] 42 U.S.C. 11361, *et seq.*

[48] 42 U.S.C. 1485.

[49] 26 U.S.C. 42.

[50] 12 CFR 1282.21.

Subpart F—Monitoring

Proposed § 1291.50 Monitoring Under General Fund and Targeted Funds

The Bank Act requires the AHP regulation to ensure that adequate long-term monitoring is available to guarantee that affordability standards and other AHP requirements are satisfied.[51] The Bank Act also requires the AHP regulation to coordinate AHP activities with other Federal or federally-subsidized affordable housing activities to the maximum extent possible.[52] The current regulation's requirements for long-term monitoring of AHP rental projects are based on those statutory provisions.

Specifically, the current regulation requires the Banks to adopt written policies for monitoring projects and households awarded AHP subsidies under both the Competitive Application Program and Homeownership Set-Aside Programs.

For initial monitoring under the Competitive Application Program, the regulation requires the Banks to monitor owner-occupied and rental projects prior to, and within a reasonable period after, project completion by:

- Reviewing documentation to determine whether AHP eligibility requirements have been satisfied, services and activities committed in the approved AHP application have been provided, and AHP retention agreements are in place; and
- Reviewing back-up project documentation (such as rent rolls and households' W–2 forms) on a risk-based sampling basis, of household incomes and rents maintained by the project sponsors to verify that the household incomes and rents comply with the commitments in the approved AHP applications. In practice, for initial monitoring, the Banks review the project sponsor documentation and rent rolls at initial monitoring, and review other back-up documentation on a risk-basis.

For long-term monitoring under the Competitive Application Program, the regulation generally requires the Banks to monitor completed AHP rental projects commencing in the second year after project completion to determine, at a minimum, whether household incomes and rents comply with the income targeting and rent commitments in the approved AHP applications during the AHP 15-year retention period by:

- Reviewing annual project owner certifications of household incomes and rents for compliance with the AHP application commitments, which may be reviewed on a risk-based sampling basis; and
- Reviewing back-up project documentation for incomes and rents, including project rent rolls, maintained by the project owner, which may also be reviewed on a risk-based sampling basis pursuant to the Bank's risk-based sampling plan.

In practice, for long-term monitoring, the Banks review all of the annual project sponsor certifications but review the rent rolls and other back-up documentation on a risk basis.

The regulation provides that a Bank's written monitoring policies must take into account risk factors such as the amount of AHP subsidy in the project, type of project, size of project, location of project, sponsor experience, and any monitoring of the project provided by a federal, state, or local government entity.

The regulation permits the Banks to develop and implement reasonable sampling plans to monitor rental projects that receive subsidies under the Competitive Application Program as well as households that receive subsidies under the Homeownership Set-Aside Program. The regulation permits the Banks to use the sampling plans to monitor back-up documentation of household incomes and rents. The regulation does not permit the use of sampling plans for monitoring member certifications under the Homeownership Set-Aside Program.

The regulation makes some exceptions to the long-term monitoring requirements for certain types of AHP rental projects. Specifically, for AHP projects that also receive LIHTC, the Banks may rely on the long-term monitoring of LIHTC household incomes and rents performed by state-designated housing credit agencies that administer LIHTC, and the Banks do not have to review any monitoring documentation.

The regulation also makes an exception to the long-term monitoring requirements for AHP rental projects that received funds from federal, state, or local government entities provided the Bank is able to demonstrate the following: (1) The compliance profile of the program is substantively equivalent to AHP requirements; (2) the governmental entity has the ability to monitor the project; (3) the governmental entity agrees to provide reports to the Bank on the project's incomes and rents for the full AHP 15-year retention period; and (4) the Bank reviews the reports from the governmental entity to confirm compliance with its monitoring policies. However, this monitoring option has not proved feasible for the Banks.

Initial monitoring of AHP projects receiving LIHTC. The proposed rule would retain the initial monitoring requirement that the Banks review certifications from LIHTC project sponsors that the residents' incomes and the rents comply with the income-targeting and rent commitments in the approved AHP application. The proposed rule would also include a requirement, consistent with Bank practice, that the Banks review the project's rent rolls. However, the proposed rule would remove the requirement that the Banks review other back-up documentation on incomes and rents at initial monitoring for LIHTC projects. The proposed rule would also streamline the LIHTC monitoring provisions for greater conciseness.

In 2016, 51 percent of AHP projects received LIHTC allocations, comprising 62 percent of total AHP competitive funds awarded. The current regulation has allowed the Banks to rely on the long-term monitoring of LIHTC projects by state-designated housing tax credit allocation agencies since 2006 because the LIHTC income, rent, and long-term retention period requirements are the same as or substantially equivalent to those of the AHP, and because LIHTC projects rarely go out of compliance with those requirements. As noted by some stakeholders, the same analysis for long-term monitoring of LIHTC projects could be applied to initial monitoring of LIHTC projects and, therefore, the Banks should also be permitted to rely at initial monitoring upon the income and rent monitoring performed by the state-designated tax credit allocation agencies.

The initial rationale for allowing the Banks to rely on monitoring of LIHTC projects by the state-designated tax credit allocation agencies continues to hold true—the LIHTC income, rent, and long-term retention period requirements are substantially equivalent to those of the AHP, the state-designated tax credit allocation agencies monitor the projects, and LIHTC projects rarely go out of compliance with the income and rent requirements.[53] Further, multiple

[51] 12 U.S.C. 1430(j)(9)(C).

[52] 12 U.S.C. 1430(j)(9)(G).

[53] A minimum of 40 percent of units in an LIHTC project must be affordable to tenants earning 60 percent of AMI, or a minimum of 20 percent of units in an LIHTC project must be affordable to tenants earning 50 percent of AMI. However, the vast majority of LIHTC units serve residents at 50 percent of AMI or below. A HUD report published in December 2016, *Data on Tenants in LIHTC Units as of December 31, 2014,* indicates that the median income for LIHTC households was $17,152. Of all LIHTC units, 81 percent serve households at 50

parties retain a strong incentive to monitor LITHC projects for income and rent compliance.

LIHTC project owners bear responsibility for ensuring that their projects comply with the program's income, rent, and retention period requirements. The owners face severe consequences for noncompliance, which serve as a substantial deterrent to noncompliance. Because LIHTC investors cannot receive the benefits of the tax credits for units that are not in compliance, LIHTC project owners guarantee to their investors that their projects remain in compliance, or must repay investors the amount of tax credits lost plus any penalties or interest levied by the Internal Revenue Service.

LIHTC projects are monitored not only by the state-designated tax credit allocation agencies, but also annually by the LIHTC project owners and LIHTC investors. LIHTC project owners must certify the income of each household at move-in, and must re-certify the income of each household annually.

As noted above, the Banks currently may review LIHTC back-up documentation at initial monitoring on a risk basis. Given the low risks of noncompliance by LIHTC projects, the Banks can establish review schedules for the back-up documentation that are not especially burdensome. For example, a Bank might choose to review LIHTC back-up documentation once or twice during the project's 15-year AHP retention period. Although the administrative burden on the project sponsors to provide, and the Banks to review, LIHTC back-up documentation may not be significant, FHFA believes that eliminating this monitoring requirement would benefit the Banks and project sponsors by reducing their administrative costs.

Notice Requirement for LIHTC Project Noncompliance during AHP Retention Period. Notwithstanding the infrequent instances of LIHTC project noncompliance, in the event of such noncompliance during the AHP 15-year retention period, a Bank likely would not become aware of the noncompliance because the Banks do not monitor LIHTC projects during the retention period. FHFA is proposing to add a requirement, as discussed under proposed § 1291.15(a)(5)(ii) above, that members' monitoring agreements with project sponsors and owners require such parties to provide prompt written notice to the Bank if the LIHTC project goes out of compliance with the applicable LIHTC income-targeting or rent requirements during the AHP 15-year retention period. The proposed rule would add a corresponding requirement in the monitoring section of the regulation that the Banks must review LIHTC project noncompliance notices received from project sponsors or owners during the AHP 15-year retention period. In this way, the Banks would become aware of any noncompliance and could take remedial actions with respect to the project.

The proposed rule would not require that the Bank's AHP agreement with the member or project sponsor or owner include a provision for the project sponsor or owner to send written notice of noncompliance with other government programs to the Banks. As discussed below, the Banks would be receiving other information that would help inform them of potential or actual project noncompliance. The Banks would be required to obtain information from project sponsors or owners on their projects' compliance with these other government programs, as well as the projects' on-going financial viability (''enhanced certifications''), which the Banks obtain currently but to varying degrees. The Banks would also continue to review annual project sponsor certifications. In addition, the noncompliance rates for projects under these other government programs are low.

Initial and long-term monitoring of AHP projects funded by certain other government programs specified in FHFA guidance. The proposed rule would also provide that, for AHP projects funded by certain other government programs specified in separate FHFA guidance, the Banks would only be required to review project sponsor certifications and rent rolls, and not any other back-up documentation, at initial monitoring. For long-term monitoring, the Banks would only be required to review annual project sponsor certifications on incomes and rents, and would not be required to review any back-up documentation for incomes and rents, including rent rolls. FHFA would include in the guidance only government programs that have the same or substantially equivalent rent, income, and retention period requirements as the AHP, very low occurrences of noncompliance with those requirements, and where the monitoring entity has demonstrated and continues to demonstrate its ability to monitor the program. The proposed rule would specify that other compatible government programs, for monitoring purposes, will be set forth in FHFA guidance. FHFA will employ the guidance to remain current with federal program developments.

The FHFA guidance initially would specify the following federal government programs as eligible for this reduced monitoring:

- HUD Section 202 Program for the Elderly;
- HUD Section 811 Program for Housing the Disabled;
- USDA Section 515 Rural Multifamily Program; and
- USDA Section 514 Farmworker Multifamily Program.

Stakeholders requested that FHFA allow the Banks to rely upon the income qualification tests performed by USDA Rural Development and HUD-funded projects at initial monitoring. Further, stakeholders requested that FHFA allow a Bank, in its discretion, for purposes of long-term monitoring, to rely upon the monitoring conducted by HUD and USDA Rural Development, as the Banks are currently allowed to rely on the monitoring of the agency administering LIHTC.

In 2016, approximately two-thirds of AHP projects received funding from other federal programs. FHFA analyzed the extent to which AHP projects also receive subsidies from HUD and USDA programs to determine the extent to which Banks could conceivably rely on HUD and USDA monitoring for these projects. In 2016, 26 percent of AHP projects received HOME Investment Partnerships Program (HOME) financing, 8 percent received Community Development Block Grant (CDBG) funds, and 12 percent received other federal financing, including from USDA. FHFA then analyzed HUD and USDA programs to determine which programs have substantially equivalent rent, income, and retention requirements to the AHP, very low noncompliance rates, and where the monitoring entity has demonstrated and continues to demonstrate its ability to monitor the program. These programs are further discussed below.

HUD Section 202 and 811 Programs. The income, rent and retention period standards for HUD's Section 202 Program for the Elderly and Section 811

percent of AMI or below, while 11 percent serve households between 50.1 percent and 60 percent of AMI. *See https://www.huduser.gov/portal/publications/LIHTCTenantReport-2014.html.* Further, LIHTC projects rarely go out of compliance, with analysis showing that the average LIHTC investor has realized 98 percent of its promised credits, and a cumulative foreclosure rate for 9 percent credits between 1986 and 2014 at 0.04 percent. *See* A CohnReznick Webinar, *The Low Income Housing Tax Credit Program at Year 30: A Performance Update,* January 21, 2016. Slides 24 and 35. *http://ahic.org/images/downloads/Research_and_Education/cohnreznick_lihtc_performance_study.pdf.* Finally, LIHTC carries more stringent retention requirements than the AHP. LIHTC projects must remain affordable for an initial 15-year retention period, and an additional 15-year extended use period.

for Housing the Disabled meet or exceed the AHP standards.[54] Further, HUD monitors eligibility for rental assistance on an annual basis, and has demonstrated and continues to demonstrate its ability to monitor the programs. The Banks have indicated to FHFA that in their experience, there are very low or no instances of noncompliance with AHP-funded Section 202 or Section 811 projects. Congress has not appropriated capital advances for the Sections 202 and 811 programs since 2011. Thus, the proposed reduction in monitoring would only apply to Section 202 and 811 projects in the Banks' existing portfolios or to Section 202 or 811 projects seeking rehabilitation funding.

USDA Section 515 and 514 Programs. There are some differences in the income-eligibility and rent requirements between the Section 515 rural multifamily projects and Section 514 farmworker multifamily projects and those of the AHP. However, in practice, the household incomes served and rents are substantially similar to the AHP standards.[55] Further, USDA has demonstrated and continues to demonstrate its ability to monitor the programs.[56] USDA 514 and 515 projects have low delinquency rates,[57] and the Banks have indicated to FHFA that in their experience, there are very low or no instances of noncompliance with AHP-funded Section 515 and 514 projects. An additional argument in favor of aligning the AHP with USDA's monitoring is that this might encourage more USDA-funded projects to apply for AHP funds, thus increasing the proportion of rural families served by the AHP.

FHFA also reviewed HUD's HOME Program, CDBG Program, Rental Assistance Demonstration Program, Housing Trust Fund, and Project-Based Rental Assistance (PBRA) Section 8 Program, as well as single-family mortgage revenue bond financing programs. FHFA found that each program has some standards that differ from the AHP in income, rent or retention periods, varying monitoring practices around the country, or a lack of available data on the projects' noncompliance rates (in the case of the PBRA Section Program). Therefore, relying on the monitoring of these other government funding programs is not currently feasible for the AHP.

Because the income, rent, and retention period standards, monitoring practices, and compliance profiles of government housing subsidy programs may change over time, FHFA is proposing to include a list of federal government programs that currently meet the requirements discussed above in separate guidance, which FHFA could occasionally revise in the event that programs' requirements become compatible or incompatible with the AHP requirements, or new programs are established that have compatible requirements.

The proposed monitoring changes would create a modest decrease in the Banks' administrative responsibilities by expanding their ability to rely on other government programs for both initial and long-term monitoring. The Banks currently have an average of 260 AHP rental projects per Bank to monitor, although the monitoring is reduced significantly by the Banks' ability to conduct long-term monitoring of the projects on a risk-basis.

FHFA specifically requests comments on whether the proposed reductions in the Banks' monitoring responsibilities are reasonable, taking into consideration the risks of noncompliance and the costs of project monitoring. FHFA also requests comments on whether data is available on the noncompliance rates of projects funded under the PBRA Section 8 Program.

Enhanced long-term monitoring certifications. Proposed § 1291.50(c)(1) would codify existing Bank best practices that require submission by project sponsors of annual project certifications that include not only the required household income and rent information, but also information on the on-going financial viability of the project, such as whether the project is current on property taxes and loan payments, its vacancy rate, or whether it is in compliance with its commitments to other funding sources.

During long-term monitoring, the Banks are only required to monitor projects for compliance with the household income-targeting and rent commitments in their AHP applications. Reviewing income and rent information alone limits the ability of the Banks to determine whether projects are experiencing operational challenges or in danger of foreclosure. Thus, in addition to obtaining household income and rent information, Banks have, to varying degrees, been requesting additional information from project sponsors in order to discover project issues before they escalate. This additional information enables the Banks to work with other funders to address project concerns and any noncompliance, including attempting remediation through workout strategies or recovery of AHP subsidy for noncompliance. It also mitigates the risk

[54] Section 811 projects are funded by a capital advance that requires a project to be occupied only by very low-income persons with disabilities (at or below 50 percent of AMI). Section 202 projects must be occupied by low- or very low-income elderly people. In 2017, 98% of households in Section 811 units had incomes at or below 50 percent of AMI. *See https://www.huduser.gov/portal/datasets/assthsg.html.* Residents of Section 202 and 811 programs pay 30 percent or less of their monthly adjusted income for rent. These requirements are the same, and in some cases more stringent, than the AHP's 30 percent of income standard for rents. *See* Section 811 Supportive Housing for Persons with Disabilities Handbook (4571.2) *https://www.hud.gov/sites/documents/45712C1HSGH.PDF* and HUD Handbook 4571.3. In both the Section 202 and 811 programs, the affordability term is 40 years. HUD has demonstrated the ability to monitor both Section 202 and Section 811 projects. The low default rates in both these programs are indicative that that HUD's monitoring has been effective. *See 811 Operating Costs Needs,* Ken Lam, Jill Khadduri, March 2007, *https://www.huduser.gov/portal/publications/pubasst/Sec_202_811.html,* and Brauner, Bill, (2016) *A First Look at Supportive Housing for the Elderly (Section 202) Housing in Massachusetts* and Haley, Barbara and Robert Gray (June, 2008) *Section 202 Supportive Housing for the Elderly: Program Status and Performance Measurement, https://www.huduser.gov/portal/publications/sec_202_1.pdf.*

[55] While incomes in Section 515 projects may go up to 80 percent of AMI plus $5,500 and incomes in Section 514 projects may rise to 80 percent of AMI, in actuality household incomes are much lower. In 2015, 92 percent of households in Section 515 and 514 projects had very low incomes, and the average rent for units in all states is below the 50 percent of AMI adjusted rent level. Tenants pay basic rent or 30 percent of adjusted income, whichever is greater. USDA Section 521 Rental Assistance subsidy can be used to limit tenants' payments to 30 percent of their income. Tenants may receive rent subsidies from other sources as well. Most tenants pay no more than 30 percent of their income in rent (88 percent of Section 515 households, and 97 percent of Section 514 households in 2016). *See* 7 CFR 3560.203. A USDA report published in December 2016, *Results of the 2016 Multi-Family Housing Annual Fair Housing Occupancy Report,* found that in FY 2016, 92.3 percent of units were occupied by very low-income households—a percentage consistent with past years. In Section 514 projects 77.1 percent of units were occupied by very low income households, and 19.73 percent of units were occupied by low income households. *See http://www.ruralhome.org/storage/documents/rd_obligations/mfh-occupancy/occupancymfh2016.pdf.* The standard term for an initial Section 515 loan is 30 years with a 50-year amortization period. The term for subsequent (made to an existing Section 515 project for subsequent rehabilitation or repairs to the project) and loans for special types of properties, such as manufactured housing, may be made for a shorter term based on the project's expected useful life; and, the loans are amortized over 50 years.

[56] USDA field staff performs careful monitoring of Section 515 and 514 projects, including on-site physical inspections, on-site tenant file review and management review, annual project budget review, and project financial statement review. All reviews are performed by USDA area office staff.

[57] USDA Section 515 and 514 projects perform well: Section 515 projects had a 2.4 percent delinquency rate for the ten years ending 2014, while Section 514 projects had a 3.4 delinquency rate. *See Statement of Tony Hernandez, Administrator Before the Subcommittee on Housing and Insurance Committee on Financial Services.* May 19, 2015. *https://www.rd.usda.gov/files/testimony/USDA_Rural%20Housing_May%2019_15.pdf.*

that Banks may be less aware of noncompliance by AHP projects that are also funded by the federal programs for which FHFA may determine through guidance that the Banks may reduce their long-term monitoring. The proposed change may slightly increase the monitoring requirement for project sponsors and the Banks that are not currently requiring such enhanced certifications.

Accordingly, the proposed rule would require the Banks to obtain such ''enhanced'' annual certifications from project sponsors during the AHP 15-year retention period that include information on the ongoing financial viability of the project.

Proposed § 1291.51 Monitoring Under Homeownership Set-Aside Programs

The current monitoring provisions for the Homeownership Set-Aside Program would move from § 1291.7(b) to proposed § 1291.51. The requirement to monitor compliance with the owner-occupied retention agreement requirement would be removed because FHFA is proposing to eliminate this requirement.

Subpart G—Remedial Actions for Noncompliance

The current provisions addressing remedial actions for AHP noncompliance in § 1291.8 would move to proposed Subpart G, and each type of noncompliance—project sponsor or owner, member, or Bank—would be included in a separate section so that the responsibilities and potential liabilities of each party are clear. Substantive changes would also be made regarding the order in which certain remedial actions must be taken.

Subpart G would also include a new section addressing remedies for Bank noncompliance with the proposed outcome requirements for the statutory and regulatory priorities, including housing plans and reimbursement of the AHP fund.

The proposed changes are discussed below.

Proposed § 1291.60 Remedial Actions for Project Noncompliance

Proposed § 1291.60 would address AHP project noncompliance. The language would be revised and streamlined to provide greater clarity on the scope of the section and the responsibilities of the various parties. The proposed rule would also make substantive changes by establishing an order of remedial steps that a Bank would be required to follow before recovering AHP subsidy. The proposed rule would clarify factors for Bank consideration in determining whether to settle for less than the full amount of AHP subsidy due. These changes are discussed below.

Scope. Proposed § 1291.60 would apply to noncompliance by an AHP-assisted project with its AHP application commitments and the requirements of the regulation, including any use of AHP subsidy by the project sponsor or owner for purposes other than those committed to in the AHP application. Consistent with the current regulation, the proposed rule would clarify that this section would not apply to individual AHP-assisted households, or to the sale or refinancing by such households of their homes, as there is no ongoing Bank monitoring of households once they purchase their homes, and sale or refinancing during the AHP five-year retention period is not considered noncompliance.

Elimination of project noncompliance. The current regulation provides for three types of remedies for project noncompliance without mandating the order in which they must be attempted—cure of the noncompliance; project modification; and recovery of AHP subsidy or settlement. Because the objective of the AHP is to provide affordable housing for eligible households for the duration of the AHP retention period, recovery of AHP subsidy should be the last resort. Accordingly, the proposed rule would require that certain remedial actions be attempted before subsidy is recaptured, as discussed further below.

Cure. The project sponsor or owner would first be required to cure the project noncompliance within a reasonable period of time. Banks generally follow this practice currently. For example, if a project has a certain number of households with incomes exceeding the AHP application's income-targeting commitments, cure would be achieved by renting the next available vacant units to that number of income-eligible households. If the noncompliance is cured, then no AHP subsidy would be required to be repaid by the project sponsor or owner to the Bank.

Project modification. If the project noncompliance cannot be cured within a reasonable period of time, the Bank would be required to determine whether the circumstances of the noncompliance could be eliminated through a project modification under proposed § 1291.27. If so, then the Bank would be required to approve the modification, and the project sponsor or owner would not be required to repay AHP subsidy to the Bank.

Under proposed § 1291.27(a), a modification must be approved by the Bank if the project, as modified, meets all of the modification requirements in that section, including that there is good cause for the modification that is not solely eliminating the noncompliance, and that the project rescores as high as the lowest ranking alternate approved for funding by the Bank in the project's original AHP funding period. In the above example, if the project sponsor or owner were not able to find enough households meeting its income-targeting commitments to occupy the next available vacant units, the Bank would determine whether the project could be modified to target those units to higher income (but still AHP income-eligible) households by rescoring the project based on the number of units to be targeted to the higher incomes. If the project rescored successfully, then the project would be modified, thereby eliminating the circumstances of the noncompliance, and no subsidy recovery would be required.

Reasonable collection efforts, including settlement. If the circumstances of a project's noncompliance cannot be eliminated through a cure or modification, the Bank, or the member if delegated the responsibility, would be required to first make a demand on the project sponsor or owner for repayment of the full amount of the subsidy not used in compliance with the commitments in the AHP application or the requirements of the regulation. This is intended to ensure that the Banks attempt to recover all of the subsidy due before considering settlements. The proposed rule would clarify that if the noncompliance is occupancy by over-income households, the amount of AHP subsidy due is calculated based on the number of units in noncompliance, the length of the noncompliance, and the portion of the AHP subsidy attributable to the noncompliant units.

If the demand for repayment of the full amount of subsidy due is unsuccessful, then the member, in consultation with the Bank, would be required to make reasonable efforts to collect the subsidy from the project sponsor or owner. Members have this role under the current regulation. The proposed rule would clarify that members would carry out these efforts in consultation with the Bank, consistent with current practice.

Under the current regulation, reasonable collection efforts may include settlement for less than the full amount of subsidy due, taking into account the facts and circumstances of the noncompliance, including the

degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts. The proposed rule would clarify that the facts and circumstances to consider also include the financial capacity of the project sponsor or owner, assets securing the AHP subsidy, and other assets of the project sponsor or owner.

As under the current regulation, the proposed rule would require that a settlement be supported by sufficient documentation showing that the sum agreed to be repaid is reasonably justified, based on the facts and circumstances of the noncompliance discussed above. FHFA specifically requests comments on whether those facts and circumstances are appropriate for consideration during reasonable collection efforts, and whether there are other factors that should be considered as well.

The proposed rule would eliminate current § 1291.8(d)(2), which provides Banks the option to seek prior approval from FHFA of a proposed subsidy settlement. Since inception of this option, only one Bank has used it and for two similar cases. The Banks may enter into subsidy settlements, in their discretion, provided the settlements are supported by reasonable justifications. The Banks have made these types of business decisions for many years without seeking prior FHFA approval. Moreover, the proposed rule would further clarify the factors the Banks should consider in deciding whether to settle with the project sponsor or owner. Accordingly, there is no need to retain this prior approval provision in the regulation.

Proposed § 1291.61 Recovery of Subsidy for Member Noncompliance

Proposed § 1291.61 would address member noncompliance, which is currently addressed in § 1291.8(b)(1). As under the current regulation, if a member uses AHP subsidy for purposes other than those committed to in the AHP application or the requirements of the regulation, the Bank would be required to recover from the member the amount of subsidy used for such impermissible purposes.

Proposed § 1291.62 Bank Reimbursement of AHP Fund

Current § 1291.8(e), which addresses circumstances where a Bank would be required to reimburse its AHP fund, would move to proposed § 1291.62, with no substantive changes.

Proposed § 1291.63 Suspension and Debarment

Current § 1291.8(g) addressing suspension or debarment of members, project sponsors, or project owners would move unchanged to proposed § 1291.63.

Proposed § 1291.64 Use of Repaid AHP Subsidies for Other AHP-Eligible Projects and Households

Proposed § 1291.64 would include current § 1291.8(f)(1), which provides that AHP subsidy repaid to a Bank under the AHP regulation must be made available by the Bank for other AHP-eligible projects. The proposed rule would clarify that the repaid subsidy may also be made available by the Bank for AHP-eligible households.

The proposed rule would remove the provision in current § 1291.8(f)(2) providing for re-use of repaid AHP direct subsidies in the same project because it applies where AHP subsidy is repaid by a household due to sale or refinancing of the home to a household that is not low- or moderate-income household during the retention period, and FHFA is proposing to eliminate this subsidy repayment requirement in connection with elimination of the owner-occupied retention agreement requirement.

Proposed § 1291.65 Remedial Actions for Bank Noncompliance With Outcome Requirements

Proposed new § 1291.65 would provide that if the Director of FHFA determines that a Bank has failed to comply with an outcome requirement for the statutory and regulatory priorities and compliance was feasible, the Director may require the Bank to take actions to remedy the noncompliance, including but not limited to, reimbursement by the Bank of its AHP fund for the difference in the amount of AHP funds required to be awarded to meet the outcome requirement and the amount the Bank actually awarded, or implementation of a housing plan. A housing plan would describe the specific actions the Bank would take to comply with the outcome requirements for the next calendar year. The proposed procedures, including time periods, for submission, review and approval of a proposed housing plan, are generally analogous to those under the Enterprise Housing Goals regulation.[58]

[58] 12 CFR 1282.21.

Proposed § 1291.66 Transfer of Program Administration

The proposed rule would move current § 1291.8(h), which addresses transfer of a Bank's Program to another Bank in the event of mismanagement of its Program, to proposed § 1291.66 with no changes.

Removal of Obsolete Provision

The proposed rule would rescind current § 1291.8(i) because the provision refers to a now-repealed Finance Board regulatory provision that was intended to establish a formal process for review by the Board of Directors of the Finance Board of certain types of supervisory decisions, which FHFA opted not to adopt.[59] Though it is not directly comparable to the repealed Finance Board provision, FHFA's Ombudsman regulation provides an avenue for the Banks to present complaints and appeals to the agency about their regulation or supervision.[60]

Subpart H—Affordable Housing Reserve Fund

Proposed § 1291.70 Affordable Housing Reserve Fund

Current § 1291.12 addressing the requirements for an Affordable Housing Reserve Fund would move to proposed § 1291.70. In the 28 years of the Program, there has never been cause for the agency to establish an Affordable Housing Reserve Fund because the demand for AHP funds at each Bank has always exceeded the amount available, and no Bank has failed to use or commit in full its required annual AHP contribution.

The proposed rule would revise the current provision by requiring that amounts remaining unused or uncommitted at year-end would be deemed to be used or committed if, in combination with AHP funds that have been returned to the Bank or de-committed from canceled projects, they are insufficient to fund the next highest scoring AHP applications in the Bank's final funding period of the year for its General Fund first and then for any Targeted Funds established by the Bank.

IV. List of Specific Requests for Comments

In addition to requesting comments on the entire proposed rule, FHFA is listing below, for ease of reference, the specific requests for comments included throughout the preamble above. Please identify the specific request for

[59] 12 CFR 907.9.

[60] *See* 12 CFR part 1213.

comment to which you are responding by its request number.

Subpart B—Program Administration and Governance

1. What are the benefits and risks of allowing the Banks to establish Targeted Funds?

2. Is the proposed allocation of 40 percent of total AHP funds to Targeted Funds an appropriate percentage, or should the percentage be higher or lower?

3. Would the proposed expansion of the contents of the Targeted Community Lending Plans impede the Banks' ability to respond to disasters through the AHP?

4. What are the benefits of the proposed expansion of the contents of the Targeted Community Lending Plans and their linkage to the AHP Implementation Plans?

5. Is the requirement that members' AHP agreements with LIHTC project sponsors include a provision requiring the sponsors to provide prompt written notice to the Bank if the project is in noncompliance with the LIHTC income-targeting or rent requirements at any time during the AHP 15-year retention period practical, and should it also be required of project sponsors in the event of noncompliance by their projects with the income-targeting or rent requirements of the government housing programs discussed under the Monitoring section?

6. What are the advantages and disadvantages of an AHP owner-occupied retention agreement, would eliminating it impact FHFA's ability to ensure that AHP funds are being used for the statutorily intended purposes, and are there ways to deter flipping other than a retention agreement?

7. Should the proposed increase in the maximum permissible grant to households from $15,000 to $22,000 under the Homeownership Set-Aside Program impact the decision on whether to eliminate the retention agreement?

8. Should the current provision in retention agreements requiring that notice of a sale or refinancing during the retention period be provided to either the Bank or its designee (typically the member) be revised to require that the notice be provided to both the Bank and its designee if a retention agreement requirement is retained in the final rule?

9. Should the AHP retention agreement, if retained in the final rule, require the AHP-assisted household to repay AHP subsidy to the Bank from any net proceeds on the sale or refinancing of the home or from the net gain?

10. What are the merits and disadvantages of the net proceeds and net gain calculations from the standpoint of the AHP-assisted households and the Banks, and are there other subsidy repayment approaches FHFA should consider, if the AHP retention agreement requirement is retained in the final rule?

11. What approaches would provide a reasonable basis to assume that the subsequent purchaser of an AHP-assisted unit is likely to be low- or moderate-income, including proxies that could serve this purpose?

12. What proxies would be reasonable for assuming a subsequent purchaser's income, including the following or others: Certification from the subsequent purchaser or a third party that the subsequent purchaser's income is at or below the low- or moderate-income limit; evidence that the subsequent purchaser is receiving direct homebuyer assistance from another government program with household income targeting requirements substantially equivalent to those of the AHP; the purchase price of the AHP-assisted unit is less than the median home price in the area; the AHP-assisted unit is located in a census tract. or block group where at least 51 percent of the households are low- or moderate-income; or FHA or other underwriting standards indicating that the income required to purchase the AHP-assisted unit at the purchase price is low- or moderate-income?

13. Should there be an exception to the AHP subsidy repayment requirement in the AHP retention agreement, if retained in the final rule, where the amount of AHP subsidy subject to repayment, after calculating the net proceeds or net gain, is $1,000 or less?

14. If the AHP retention agreement is retained in the final rule, should the rule clarify that the obligation to repay AHP subsidy to a Bank shall terminate not only after any event of foreclosure, but also after transfer by deed in lieu of foreclosure, assignment of an FHA mortgage to HUD, or death of the owner(s) of the unit?

Subpart C—General Fund and Targeted Funds

15. How should preservation of rental projects be encouraged through the AHP while discouraging displacement of current occupants with higher incomes than those targeted in the AHP application submitted to the Bank for approval, and is the proposed requirement for a relocation plan approved by the primary funder reasonable?

16. Are the current AHP requirements for sponsor-provided permanent financing reasonable, do the sponsors have a need for AHP subsidy in light of their particular financing model, and does the current method in the regulation for determining their need for AHP subsidy understate or overstate the amount of AHP subsidy needed?

17. Should sponsors using the sponsor-provided permanent financing model be considered revolving loan funds and, if so, should they be subject to the current or different AHP revolving loan fund requirements?

18. What are the potential advantages and disadvantages of allowing the Banks to impose a maximum subsidy limit per project sponsor?

19. What are possible approaches for re-ranking applications to meet the outcome requirements while at the same time maximizing the extent to which the highest scoring applications are approved?

20. Are the current AHP revolving loan fund provisions reasonable, and how could the financing mechanisms of revolving loan funds be used successfully with AHP subsidies?

21. Why have certain AHP scoring criteria for revolving loan funds been difficult to meet, how would AHP subsidy be repaid in the event of project noncompliance, and how can a revolving loan fund demonstrate a need for the AHP subsidy?

22. Would the proposed outcome requirements for the statutory and regulatory priorities facilitate use of AHP subsidies by revolving loan funds, and if so, how?

23. What are the potential positive or negative impacts of eliminating the owner-occupied retention agreement requirement for revolving loan funds?

24. Are there loan pools currently existing in the market that meet the conditions in the current regulation, how are the loan pools addressing current housing market needs, and what are the potential positive or negative impacts of eliminating the owner-occupied retention agreement requirement for loan pools?

Subpart D—Homeownership Set-Aside Programs

25. Are there any potential positive and negative impacts of increasing the subsidy limit per household from $15,000 to $22,000, and should the subsidy limit be higher or lower?

26. Is the proposed use of FHFA's Housing Price Index to automatically adjust the subsidy limit upward over time appropriate, or are there other housing price adjustment indices that would be preferable and why?

Subpart E—Outcome Requirements for Statutory and Regulatory Priorities

27. Does the proposed outcome requirement of 10 percent of a Bank's total AHP funds constitute prioritization for the home purchase priority, or should the percentage be higher or lower?

28. What is the utility of the proposed outcome approach to income targeting, and are the proposed 55 percent threshold, its applicability solely to rental units, and income-targeting at 50 percent of AMI appropriate?

29. Is the proposed increase in the minimum threshold from 20 to 50 percent for the number of units reserved for homeless households appropriate?

30. Is the proposed increase in the minimum threshold from 20 to 50 percent for the number of units in a project reserved for households with a specific special need appropriate?

31. Is the proposed 50 percent minimum threshold for the number of units in a project reserved for other targeted populations appropriate?

32. Is the proposed 20 percent minimum threshold for the number of units in a project reserved for extremely low-income households appropriate?

33. Do the three proposed regulatory priorities described in proposed § 1291.48—underserved communities and populations, creating economic opportunities, and affordable housing preservation—constitute significant housing priorities that should be included in the regulation, or should other housing priorities be included?

34. Should the specific housing needs identified under each regulatory priority be included, or are there other specific housing needs that should be included?

35. Do the Banks have sufficient flexibility under the current scoring system to target specific housing needs in their districts, including awarding subsidy to address multiple housing needs in a single AHP funding period?

36. Should the current regulatory scoring system be maintained without change?

37. Should any of the current mandatory scoring criteria and minimum required point allocations be modified to reflect other specific housing needs?

38. Should the current Bank First and Second District Priorities be combined and the list of housing needs in the Bank First District Priority eliminated?

Subpart F—Monitoring

39. Are the proposed reductions in the Banks' monitoring requirements reasonable, taking into consideration the risks of noncompliance and the costs of project monitoring?

40. Is data available on the noncompliance rates of projects funded under the PBRA Section 8 Program?

Subpart G—Remedial Actions for Noncompliance

41. Are the facts and circumstances described in proposed § 1291.60 appropriate for consideration by a Bank during reasonable subsidy collection efforts, and are there other factors that should be considered as well?

V. Consideration of Differences Between the Banks and the Enterprises

Section 1313(f) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 requires the Director of FHFA, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises (Fannie Mae and Freddie Mac) as they relate to the Banks': Cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. The proposed rule would apply only to the Banks. It would amend the current regulation to provide additional authority to the Banks regarding certain Program operations, streamline project monitoring requirements, clarify various parties' responsibilities regarding noncompliance, and clarify certain operational requirements. There is no direct Enterprise-specific analog to the Banks' AHP. In preparing this proposed rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors, and determined that the rule is appropriate. FHFA requests comments regarding whether differences related to those factors should result in any revisions to the proposed rule.

VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* requires that Federal agencies, including FHFA, consider the impact of paperwork and other information collection burdens imposed on the public. Under the PRA, no agency may conduct or sponsor, and no person is required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Existing part 1291 contains a number of requirements that constitute collections of information under the PRA. These collections have been approved by OMB and assigned OMB control number 2590–0007 (entitled ''Affordable Housing Program''), which expires on March 31, 2020. As detailed below, the proposed rule would modify some of the information collection requirements in part 1291 and would make other changes to the regulation requiring FHFA to revise the burden estimates approved by OMB when the control number was last renewed in early 2017. FHFA intends to submit the revised information collection to OMB for review and approval of a three-year extension of the control number.

A. Comments on Paperwork Burden Requested

FHFA is soliciting comments on: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on Bank members, project sponsors, and project owners, including through the use of automated collection techniques or other forms of information technology.

You may submit written comments on the information collection requirements on or before May 14, 2018 and should direct them to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: (202) 395–3047, Email: *OIRA_submission@omb.eop.gov.* Please also submit copies of comments on information collection issues to FHFA, identified by ''Proposed Collection; Comment Request: 'Affordable Housing Program (RIN 2590–AA83)' '' by any of the methods listed above in the **ADDRESSES** section.

B. Background

Part 1291 requires the Banks to collect various types of information relating to their AHPs from their members and (both directly and indirectly) from AHP project sponsors and owners. Those information collection requirements fall into six categories: (1) AHP Competitive Applications; (2) compliance submissions for approved Competitive Application projects at AHP subsidy disbursement; (3) modification requests for approved Competitive Application projects; (4) initial monitoring submissions for approved Competitive Application projects; (5) long-term monitoring submissions for approved Competitive Application projects; and (6) Homeownership Set-Aside Program applications and certifications. As revised by the proposed rule, the collections of information under part

1291 would continue to fall into the foregoing six basic categories, but would be somewhat modified as described below.

The proposed rule would eliminate the existing requirement that each Bank establish a Competitive Application Program. As revised, part 1291 would instead require each Bank to establish a General Fund, and authorize each Bank to establish up to three Targeted Funds (subject to a phase-in period), each of which would be subject to a competitive application process similar to that required for the Banks' Competitive Application Programs under the current regulation. Projects funded under the Banks' General Fund and any Targeted Funds established would be subject to requirements regarding subsidy disbursements, modification requests, and initial and long-term monitoring that are similar to those that currently apply to their Competitive Application Programs. Thus, the descriptions of the first five of the six information collection categories, which relate to the Banks' Competitive Application Programs, would be modified to refer instead to the Banks' General Funds and Targeted Funds. The description of the sixth category, relating to the Banks' Homeownership Set-Aside Programs, would remain the same.

C. Burden Estimates for Respondents

FHFA has analyzed each of the six categories of information that would be collected under part 1291, as revised by the proposed rule, in order to estimate the hour burdens that the collection would impose upon Bank members and AHP project sponsors and owners annually over the three years following the effective date of the final rule. Based on that analysis, FHFA estimates that the total annual hour burden will be 127,605. This represents an increase of 11,855 hours over the estimate of 115,750 made in connection with the most recent renewal of the OMB control number. This increase is attributable to an expected increase in the number of AHP competitive applications received by the Banks due to some of the proposed revisions, as well as an expected increase in the number of AHP competitive projects and Homeownership Set-Aside direct subsidies approved because of anticipated higher required annual AHP contributions arising from projected higher Bank incomes. On balance, the proposed rule would not increase information collection burdens on a per-submission basis.

The method FHFA used to determine the annual hour burden for each category of information collected is explained in detail below. Set forth for each category are: (1) A summary of the existing information collection requirement, including the types of respondents and frequency of collection; (2) a short description of the manner in which the proposed regulatory amendments would affect the requirement and the associated burden estimates; (3) the need for and use of the information to be collected; and (4) the new annualized hourly burden estimates, as compared to the estimates made in the PRA submissions that are the basis for the current clearance.

1. Competitive Applications for AHP Subsidy Under General Funds and Targeted Funds

(a) *Existing requirement:* Each Bank must establish a Competitive Application Program under which the Bank accepts applications for AHP subsidies submitted by its members on behalf of non-member entities having a significant connection to the projects for which subsidy is being sought (project sponsors or owners).[61] Each Bank accepts applications for AHP subsidy under its Competitive Application Program during a specified number of funding periods each year, as determined by the Bank.[62] The Bank must score each application according to an AHP regulatory and Bank-specific scoring methodology, and approve the highest scoring projects within that funding period for AHP subsidy.[63]

(b) *Effect of proposed rule:* The proposed rule would allow the Banks substantially more flexibility to devise their own competitive application scoring criteria for selecting the projects to be approved for AHP subsidies under their General Fund and any Targeted Funds established. In revising the scoring criteria for their General Funds, the Banks would likely also revise their application requirements to reflect the new criteria. In addition, Banks that establish one or more Targeted Funds would likely also develop application requirements for each of those Funds that are different from both their current competitive application requirements and the General Fund application requirements they would establish under the revised regulation. Because of the greater flexibility the Banks would have under the proposed rule, it is not possible at this point to determine precisely how the Banks' competitive application processes would change or to estimate with any accuracy the effect that any such changes would have on the average amount of time needed to complete the competitive application process.

The proposed rule would, to a minor extent, require the Banks to obtain from Bank members and project sponsors and owners applying for AHP subsidies certain information when evaluating AHP applications that they are not expressly required to evaluate under the current regulation. Under the proposed rule, the Banks would be required to obtain from all AHP applicants information needed to evaluate whether the project sponsor (including all affiliates and team members such as the general contractor) is able to perform the responsibilities committed to in the AHP application, as well as information needed to provide assurance that those parties have not engaged in certain types of misconduct. The proposed rule would also require the Banks to obtain from applicants for rental project subsidies the project's operating pro forma (in addition to the project's development budget, which is expressly required under the current regulation) for use in confirming the need for the AHP subsidy. FHFA anticipates that these submission requirements may be met with materials that have already been prepared for other purposes and that, therefore, they will not materially add to the time required to prepare an AHP competitive application.

To the extent that Banks choose to establish Targeted Funds, as would be permitted under the proposed rule, they could see an increase in AHP applications in connection with projects that would be unlikely to be approved under the existing scoring criteria for their Competitive Application Programs. Based on this expectation, FHFA estimates that the number of AHP competitive applications received by the Banks annually would increase by 10 percent—from 1,350 to 1,485—over the estimates made in FHFA's most recent submissions to OMB for the information collection requirements under part 1291.

(c) *Use:* The Banks would use the information collected during the competitive application process to determine whether projects for which Bank members and project sponsors and owners are seeking subsidies under the Banks' General Funds and Targeted Funds satisfy the applicable regulatory requirements and score highly enough in comparison with other applications submitted during the same funding period to be approved for AHP subsidies.

(d) *Revised burden estimates:* For the reasons stated above, FHFA is increasing its estimate as to the average

[61] *See* 12 CFR 1291.5.

[62] *See* 12 CFR 1291.5(b)(1).

[63] *See* 12 CFR 1291.5(d).

number of competitive applications for AHP subsidies that Bank members, on behalf of project sponsors and owners, would submit to the Banks annually from 1,350 to 1,485. The estimate for the average preparation time for each application would remain at 24 hours. Thus, FHFA's estimate for the total annual hour burden on members and project sponsors and owners in connection with the preparation and submission of applications under the Banks' General Funds and Targeted Funds is 35,640 hours (1,485 applications × 24 hours).

2. Compliance Submissions for Approved General Fund and Targeted Fund Projects at AHP Subsidy Disbursement

(a) *Existing requirement:* The current regulation provides that, prior to each disbursement of AHP subsidy for a project approved under a Bank's Competitive Application Program, the Bank must confirm that the project continues to meet the AHP regulatory eligibility requirements, as well as all commitments made in the approved AHP application.[64] As part of this process, Banks typically require that the member and project sponsor provide documentation demonstrating continuing compliance.

(b) *Effect of proposed rule:* The proposed rule would add a requirement that, prior to each AHP subsidy disbursement, Banks obtain and review certifications and other information needed to provide assurance that the project sponsor (including all affiliates and team members such as the general contractor) have not engaged in certain types of misconduct since providing similar information at the application stage or in connection with a prior subsidy disbursement. FHFA anticipates that these additional requirements will not materially add to the time required to prepare a compliance submission.

(c) *Use:* The Banks would use the compliance submissions to determine whether projects approved under their General Funds and Targeted Funds continue to meet the applicable requirements and to comply with the commitments made in the approved AHP applications each time subsidy is disbursed.

(d) *Revised burden estimates:* FHFA is increasing its estimate as to the annual average number of compliance submissions made by Bank members, on behalf of project sponsors and owners, from 700 to 715 to reflect anticipated higher amounts of funds being available for the AHP due to higher projected Bank incomes (and therefore more projects approved). The estimate for the average preparation time for each submission would remain at 1 hour. Thus, FHFA's estimate for the total annual hour burden on members and project sponsors and owners in connection with the preparation and submission of these compliance submissions for projects approved under the Banks' General Funds and Targeted Funds is 715 hours (715 submissions × 1 hour).

3. Modification Requests for Approved General Fund and Targeted Fund Projects

(a) *Existing requirement:* The current regulation permits a Bank to approve a modification to the terms of an approved competitive application that would change the score that the application received in the funding period in which it was originally scored and approved, had the changed facts been operative at that time. In order to be considered for a modification: (i) The project, incorporating the changes, must continue to meet the regulatory eligibility requirements; (ii) the application, as reflective of the changes, must continue to score high enough to have been approved in the funding period in which it was originally scored and approved; and (iii) there must be good cause for the modification, and the analysis and justification for the modification must be documented by the Bank in writing.[65] Banks typically require the member and project sponsor or owner requesting a modification to provide a written analysis and justification as part of their modification request.

(b) *Effect of proposed rule:* The proposed rule would add a requirement that before a Bank may approve a modification request, it must have first requested that the project cure any AHP noncompliance and that the cure was unsuccessful after a reasonable period of time. FHFA estimates that this revision will result in about five percent fewer approved AHP projects requesting modifications. The proposed rule would have no effect on the amount of time needed to prepare and submit a modification request and any supporting materials.

(c) *Use:* The Banks would use the information submitted to determine whether requests for modifications of approved projects under their General Funds and Targeted Funds meet the regulatory requirements for approval.

(d) *Revised burden estimates:* FHFA is decreasing its estimate as to the annual average number of modification requests made by Bank members, on behalf of project sponsors and owners, from 300 to 290. This takes into account both the estimated five percent decrease in the percentage of approved projects requesting modifications arising from the effects of the proposed rule and an estimated two percent increase in the number of approved projects due to higher projected Bank income. The estimate for the average preparation time for each submission would remain at 2.5 hours. Thus, FHFA's estimate for the total annual hour burden on members and project sponsors and owners in connection with the preparation and submission of these modification requests is 725 hours (290 requests × 2.5 hours).

4. Initial Monitoring Submissions for Approved General Fund and Targeted Fund Projects

(a) *Existing requirement:* The current regulation requires generally that a Bank monitor each owner-occupied and rental project receiving AHP subsidy under its Competitive Application Program prior to and after project completion. For initial monitoring, a Bank must determine whether the project is making satisfactory progress towards completion, in compliance with the commitments made in the approved AHP application, Bank policies, and the AHP regulatory requirements. Following project completion, the Bank must determine whether satisfactory progress is being made towards occupancy of the project by eligible households, and whether the project meets the regulatory requirements and the commitments made in the approved AHP application.[66]

(b) *Effect of proposed rule:* In the case of approved projects that also receive funding through LIHTCs, the proposed rule would retain the initial monitoring requirement that project sponsors certify to the Banks that the residents' incomes and the rents comply with the income-targeting and rent commitments in the approved AHP application. The proposed rule would also include a requirement, consistent with Bank practice, that the Banks obtain and review the project's rent rolls, a type of back-up documentation. However, the proposed rule would remove the requirement that the Banks obtain and review other back-up documentation on incomes and rents, such as W–2 forms, at initial monitoring for LIHTC projects, which they are currently required to review on a risk basis.

[64] *See* 12 CFR 1291.5(g)(3).

[65] *See* 12 CFR 1291.5(f).

[66] *See* 12 CFR 1291.7(a)(1).

The proposed rule would also provide that, for AHP projects funded by certain other government programs specified in separate FHFA guidance, the Banks would be required to obtain and review only project sponsor certifications and rent rolls at the initial monitoring stage. For such projects, the Banks would not be required to review any back-up documentation for incomes and rents, as is generally required at the initial monitoring stage.

FHFA estimates that these proposed revisions would decrease the average amount of time needed for Bank members and project sponsors or owners to prepare and submit materials related to the initial monitoring of approved projects by ten percent.

(c) *Use:* The Banks would use the information collected in connection with their initial monitoring of approved General Fund and Targeted Fund projects to determine whether the projects are making satisfactory progress towards completion, and following project completion, are making satisfactory progress towards occupancy of the project by eligible households, in compliance with the commitments made in the approved AHP applications, Bank policies, and the regulatory requirements.

(d) *Revised burden estimates:* FHFA is increasing its estimate as to the annual average number of submissions related to the initial monitoring of in-progress and recently completed AHP projects from 500 to 510, which reflects an estimated two percent increase in the number of approved projects due to projected higher Bank incomes. FHFA is decreasing its estimate for the average preparation time for each submission from 5 hours to 4.5 hours, which reflects the effects of the proposed rule, as described above. Thus, FHFA's estimate for the total annual hour burden on members and project sponsors and owners in connection with the preparation and submission of documentation required for initial monitoring of the Banks' General Fund and Targeted Fund projects is 2,295 hours (510 submissions × 4.5 hours).

5. Long-Term Monitoring Submissions for Approved General Fund and Targeted Fund Projects

(a) *Existing requirement:* The current regulation requires that for long-term monitoring of rental projects, subject to certain exceptions, a Bank must determine whether, during the 15-year retention period, the household incomes and rents comply with the income-targeting and rent commitments made in the approved AHP application.[67] A Bank must obtain and review appropriate documentation maintained by the project sponsor or owner.

(b) *Effect of proposed rule:* The proposed rule would implement a number of changes to streamline certain aspects of the long-term monitoring process. Under the proposed rule, as under the current regulation, project sponsors or owners of LIHTC projects would not be required to submit compliance reports for such projects to the Bank during the AHP retention period. The proposed rule, however, would add a requirement that the members' AHP agreements with project sponsors and owners include a provision requiring the party to notify the Bank if a LIHTC project is noncompliant with the LIHTC income-targeting or rent requirements at any time during the AHP 15-year retention period. The proposed rule would also provide that, for AHP projects funded by certain other government programs, the Banks would be required to review only project sponsor certifications each year during the long-term retention period. The Banks would not be required to review any back-up documentation for incomes and rents, including rent rolls, for those projects, as they are generally required to do on a risk basis.

The proposed rule would codify existing Bank best practices that require submission by project sponsors of annual project certifications during the AHP 15-year retention period that include not only the required household income and rent information, but also information on the ongoing financial viability of the project, such as whether the project is current on property taxes and loan payments, its vacancy rate, or whether it is in compliance with its commitments to other funding sources.

FHFA estimates that the net effect of the above-described revisions would be to decrease the average amount of time needed for Bank members and project sponsors or owners to prepare and submit materials related to the long-term monitoring of approved projects by ten percent.

(c) *Use:* The Banks would use the information collected as part of their long-term monitoring to determine whether during the 15-year retention period, completed rental projects under their General Funds and Targeted Funds continue to comply with the household income-targeting and rent commitments made in the approved AHP applications.

(d) *Revised burden estimates:* FHFA is increasing its estimate as to the annual average number of submissions related to the long-term monitoring of completed AHP rental projects from 4,800 to 4,900, which reflects an estimated two percent increase in the number of approved projects due to projected higher Bank incomes. FHFA is decreasing its estimate for the average preparation time for each submission from 3 hours to 2.7 hours, which reflects the effects of the proposed rule, as described above. Thus, FHFA's estimate for the total annual hour burden on members and project sponsors and owners in connection with the preparation and submission of documentation required for long-term monitoring of completed rental projects approved under the Banks' General Funds and Targeted Funds is 13,230 hours (4,900 submissions × 2.7 hours).

6. Homeownership Set-Aside Program Applications and Certifications

(a) *Existing requirement:* The current regulation authorizes each Bank, in its discretion, to allocate up to the greater of $4.5 million or 35 percent of its annual required AHP contribution to establish Homeownership Set-Aside Programs for the purpose of promoting homeownership for low- or moderate-income households.[68] Under these Homeownership Set-Aside Programs, a Bank provides to its members AHP direct subsidies, which are provided by the members to eligible households as grants to pay for down payment, closing cost, counseling cost, or rehabilitation assistance in connection with the household's purchase of a primary residence or rehabilitation of an owner-occupied residence.[69] Prior to the Bank's disbursement of a direct subsidy under its Homeownership Set-Aside Program, the member must provide a certification that the subsidy will be provided in compliance with all applicable regulatory eligibility requirements.[70]

(b) *Effect of proposed rule:* The proposed rule would increase the maximum permissible percentage allocation amount for each Bank's Homeownership Set-Aside Program from 35 to 40 percent of the Bank's annual required AHP contribution, while retaining the existing alternative maximum permissible allocation amount of $4.5 million. In addition, the proposed rule would increase the maximum permissible direct subsidy amount that a Bank could provide to a

[67] *See* 12 CFR 1291.7(a)(4).

[68] *See* 12 CFR 1291.2(b)(2); 1291.6.

[69] *See* 12 CFR 1291.6(c)(4).

[70] *See* 12 CFR 1291.7(b)(2).

household from $15,000 to $22,000, which would be adjusted annually to reflect increases in FHFA's Housing Price Index. While adoption of the proposed higher subsidy limit could result in fewer households receiving set-aside subsidies, Banks could choose to offset this by increasing the maximum amount of AHP funds they allocate to their Homeownership Set-Aside Programs from 35 to 40 percent. Notwithstanding that the Banks would be authorized to adopt a higher subsidy limit than is permitted under the current regulation, FHFA expects that most Banks will continue to establish lower subsidy limits in order to serve a greater number of households. Accordingly, FHFA anticipates that the proposed regulatory revisions may cause the Banks to provide a higher number of set-aside subsidies annually.

None of the proposed revisions would affect the amount of time needed for a Bank member to prepare a Homeownership Set-Aside Program application or monitoring certification.

(c) *Use:* The Banks would use the information collected in connection with their Homeownership Set-Aside Programs to determine whether applications for direct subsidy under those programs were approved, and the direct subsidies disbursed, in accordance with the regulatory requirements.

(d) *Revised burden estimates:* FHFA is increasing its estimate as to the annual average number of applications and required certifications for AHP direct subsidies under the Banks' Homeownership Set-Aside Programs from 13,000 to 15,000 to reflect anticipated higher amounts of funds being available for the AHP due to projected higher Bank incomes, in addition to the effect of the proposed increase—from 35 to 40 percent—in the percentage of their AHP contributions that the Banks may allocate to their Homeownership Set-Aside Programs. The estimate for the average preparation time for each submission would remain at 5 hours. Thus, FHFA's estimate for the total annual hour burden on members in connection with the preparation and submission of Homeownership Set-Aside Program applications and certifications is 75,000 hours (15,000 applications/certifications × 5 hours).

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act [71] requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities.[72] FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small entities because the regulation applies to the Banks, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 1290

Banks and banking, Credit, Federal home loan banks, Housing, Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 1291

Community development, Credit, Federal home loan banks, Housing, Low- and moderate-income housing, Mortgages, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FHFA proposes to amend parts 1290 and 1291 of Title 12 of the Code of Federal Regulations as follows:

PART 1290—COMMUNITY SUPPORT REQUIREMENTS

■ 1. The authority citation for part 1290 is revised to read as follows:

Authority: 12 U.S.C. 1430(g).

■ 2. Amend § 1290.6 by revising paragraph (a)(5) and adding paragraphs (c) and (d) to read as follows:

§ 1290.6 Bank community support programs.

(a) * * *

(5) Include an annual Targeted Community Lending Plan, approved by the Bank's board of directors and subject to modification. The Bank's board of directors shall not delegate to a committee of the board, Bank officers, or other Bank employees the responsibility to adopt or amend the Targeted Community Lending Plan. The Targeted Community Lending Plan shall:

(i) Reflect market research conducted in the Bank's district;

(ii) Describe how the Bank will address identified credit needs and market opportunities in the Bank's district for targeted community lending;

(iii) Be developed in consultation with (and may only be amended after consultation with) its Advisory Council and with members, housing associates, and public and private economic development organizations in the Bank's district in developing and implementing its Targeted Community Lending Plan;

(iv) Establish quantitative targeted community lending performance goals; and

(v) Describe how the Bank will address identified significant affordable housing needs in its district through its Affordable Housing Program, reflecting:

(A) Market research conducted or obtained by the Bank on affordable housing needs in the Bank's district;

(B) Identification and assessment of significant affordable housing needs in the Bank's district, supported by empirical data; and

(C) Specification, from among the identified affordable housing needs, of the specific affordable housing needs the Bank will address through its funding allocations and scoring criteria under its General Fund and any Bank Targeted Funds and Homeownership Set-Aside Programs, as set forth in its AHP Implementation Plan pursuant to 12 CFR 1291.13(b).

* * * * *

(c) *Public access.* A Bank shall publish its current Targeted Community Lending Plan on its publicly available website, and shall publish any amendments to its Targeted Community Lending Plan on the website within 30 days after the date of their adoption by the Bank's board of directors. Publication of the Targeted Community Lending Plan on the website shall be at least six months before the beginning of the Plan year.

(d) *Notification of Plan amendments to FHFA.* A Bank shall notify FHFA of any amendments to its Targeted Community Lending Plan within 30 days after the date of their adoption by the Bank's board of directors.

PART 1291—FEDERAL HOME LOAN BANKS' AFFORDABLE HOUSING PROGRAM

■ 3. Revise part 1291 to read as follows:

PART 1291—FEDERAL HOME LOAN BANKS' AFFORDABLE HOUSING PROGRAM

Subpart A—General

Sec.

1291.1 Definitions.

[71] 5 U.S.C. 601 *et seq.*

[72] 5 U.S.C. 605(b).

Subpart B—Program Administration and Governance

1291.10 Required annual AHP contribution.
1291.11 Temporary suspension of AHP contributions.
1291.12 Allocation of required annual AHP contribution.
1291.13 Targeted Community Lending Plan; AHP Implementation Plan.
1291.14 Advisory Councils.
1291.15 Agreements.
1291.16 Conflicts of interest.

Subpart C—General Fund and Targeted Funds

1291.20 Establishment of programs.
1291.21 Eligible applicants.
1291.22 Funding periods; application process.
1291.23 Eligible projects.
1291.24 Eligible uses.
1291.25 Scoring methodology.
1291.26 Approval of AHP applications.
1291.27 Modifications of approved AHP applications.
1291.28 Procedures for funding.
1291.29 Lending and re-lending of AHP direct subsidy by revolving loan funds.
1291.30 Use of AHP subsidy in loan pools.

Subpart D—Homeownership Set-Aside Programs

1291.40 Establishment of programs.
1291.41 Eligible applicants.
1291.42 Eligibility requirements.
1291.43 Approval of AHP applications.
1291.44 Procedures for funding.

Subpart E—Outcome Requirements for Statutory and Regulatory Priorities

1291.48 Outcome requirements for statutory and regulatory priorities.
1291.49 Determination of compliance with outcome requirements; notice of determination.

Subpart F—Monitoring

1291.50 Monitoring under General Fund and Targeted Funds.
1291.51 Monitoring under Homeownership Set-Aside Programs.

Subpart G—Remedial Actions for Noncompliance

1291.60 Remedial actions for project noncompliance.
1291.61 Recovery of subsidy for member noncompliance.
1291.62 Bank reimbursement of AHP fund.
1291.63 Suspension and debarment.
1291.64 Use of repaid AHP subsidies for other AHP-eligible projects and households.
1291.65 Remedial actions for Bank noncompliance with outcome requirements.
1291.66 Transfer of Program administration.

Subpart H—Affordable Housing Reserve Fund

1291.70 Affordable Housing Reserve Fund.

Authority: 12 U.S.C. 1430(j).

Subpart A—General

§ 1291.1 Definitions.

As used in this part:

Affordable means that:

(1) The rent charged to a household for a unit that is to be reserved for occupancy by a household with an income at or below 80 percent of the median income for the area, does not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 persons per unit without a separate bedroom); or

(2) The rent charged to a household, for rental units subsidized with Section 8 assistance under 42 U.S.C. 1437f or subsidized under another assistance program where the rents are charged in the same way as under the Section 8 Program, if the rent complied with this definition at the time of the household's initial occupancy and the household continues to be assisted through the Section 8 or another assistance program, respectively.

AHP means the Affordable Housing Program required to be established by the Banks pursuant to 12 U.S.C. 1430(j) and this part.

AHP project means a single-family or multifamily housing project for owner-occupied or rental housing that has been awarded or has received AHP subsidy under a Bank's General Fund and any Targeted Funds established by the Bank.

Cost of funds means, for purposes of a subsidized advance, the estimated cost of issuing Bank System consolidated obligations with maturities comparable to that of the subsidized advance.

Direct subsidy means an AHP subsidy in the form of a direct cash payment.

Eligible household means a household that meets the income limits and other requirements specified by a Bank for its General Fund and any Targeted Funds and Homeownership Set-Aside Programs established by the Bank, provided that:

(1) In the case of owner-occupied housing, the household's income may not exceed 80 percent of the median income for the area; and

(2) In the case of rental housing, the household's income in at least 20 percent of the units may not exceed 50 percent of the median income for the area.

Eligible project means a project eligible to receive AHP subsidy pursuant to the requirements of this part.

Extremely low-income household means a household that has an income at or below 30 percent of the median income for the area, with the income limit adjusted for household size in accordance with the methodology of the applicable median income standard selected from those enumerated in the definition of ''median income for the area,'' unless such median income standard has no household size adjustment methodology.

Family member means any individual related to a person by blood, marriage, or adoption.

Funding period means a time period, as determined by a Bank, during which the Bank accepts AHP applications for subsidy under the Bank's General Fund and any Targeted Funds established by the Bank.

General Fund means a program required to be established by a Bank under which the Bank approves (*i.e.,* awards) applications for AHP subsidy through a competitive application scoring process developed by the Bank and disburses the subsidy, pursuant to the requirements of this part.

Homeownership Set-Aside Program means a program established by a Bank, in its discretion, under which the Bank approves (*i.e.,* awards) applications for AHP direct subsidy through a noncompetitive process developed by the Bank and disburses the subsidy, pursuant to the requirements of this part.

Loan pool means a group of mortgage or other loans meeting the requirements of this part that are purchased, pooled, and held in trust.

Low- or moderate-income household means a household that has an income of 80 percent or less of the median income for the area, with the income limit adjusted for household size in accordance with the methodology of the applicable median income standard selected from those enumerated in the definition of ''median income for the area,'' unless such median income standard has no household size adjustment methodology.

Low- or moderate-income neighborhood means any neighborhood in which 51 percent or more of the households have incomes at or below 80 percent of the median income for the area.

Median income for the area means one or more of the following median income standards as determined by a Bank, after consultation with its Advisory Council, in its AHP Implementation Plan:

(1) The median income for the area, as published annually by HUD;

(2) The median income for the area obtained from the Federal Financial Institutions Examination Council;

(3) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a state agency or instrumentality;

(4) The median income for the area, as published by the United States Department of Agriculture; or

(5) The median income for an applicable definable geographic area, as published by a federal, state, or local government entity, and approved by FHFA, at the request of a Bank, for use under the AHP.

Multifamily building means a structure with five or more dwelling units.

Net earnings of a Bank means the net earnings of a Bank for a calendar year before declaring or paying any dividend under section 16 of the Bank Act (12 U.S.C. 1436). For purposes of this part, ''dividend'' includes any dividends on capital stock subject to a redemption request even if under GAAP those dividends are treated as an ''interest expense.''

Owner-occupied project means, for purposes of a Bank's General Fund and any Targeted Funds established by the Bank, one or more owner-occupied units in a single-family or multifamily building, including condominiums, cooperative housing, and manufactured housing.

Owner-occupied unit means a dwelling unit occupied by the owner of the unit. Housing with two to four dwelling units consisting of one owner-occupied unit and one or more rental units is considered a single owner-occupied unit.

Program means the Affordable Housing Program established pursuant to this part.

Regulatory priority means underserved communities and populations, creating economic opportunity, or affordable housing preservation, as described in § 1291.48(d)(1), (d)(2), or (d)(3), respectively.

Rental project means, for purposes of a Bank's General Fund and any Targeted Funds established by the Bank, one or more dwelling units for occupancy by households that are not owner-occupants, including overnight and emergency shelters, transitional housing for homeless households, mutual housing, single-room occupancy housing, and manufactured housing communities.

Retention period means fifteen years from the date of completion for a rental project.

Revolving loan fund means a capital fund established to make mortgage or other loans whereby loan principal is repaid into the fund and re-lent to other borrowers.

Single-family building means a structure with one to four dwelling units.

Sponsor means a not-for-profit or for-profit organization or public entity that:

(1) Has an ownership interest (including any partnership interest), as defined by the Bank in its AHP Implementation Plan, in a rental project;

(2) Is integrally involved, as defined by the Bank in its AHP Implementation Plan, in an owner-occupied project, such as by exercising control over the planning, development, or management of the project, or by qualifying borrowers and providing or arranging financing for the owners of the units;

(3) Operates a loan pool; or

(4) Is a revolving loan fund.

Statutory priority means use of donated or conveyed government-owned or other properties, project sponsorship by a not-for-profit organization or government entity, or purchase of homes by low- or moderate-income households, as described in § 1291.48(a)(1), (a)(2), or (b), respectively.

Subsidized advance means an advance to a member at an interest rate reduced below the Bank's cost of funds by use of a subsidy.

Subsidy means:

(1) A direct subsidy, provided that if a direct subsidy is used to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the subsidy must equal the net present value of the interest foregone from making the loan below the lender's market interest rate; or

(2) The net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank's cost of funds.

Targeted Fund means a program established by a Bank, in its discretion, under which the Bank approves (*i.e.,* awards) applications for AHP subsidy through a competitive application scoring process developed by the Bank and disburses the subsidy, pursuant to the requirements of this part.

Very low-income household means a household that has an income at or below 50 percent of the median income for the area, with the income limit adjusted for household size in accordance with the methodology of the applicable median income standard selected from those enumerated in the definition of ''median income for the area,'' unless such median income standard has no household size adjustment methodology.

Visitable means, in either owner-occupied or rental housing, at least one entrance is at-grade (no steps) and approached by an accessible route such as a sidewalk, and the entrance door and all interior passage doors are at least 2 feet, 10 inches wide, offering 32 inches of clear passage space.

Subpart B—Program Administration and Governance

§ 1291.10 Required annual AHP contribution.

Each Bank shall contribute annually to its Program the greater of:

(a) 10 percent of the Bank's net earnings for the previous year; or

(b) That Bank's pro rata share of an aggregate of $100 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year, except that the required annual AHP contribution for a Bank shall not exceed its net earnings in the previous year.

§ 1291.11 Temporary suspension of AHP contributions.

(a) *Request to FHFA.* If a Bank finds that the contributions required pursuant to § 1291.10 are contributing to the financial instability of the Bank, the Bank may apply in writing to FHFA for a temporary suspension of such contributions.

(b) *Director review.*—(1) In determining the financial instability of a Bank, the Director shall consider such factors as:

(i) Severely depressed Bank earnings;

(ii) A substantial decline in Bank membership capital; and

(iii) A substantial reduction in Bank advances outstanding.

(2) *Limitations on grounds for suspension.* The Director shall not suspend a Bank's annual AHP contributions if it determines that the Bank's reduction in earnings is due to:

(i) A change in the terms of advances to members that is not justified by market conditions;

(ii) Inordinate operating and administrative expenses; or

(iii) Mismanagement.

§ 1291.12 Allocation of required annual AHP contribution.

Each Bank, after consultation with its Advisory Council and pursuant to written policies adopted by the Bank's board of directors, shall meet the following requirements for allocation of its required annual AHP contribution.

(a) *General Fund.* Each Bank shall allocate annually at least 50 percent of its required annual AHP contribution to provide funds to members through a General Fund established and

administered by the Bank pursuant to the requirements of this part.

(b) *Homeownership Set-Aside Programs.* A Bank may, in its discretion, allocate annually, in the aggregate, up to the greater of $4.5 million or 40 percent of its required annual AHP contribution to provide funds to members participating in Homeownership Set-Aside Programs established and administered by the Bank pursuant to the requirements of this part, provided that at least one-third of the Bank's aggregate annual set-aside allocation to such programs is allocated to assist first-time homebuyers or households for owner-occupied rehabilitation.

(c) *Targeted Funds.*—(1) *Phase-in requirements for funding allocations.* Unless otherwise directed by FHFA and subject to the phase-in requirements for the number of Targeted Funds in § 1291.20(b), a Bank may, in its discretion, allocate annually, up to:

(i) 20 percent, in the aggregate, of its required annual AHP contribution to any Targeted Funds;

(ii) 30 percent, in the aggregate, of its required annual AHP contribution to any Targeted Funds, provided that it allocated at least 20 percent, in the aggregate, of its required annual AHP contribution to one or more Targeted Funds in any preceding year; or

(iii) 40 percent, in the aggregate, of its required annual AHP contribution to any Targeted Funds, provided that it allocated at least 30 percent, in the aggregate, of its required annual AHP contribution to one or more Targeted Funds in any preceding year.

(2) *Transfer of uncommitted funds.* A Bank shall transfer any uncommitted Targeted Fund amounts to its General Fund for awards to alternates under the General Fund in the same calendar year.

(d) *Acceleration of funding.* A Bank may, in its discretion, accelerate to its current year's Program from future required annual AHP contributions an amount up to the greater of $5 million or 20 percent of its required annual AHP contribution for the current year. The Bank may credit the amount of the accelerated contribution against required AHP contributions under this part 1291 over one or more of the subsequent five years.

(e) *No delegation.* A Bank's board of directors shall not delegate to a committee of the board, Bank officers, or other Bank employees the responsibility for adopting the Bank's policies for its General Fund and any Bank Targeted Funds and Homeownership Set-Aside Programs.

§ 1291.13 Targeted Community Lending Plan; AHP Implementation Plan.

(a) *Targeted Community Lending Plan.* Pursuant to the requirements of 12 CFR 1290.6(a)(5)(v), a Bank's annual Targeted Community Lending Plan adopted under its community support program shall, among other things, identify the significant affordable housing needs in its district that will be addressed through its General Fund and any Bank Targeted Funds and Homeownership Set-Aside Programs, as set forth in its AHP Implementation Plan.

(b) *AHP Implementation Plan.* Each Bank's board of directors, after consultation with its Advisory Council, shall adopt a written AHP Implementation Plan, and shall not amend the AHP Implementation Plan without first consulting its Advisory Council. The Bank's board of directors shall not delegate to a committee of the board, Bank officers, or other Bank employees the responsibility for such prior consultations with the Advisory Council or the responsibility for adopting or amending the AHP Implementation Plan. The AHP Implementation Plan shall set forth, at a minimum:

(1) The applicable median income standard or standards adopted by the Bank consistent with the definition of median income for the area in § 1291.1.

(2) For the General Fund established by the Bank pursuant to § 1291.20(a), the Bank's requirements for the General Fund, including the specific funding allocation pursuant to § 1291.12(a), the Bank's scoring criteria, including its scoring tie-breaker policy, adopted pursuant to § 1291.25(d), and the possibility of re-ranking scored applications and alternates pursuant to § 1291.26.

(3) For each Targeted Fund established by the Bank, if any, pursuant to § 1291.20(b), the Bank's requirements for the Targeted Fund, including the specific funding allocation pursuant to § 1291.12(c), the Bank's scoring criteria, including its scoring tie-breaker policy, adopted pursuant to § 1291.25(d), the possibility of re-ranking scored applications and alternates pursuant to § 1291.26, and the controls adopted pursuant to § 1291.20(c)(1).

(4) The Bank's policy on how it will decide under which Fund to approve a project that scores high enough to be approved under multiple Funds, pursuant to § 1291.26(d).

(5) For each Homeownership Set-Aside Program established by the Bank, if any, pursuant to § 1291.40, the Bank's requirements for the program, including the specific funding allocation, how the one-third allocation requirement is apportioned with respect to first-time homebuyers and households for owner-occupied rehabilitation pursuant to § 1291.12(b), and the Bank's application and subsidy disbursement methodology.

(6) The Bank's retention agreement requirements for rental projects under its General Fund and any Bank Targeted Funds pursuant to § 1291.15(a)(7).

(7) Any optional Bank district eligibility requirements adopted by the Bank pursuant to § 1291.24(c).

(8) The Bank's requirements for funding revolving loan funds, if adopted by the Bank pursuant to § 1291.29;

(9) The Bank's requirements for funding loan pools, if adopted by the Bank pursuant to § 1291.30;

(10) The Bank's requirements for monitoring under its General Fund and any Bank Targeted Funds and Homeownership Set-Aside Programs pursuant to §§ 1291.50 and 1291.51.

(c) *Advisory Council review.* Prior to the amendment of a Bank's AHP Implementation Plan, the Bank shall provide its Advisory Council an opportunity to review the document, and the Advisory Council shall provide its recommendations to the Bank's board of directors for its consideration.

(d) *Notification of Plan amendments to FHFA.* A Bank shall notify FHFA of any amendments made to its AHP Implementation Plan within 30 days after the date of their adoption by the Bank's board of directors.

(e) *Public access.* A Bank shall publish its current AHP Implementation Plan on its publicly available website, and shall publish any amendments to the AHP Implementation Plan on the website within 30 days after the date of their adoption by the Bank's board of directors.

§ 1291.14 Advisory Councils.

(a) *Appointment.*—(1) Each Bank's board of directors shall appoint an Advisory Council of 7 to 15 persons who reside in the Bank's district and are drawn from community and not-for-profit organizations that are actively involved in providing or promoting low- and moderate-income housing, and community and not-for-profit organizations that are actively involved in providing or promoting community lending, in the district. Community organizations include for-profit organizations.

(2) Each Bank shall solicit nominations for membership on the Advisory Council from community and not-for-profit organizations pursuant to a nomination process that is as broad

and as participatory as possible, allowing sufficient time for responses.

(3) The Bank's board of directors shall appoint Advisory Council members from a diverse range of organizations so that representatives of no one group constitute an undue proportion of the membership of the Advisory Council, giving consideration to the size of the Bank's district and the diversity of low- and moderate-income housing and community lending needs and activities within the district.

(b) *Terms of Advisory Council members.* Pursuant to policies adopted by the Bank's board of directors, Advisory Council members shall be appointed by the Bank's board of directors to serve for terms of three years, which shall be staggered to provide continuity in experience and service to the Advisory Council, except that Advisory Council members may be appointed to serve for terms of one or two years solely for purposes of reconfiguring the staggering of the three-year terms. No Advisory Council member may be appointed to serve for more than three full consecutive terms. An Advisory Council member appointed to fill a vacancy shall be appointed for the unexpired term of his or her predecessor in office.

(c) *Election of officers.* Each Advisory Council shall elect from among its members a chairperson, a vice chairperson, and any other officers the Advisory Council deems appropriate.

(d) *Duties*—(1) *Meetings with the Banks.*—(i) The Advisory Council shall meet with representatives of the Bank's board of directors at least quarterly to provide advice on ways in which the Bank can better carry out its housing finance and community lending mission, including, but not limited to, advice on the low- and moderate-income housing and community lending programs and needs in the Bank's district, and on the use of AHP subsidies, Bank advances, and other Bank credit products for these purposes.

(ii) The Advisory Council's advice shall include recommendations on:

(A) The Bank's Targeted Community Lending Plan, and any amendments thereto, adopted by the Bank pursuant to 12 CFR 1290.6(a)(5)(iii);

(B) The amount of AHP funds to be allocated to the Bank's General Fund and any Bank Targeted Funds, and the amount of AHP funds to be allocated to any Bank Homeownership Set-Aside Programs, including the apportionment of the funds between first-time homebuyers and households for owner-occupied rehabilitation under the one-third allocation requirement in § 1291.12(b);

(C) The AHP Implementation Plan and any subsequent amendments thereto;

(D) The Bank's scoring criteria, related definitions, and any additional optional district eligibility requirements for the Bank's General Fund and any Bank Targeted Funds; and

(E) The eligibility requirements and any priority criteria for any Bank Homeownership Set-Aside Programs.

(2) *Summary of AHP applications.* The Bank shall comply with requests from the Advisory Council for summary information regarding AHP applications from prior funding periods.

(3) *Annual analysis; public access*—(i) Each Advisory Council annually shall submit to FHFA by May 1 its analysis of the low- and moderate-income housing and community lending activity of the Bank by which it is appointed.

(ii) Within 30 days after the date the Advisory Council's annual analysis is submitted to FHFA, the Bank shall publish the analysis on its publicly available website.

(e) *Expenses.* The Bank shall pay Advisory Council members' travel expenses, including transportation and subsistence, for each day devoted to attending meetings with representatives of the board of directors of the Bank and meetings requested by FHFA.

(f) *No delegation.* A Bank's board of directors may delegate to a committee of the board, but not to Bank officers or other Bank employees, the responsibility to appoint persons as members of the Advisory Council. A Bank's board of directors may not delegate to a committee of the board, Bank officers, or other Bank employees the responsibility to meet with the Advisory Council at the quarterly meetings required by the Bank Act (12 U.S.C. 1430(j)(11)).

§ 1291.15 Agreements.

(a) *Agreements between Banks and members.* A Bank shall have in place with each member receiving an AHP subsidized advance or AHP direct subsidy an agreement or agreements containing, at a minimum, the following provisions, where applicable:

(1) *Notification of member.* The member has been notified of the requirements of this part as they may be amended from time to time, and all Bank policies relevant to the member's approved application for AHP subsidy.

(2) *AHP subsidy pass-through.* The member shall pass on the full amount of the AHP subsidy to the project or household, as applicable, for which the subsidy was approved.

(3) *Use of AHP subsidy*—(i) *Use of AHP subsidy by the member.* The member shall use the AHP subsidy in accordance with the terms of the member's approved application for the subsidy and the requirements of this part.

(ii) *Use of AHP subsidy by the project sponsor or owner.* The member shall have in place an agreement with each project sponsor or project owner in which the project sponsor or project owner agrees to use the AHP subsidy in accordance with the terms of the member's approved application for the subsidy and the requirements of this part.

(4) *Repayment of AHP subsidies in case of noncompliance.*—(i) *Noncompliance by the member.* The member shall repay AHP subsidies to the Bank in accordance with the requirements of § 1291.61.

(ii) *Noncompliance by a project sponsor or project owner.*—(A) *Agreement.* The member shall have in place an agreement with each project sponsor or project owner in which the project sponsor or project owner agrees to repay AHP subsidies to the member or the Bank in accordance with the requirements of § 1291.60.

(B) *Recovery of AHP subsidies.*—(i) *Noncompliance by the member.* The member shall recover from the project sponsor or project owner and repay to the Bank AHP subsidy in accordance with the requirements of § 1291.60 (if applicable).

(5) *Project monitoring*—(i) *Monitoring by the member.* The member shall comply with the monitoring requirements applicable to it, as established by the Bank in its monitoring policies pursuant to §§ 1291.50 and 1291.51.

(ii) *Agreement.* The member shall have in place an agreement with each project sponsor and project owner, in which the project sponsor and project owner agree to comply with the monitoring requirements applicable to such parties, as established by the Bank in its monitoring policies pursuant to § 1291.50, which shall also include agreeing to provide prompt written notice to the Bank if the project also received tax credits under the Low-Income Housing Tax Credit Program and the project is in noncompliance with the income targeting or rent requirements applicable under the Low-Income Housing Tax Credit Program at any time during the AHP 15-year retention period.

(6) *Transfer of AHP obligations*—(i) *To another member.* The member shall make best efforts to transfer its obligations under the approved

application for AHP subsidy to another member in the event of its loss of membership in the Bank prior to the Bank's final disbursement of AHP subsidies.

(ii) *To a nonmember.* If, after final disbursement of AHP subsidies to the member, the member undergoes an acquisition or a consolidation resulting in a successor organization that is not a member of the Bank, the nonmember successor organization assumes the member's obligations under its approved application for AHP subsidy, and where the member received an AHP subsidized advance, the nonmember assumes such obligations until prepayment or orderly liquidation by the nonmember of the subsidized advance.

(7) *Retention agreements for rental projects.* The member shall ensure that an AHP-assisted rental project is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The project's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the approved AHP application for the duration of the retention period;

(ii) The Bank and its designee is to be given notice of any sale, transfer, assignment of title or deed, or refinancing of the project during the retention period;

(iii) In the case of a sale, transfer, assignment of title or deed, or refinancing of the project by the owner during the retention period, the full amount of the AHP subsidy received by the owner shall be repaid to the Bank, unless:

(A) The project continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP application for the duration of the retention period; or

(B) If authorized by the Bank, in its discretion, the households are relocated, due to the exercise of eminent domain, or for expansion of housing or services, to another property that is made subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP application for the remainder of the retention period; and

(iv) The income-eligibility and affordability restrictions applicable to the project shall terminate after any foreclosure.

(8) *Lending of AHP direct subsidies.* If a member or a project sponsor lends AHP direct subsidy to a project, any repayments of principal and payments of interest received by the member or the project sponsor must be paid forthwith to the Bank, unless the direct subsidy is being both lent and re-lent by a revolving loan fund pursuant to § 1291.29(d).

(9) *Special provisions where members obtain AHP subsidized advances.*—(i) *Repayment schedule.* The term of an AHP subsidized advance shall be no longer than the term of the member's loan to the project funded by the advance, and at least once in every 12-month period, the member shall be scheduled to make a principal repayment to the Bank equal to the amount scheduled to be repaid to the member on its loan to the project in that period.

(ii) *Prepayment fees.* Upon a prepayment of an AHP subsidized advance, the Bank shall charge a prepayment fee only to the extent the Bank suffers an economic loss from the prepayment.

(iii) *Treatment of loan prepayment by project.* If all or a portion of the loan or loans financed by an AHP subsidized advance are prepaid by the project to the member, the member may, at its option, either:

(A) Repay to the Bank that portion of the advance used to make the loan or loans to the project, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any economic loss the Bank experiences in reinvesting the repaid amount at a rate of return below the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance; or

(B) Continue to maintain the advance outstanding, subject to the Bank resetting the interest rate on that portion of the advance used to make the loan or loans to the project to a rate equal to the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance.

(b) *Agreements between Banks and project sponsors or project owners.*—(1) A Bank may have in place an agreement with each project sponsor or project owner, in which the project sponsor or project owner agrees to repay AHP subsidies directly to the Bank in accordance with the requirements of § 1291.60.

(2) *Project sponsor qualifications.* A Bank's AHP subsidy application form or other related document must include project sponsor qualification criteria that evaluate the ability of the project sponsor (including all affiliates and team members such as the general contractor) to perform the responsibilities committed to in the application. The application form or other related document shall include a requirement for the project sponsor to provide certifications or respond to specific questions about whether the project sponsor (and affiliates and team members such as the general contractor) have engaged in misconduct as defined in FHFA's Suspended Counterparty Program regulation (12 CFR part 1227), or as defined by the Bank. A Bank's AHP subsidy disbursement form or other related form shall include a requirement for similar certifications or questions for the project sponsor to complete prior to each disbursement of AHP subsidy.

(c) *Application to existing AHP projects and units.* The requirements of section 10(j) of the Bank Act (12 U.S.C. 1430(j)) and the provisions of this part, as amended, are incorporated into all agreements between Banks, members, project sponsors, and project owners receiving AHP subsidies under the General Fund and any Bank Targeted Funds, and between Banks, members and unit owners under any Bank Homeownership Set-Aside Programs. To the extent the requirements of this part are amended from time to time, such agreements are deemed to incorporate the amendments to conform to any new requirements of this part. No amendment to this part shall affect the legality of actions taken prior to the effective date of such amendment.

§ 1291.16 Conflicts of interest.

(a) *Bank directors and employees.*—(1) Each Bank's board of directors shall adopt a written policy providing that if a Bank director or employee, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, a project that is the subject of a pending or approved AHP application, the Bank director or employee shall not participate in or attempt to influence decisions by the Bank regarding the evaluation, approval, funding, monitoring, or any remedial process for such project.

(2) If a Bank director or employee, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, an AHP project such that he or she is subject to the requirements in paragraph (a)(1) of this section, such person shall not participate in or attempt to influence decisions by the Bank regarding the evaluation, approval, funding, monitoring, or any remedial process for such project.

(b) *Advisory Council members.*—(1) Each Bank's board of directors shall adopt a written policy providing that if an Advisory Council member, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, a project that is the subject of a pending or approved AHP application, the Advisory Council member shall not participate in or attempt to influence decisions by the Bank regarding the approval for such project.

(2) If an Advisory Council member, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, an AHP project such that he or she is subject to the requirements in paragraph (b)(1) of this section, such person shall not participate in or attempt to influence decisions by the Bank regarding the approval for such project.

(c) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to adopt the conflict of interest policies required by this section.

Subpart C—General Fund and Targeted Funds

§ 1291.20 Establishment of programs.

(a) *General Fund.* A Bank shall establish a General Fund pursuant to the requirements of this part.

(b) *Targeted Funds.*—(1) *Number of Funds.* A Bank may establish, in its discretion, a maximum of three Targeted Funds pursuant to the requirements of paragraph (b)(2) of this section, the phase-in funding allocation requirements in § 1291.12(c)(1), and any other applicable requirements of this part. A Bank may not establish or administer a Targeted Fund unless at least 12 months have passed since the publication of the Targeted Community Lending Plan in which the Bank identifies the specific housing needs to be addressed by that Targeted Fund.

(2) *Phase-in requirements for number of Funds.* Unless otherwise directed by FHFA, a Bank may establish:

(i) One Targeted Fund;

(ii) Two Targeted Funds to be administered concurrently, provided that the Bank administered at least one Targeted Fund in any preceding year; or

(iii) Three Targeted Funds to be administered concurrently, provided that the Bank administered at least two Targeted Funds in any preceding year.

(c) *Eligibility requirements.*—(1) A Bank shall adopt and implement controls, which shall be included in its AHP Implementation Plan, for ensuring that each Targeted Fund is designed to receive sufficient numbers of applicants for the amount of AHP funds allocated to the Targeted Fund to enable the Bank to facilitate a genuinely competitive scoring process.

(2) A Bank may not adopt additional eligibility requirements for its General Fund and any Targeted Funds except as specifically authorized in this part.

§ 1291.21 Eligible applicants.

(a) *Member applicants.* A Bank shall accept applications for AHP subsidy under its General Fund and any Bank Targeted Funds only from institutions that are members of the Bank at the time the application is submitted to the Bank.

(b) *Project sponsor qualifications*—(i) *In general.* A project sponsor, including all affiliates and team members such as the general contractor, must be qualified and able to perform its responsibilities as committed to in the application for AHP subsidy funding the project.

(ii) *Revolving loan fund.* Pursuant to written policies adopted by a Bank's board of directors, a revolving loan fund sponsor that intends to use AHP direct subsidy in accordance with § 1291.29 shall:

(A) Provide audited financial statements that its operations are consistent with sound business practices; and

(B) Demonstrate the ability to re-lend AHP subsidy repayments on a timely basis and track the use of the AHP subsidy.

(iii) *Loan pool.* Pursuant to written policies adopted by a Bank's board of directors, a loan pool sponsor that intends to use AHP subsidy in accordance with § 1291.30 shall:

(A) Provide evidence of sound asset/liability management practices;

(B) Provide audited financial statements that its operations are consistent with sound business practices; and

(C) Demonstrate the ability to track the use of the AHP subsidy.

§ 1291.22 Funding periods; application process.

(a) *Funding periods.* A Bank may accept applications for AHP subsidy under its General Fund and any Bank Targeted Funds during a specified number of funding periods each year, as determined by the Bank.

(b) *Submission of applications.* Except as provided in § 1291.29(a), a Bank shall require applications for AHP subsidy to contain information sufficient for the Bank to:

(1) Determine that the proposed AHP project meets the eligibility requirements of this part; and

(2) Evaluate the application pursuant to the scoring methodology adopted by the Bank pursuant to § 1291.25.

(c) *Review of applications submitted.* Except as provided in § 1291.29(b), a Bank shall review the applications for AHP subsidy to determine that the proposed AHP project meets the eligibility requirements of this part, and shall evaluate the applications pursuant to the Bank's scoring methodology adopted pursuant to § 1291.25.

§ 1291.23 Eligible projects.

Projects receiving AHP subsidies pursuant to a Bank's General Fund and any Bank Targeted Funds must meet the following eligibility requirements:

(a) *Owner-occupied or rental housing.* The AHP subsidy shall be used exclusively for:

(1) *Owner-occupied housing.* The purchase, construction, or rehabilitation of an owner-occupied project by or for very low-income or low- or moderate-income households, where the housing is to be used as the household's primary residence. A household must have an income meeting the income targeting commitments in the approved AHP application at the time it is qualified by the project sponsor for participation in the project;

(2) *Rental housing.* The purchase, construction, or rehabilitation of a rental project, where at least 20 percent of the units in the project are occupied by and affordable for very low-income households.

(i) *Projects that are not occupied.* For a rental project that is not occupied at the time the AHP application is submitted to the Bank for approval, a household must have an income meeting the income targeting commitments in the approved AHP application upon initial occupancy of the rental unit.

(ii) *Projects that are occupied.* For a rental project involving purchase or rehabilitation that is occupied at the time the AHP application is submitted to the Bank for approval, a household must have an income meeting the income targeting commitments in the approved AHP application at the time of such submission. If the project has a plan approved by one of its primary funders to relocate the households not meeting the income targeting commitments, a household must have an income meeting the income targeting commitments upon initial occupancy of the rental unit.

(b) *Project feasibility*—(1) *Developmental feasibility.* The project must be likely to be completed and occupied, based on relevant factors contained in the Bank's project

feasibility guidelines, including, but not limited to, the development budget, market analysis, and project sponsor's experience in providing the requested assistance to households.

(2) *Operational feasibility of rental projects.* A rental project must be able to operate in a financially sound manner, in accordance with the Bank's project feasibility guidelines, as projected in the project's operating pro forma.

(c) *Timing of AHP subsidy use.* Some or all of the AHP subsidy must be likely to be drawn down by the project or used by the project to procure other financing commitments within 12 months of the date of approval of the application for AHP subsidy funding the project.

(d) *Retention agreements for rental projects.* AHP-assisted rental projects are, or are committed to be, subject to a 15-year retention agreement as described in § 1291.15(a)(7).

(e) *Fair housing.* The project, as proposed, must comply with applicable federal and state laws on fair housing and housing accessibility, including, but not limited to, the Fair Housing Act, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Architectural Barriers Act of 1969, and must demonstrate how the project will be affirmatively marketed.

§ 1291.24 Eligible uses.

(a) *Eligible uses of AHP subsidy.* AHP subsidies shall be used only for:

(1) *Owner-occupied housing.* The purchase, construction, or rehabilitation of owner-occupied housing.

(2) *Rental housing.* The purchase, construction, or rehabilitation of rental housing.

(3) *Need for AHP subsidy*—(i) *Review of project development budget and operating pro forma*—(A) In the case of an owner-occupied project, a Bank shall review the project's development budget in determining its need for AHP subsidy. The project's estimated sources of funds must equal its estimated uses of funds, as reflected in the project's development budget. The difference between the project's sources of funds and uses of funds is the project's need for AHP subsidy, which is the maximum amount of AHP subsidy the project may receive.

(B) In the case of a rental project, a Bank shall review both the project's development budget and operating pro forma in determining its need for AHP subsidy. Where the project's uses of funds exceed its sources of funds, the difference demonstrates a funding gap and provides support for the project's need for AHP subsidy, provided that the project's cash flow and costs are reasonable. This is the maximum amount of AHP subsidy that the project may receive.

(C) A Bank, in its discretion, may permit a project's sources of funds to include or exclude the estimated market value of in-kind donations and voluntary professional labor or services (excluding the value of sweat equity), provided that the project's uses of funds also include or exclude, respectively, the value of such estimates.

(ii) *Cash sources of funds.* A project's cash sources of funds shall include any cash contributions by the sponsor, any cash from sources other than the sponsor, and estimates of funds the project sponsor intends to obtain from other sources but which have not yet been committed to the project. In the case of homeownership projects where the sponsor extends permanent financing to the homebuyer, the sponsor's cash contribution shall include the present value of any payments the sponsor is to receive from the buyer, which shall include any cash down payment from the buyer, plus the present value of any purchase note the sponsor holds on the unit. If the note carries a market interest rate commensurate with the credit quality of the buyer, the present value of the note equals the face value of the note. If the note carries an interest rate below the market rate, the present value of the note shall be determined using the market rate to discount the cash flows.

(iii) *Cash uses.* A project's cash uses are the actual outlay of cash needed to pay for materials, labor, and acquisition or other costs of completing the project. Cash costs do not include in-kind donations, voluntary professional labor or services, or sweat equity.

(4) *Project costs.*—(i) *In general.*—(A) Taking into consideration the geographic location of the project, development conditions, and other non-financial household or project characteristics, a Bank shall determine that a project's costs, as reflected in the project's development budget, are reasonable, in accordance with the Bank's project cost guidelines.

(B) For purposes of determining the reasonableness of a developer's fee for a project as a percentage of total development costs, a Bank may, in its discretion, include estimates of the market value of in-kind donations and volunteer professional labor or services (excluding the value of sweat equity) committed to the project as part of the total development costs.

(ii) *Cost of property and services provided by a member.* The purchase price of property or services, as reflected in the project's development budget, sold to the project by a member providing AHP subsidy to the project, or, in the case of property, upon which such member holds a mortgage or lien, may not exceed the market value of such property or services as of the date the purchase price was agreed upon. In the case of real estate owned property sold to a project by a member providing AHP subsidy to the project, or property sold to the project upon which the member holds a mortgage or lien, the market value of such property is deemed to be the ''as-is'' or ''as-rehabilitated'' value of the property, whichever is appropriate. That value shall be reflected in an independent appraisal of the property performed by a state certified or licensed appraiser, as defined in 12 CFR 564.2(j) and (k), within 6 months prior to the date the Bank disburses AHP subsidy to the project.

(5) *Financing costs.* The rate of interest, points, fees, and any other charges for all loans that are made for the project in conjunction with the AHP subsidy shall not exceed a reasonable market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk.

(6) *Counseling costs.* Counseling costs, provided:

(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; and

(ii) The cost of the counseling has not been covered by another funding source, including the member.

(7) *Refinancing.* Refinancing of an existing single-family or multifamily mortgage loan, provided that the refinancing produces equity proceeds and such equity proceeds up to the amount of the AHP subsidy in the project shall be used only for the purchase, construction, or rehabilitation of housing units meeting the eligibility requirements of this part.

(8) *Calculation of AHP subsidy.*—(i) Where an AHP direct subsidy is provided to a project to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the net present value of the interest foregone from making the loan below the lender's market interest rate shall be calculated as of the date the application for AHP subsidy is submitted to the Bank, and subject to adjustment under § 1291.28(d).

(ii) Where an AHP subsidized advance is provided to a project, the net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank's cost of funds shall be determined as of the earlier of the date of disbursement of the

subsidized advance or the date prior to disbursement on which the Bank first manages the funding to support the subsidized advance through its asset/liability management system, or otherwise.

(b) *Prohibited uses of AHP subsidy.* AHP subsidy may not be used to pay for:

(1) *Certain prepayment fees.* Prepayment fees imposed by a Bank on a member for a subsidized advance that is prepaid, unless:

(i) The project is in financial distress that cannot be remedied through a project modification pursuant to § 1291.27;

(ii) The prepayment of the subsidized advance is necessary to retain the project's affordability and income targeting commitments;

(iii) Subsequent to such prepayment, the project will continue to comply with the terms of the approved AHP application and the requirements of this part for the duration of the original retention period;

(iv) Any unused AHP subsidy is returned to the Bank and made available for other AHP projects; and

(v) The amount of AHP subsidy used for the prepayment fee may not exceed the amount of the member's prepayment fee to the Bank;

(2) *Cancellation fees.* Cancellation fees and penalties imposed by a Bank on a member for a subsidized advance commitment that is canceled;

(3) *Processing fees.* Processing fees charged by members for providing AHP direct subsidies to a project; or

(4) *Reserves and certain expenses.* Capitalized reserves, periodic deposits to reserve accounts, operating expenses, or supportive services expenses.

(c) *Optional Bank district eligibility requirements.* A Bank may require a project receiving AHP subsidies to meet one or more of the following additional eligibility requirements adopted by the Bank's board of directors and included in its AHP Implementation Plan after consultation with its Advisory Council:

(1) *AHP subsidy limits.* A requirement that the amount of AHP subsidy requested for the project does not exceed limits established by the Bank as to the maximum amount of AHP subsidy available per member, per project sponsor, per project, or per project unit in a single AHP funding period. A Bank may establish only one maximum subsidy limit per member, per sponsor, per project, or per project unit for the General Fund and for each Targeted Fund, which shall apply to all applicants to the specific Fund, but the maximum subsidy limit per project or per project unit may differ for each Fund; or

(2) *Homebuyer or homeowner counseling.* A requirement that a household must complete a homebuyer or homeowner counseling program provided by, or based on one provided by, an organization recognized as experienced in homebuyer or homeowner counseling, respectively.

(d) *Applications to multiple Funds.* If an application for the same project is submitted to multiple Funds in an AHP funding period, each application must be for the same amount of AHP subsidy.

§ 1291.25 Scoring methodology.

(a) *Scoring methodology.* A Bank shall establish a written scoring methodology for its General Fund and each Targeted Fund it establishes, and shall score applications received for a particular Fund pursuant to the scoring methodology for that Fund. The scoring methodology may be different for each Fund. The scoring methodology shall set forth the Bank's competitive application scoring criteria, related definitions and point allocations, and shall reflect the affordable housing needs that the Bank identified in its Targeted Community Lending Plan would be addressed under its Funds. The Bank shall design its scoring methodology for the General Fund and each Targeted Fund to ensure that the Bank will meet the outcome requirements for the statutory and regulatory priorities in § 1291.48. The scoring methodology may include scoring criteria adopted by the Bank to address specific affordable housing needs in the Bank's district (Bank district priorities) that differ from the housing needs specified under the statutory and regulatory priorities in § 1291.48, as long as the outcome requirements specified in § 1291.48 are achieved.

(b) *Point allocations.* A Bank shall allocate 100 points among its scoring criteria for its General Fund and for each Targeted Fund.

(c) *In-district projects.* If a Bank adopts a scoring criterion under its General Fund for housing located in the Bank's district, the Bank shall not allocate points to the scoring criterion in such a way as to exclude all out-of-district projects from its General Fund.

(d) *Scoring tie-breaker policy.* A Bank shall establish a scoring tie-breaker policy to address the possibility of two or more applications to a Fund having identical scores in the same AHP funding period and there is insufficient AHP subsidy to approve all of the tied applications. A Bank shall meet the following requirements in establishing its scoring tie-breaker policy:

(1) The Bank shall consult with its Advisory Council prior to adoption of its policy;

(2) The Bank shall adopt the policy in advance of an AHP funding period and include it in its AHP Implementation Plan;

(3) The policy shall include the methodology used to break a scoring tie, which may differ for each Fund, and which shall be drawn from the particular Fund's scoring criteria adopted in the Bank's AHP Implementation Plan;

(4) The scoring tie-breaker methodology shall be reasonable, transparent, verifiable, and impartial;

(5) The scoring tie-breaker methodology shall be used solely to break a scoring tie and may not affect the eligibility of the applications, including financial feasibility, or their scores and resultant rankings;

(6) The Bank shall approve a tied application as an alternate pursuant to § 1291.26(c) if the application does not prevail under the scoring tie-breaker methodology, or if the application is tied with another application but requested more subsidy than the amount of AHP funds that remain to be awarded; and

(7) The Bank shall document in writing its analysis and results for each use of the scoring tie-breaker methodology.

§ 1291.26 Approval of AHP applications.

(a) *Approval of applications.* Except as provided in paragraphs (c), (d), and (e) of this section, a Bank's board of directors shall approve applications for AHP subsidy under its General Fund and any Bank Targeted Funds that meet all of the applicable AHP eligibility requirements in this part, in descending order starting with the highest scoring application until the total funding amount for the particular AHP funding period, except for any amount insufficient to fund the next highest scoring application, has been approved.

(b) *Alternates.* For the General Fund, the Bank's board of directors also shall approve at least the next four highest scoring applications as alternates and, within one year of approval, must approve such alternates for funding if any previously committed AHP subsidies become available. For any Bank Targeted Funds, the Bank may, in its discretion, approve alternates.

(c) *Tied applications.* Where two or more applications to a Fund have identical scores in the same AHP funding period and there is insufficient AHP subsidy to approve all of the tied

applications, a Bank shall approve the tied application that prevails under the Bank's scoring tie-breaker methodology in its policy adopted pursuant to § 1291.25(d). The Bank must approve a tied application as an alternate if it does not prevail under the scoring tie-breaker methodology, or if it is tied with another application but requested more subsidy than the amount of AHP funds that remain to be awarded under the Fund.

(d) *Applications to multiple Funds.* If an application for the same project is submitted to more than one Fund at a Bank in an AHP funding period and the application scores high enough to be approved under each Fund, the Bank shall approve the application under only one of the Funds pursuant to the Bank's policy established in its AHP Implementation Plan.

(e) *Re-ranking of scored applications and alternates.* To satisfy the outcome requirements of § 1291.48, a Bank may deviate from the ranking order after scoring applications and alternates under this section, but only to the minimum extent necessary by re-ranking scored applications and alternates meeting the outcome requirements above the lowest scoring applications and alternates not meeting the outcome requirements. A Bank shall describe the possibility of re-ranking in its AHP Implementation Plan.

(f) *No delegation.* A Bank's board of directors may not delegate to a committee of the board, Bank officers, or other Bank employees the responsibility to approve or disapprove the AHP subsidy applications and alternates under the Bank's General Fund and any Bank Targeted Funds.

§ 1291.27 Modifications of approved AHP applications.

(a) *Modification procedure.* Except as provided in paragraph (b) of this section for modification requests for AHP subsidy increases, if, prior to or after final disbursement of funds to a project from all funding sources, in order to remedy noncompliance or receive additional subsidy, there is or will be a change in the project that would change the score that the project application received in the funding period in which it was originally scored and approved, had the changed facts been operative at that time, a Bank shall approve in writing a request for a modification to the terms of the approved application, provided that:

(1) The Bank first requested that the project cure any noncompliance and the cure was not successful after a reasonable period of time;

(2) The project, incorporating any such changes, would meet the eligibility requirements of this part;

(3) The application, as reflective of such changes, continues to score as high as the lowest ranking alternate that was approved for funding by the Bank in the AHP funding period in which the application was originally scored and approved by the Bank; and

(4) There is good cause for the modification, which may not be solely remediation of noncompliance, and the analysis and justification for the modification are documented by the Bank in writing.

(b) *AHP subsidy increases; no delegation.*—(1) *AHP subsidy increases.* A Bank's board of directors may, in its discretion, approve or disapprove requests for modifications involving an increase in AHP subsidy in accordance with the requirements of paragraph (a) of this section.

(2) *No delegation.* The authority to approve or disapprove requests for modifications involving an increase in AHP subsidy shall not be delegated by the Bank's board of directors to Bank officers or other Bank employees.

§ 1291.28 Procedures for funding.

(a) *Disbursement of AHP subsidies to members.*—(1) A Bank may disburse AHP subsidies only to institutions that are members of the Bank at the time they request a draw-down of the subsidies.

(2) If an institution with an approved application for AHP subsidy loses its membership in a Bank, the Bank may disburse AHP subsidies to a member of such Bank to which the institution has transferred its obligations under the approved AHP application, or the Bank may disburse AHP subsidies through another Bank to a member of that Bank that has assumed the institution's obligations under the approved AHP application.

(b) *Progress towards use of AHP subsidy.* A Bank shall establish and implement policies, including time limits, for determining whether progress is being made towards draw-down and use of AHP subsidies by approved projects, and whether to cancel AHP application approvals for lack of such progress. If a Bank cancels any AHP application approvals due to lack of such progress, the Bank shall make the AHP subsidies available for other AHP-eligible projects.

(c) *Compliance upon disbursement of AHP subsidies.* A Bank shall establish and implement policies for determining, prior to its initial disbursement of AHP subsidies for an approved project, and prior to each subsequent disbursement if the need for AHP subsidy has changed, that the project meets the eligibility requirements of this part and all obligations committed to in the approved AHP application. If a Bank cancels any AHP application approvals due to noncompliance with eligibility requirements of this part, the Bank shall make the AHP subsidies available for other AHP-eligible projects.

(d) *Changes in approved AHP subsidy amount where a direct subsidy is used to write down prior to closing the principal amount or interest rate on a loan.* If a member is approved to receive AHP direct subsidy to write down prior to closing the principal amount or the interest rate on a loan to a project, and the amount of AHP subsidy required to maintain the debt service cost for the loan decreases from the amount of AHP subsidy initially approved by the Bank due to a decrease in market interest rates between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank shall reduce the AHP subsidy amount accordingly. If market interest rates rise between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank, in its discretion, may increase the AHP subsidy amount accordingly.

(e) *AHP outlay adjustment.* If a Bank reduces the amount of AHP subsidy approved for a project, the amount of such reduction shall be returned to the Bank's AHP fund. If a Bank increases the amount of AHP subsidy approved for a project, the amount of such increase shall be drawn first from any currently uncommitted or repaid AHP subsidies and then from the Bank's required AHP contribution for the next year.

§ 1291.29 Lending and re-lending of AHP direct subsidy by revolving loan funds.

Pursuant to written policies established by a Bank's board of directors after consultation with its Advisory Council, a Bank, in its discretion, may provide AHP direct subsidy under its General Fund or any Bank Targeted Funds for eligible projects and households involving both the lending of the subsidy and subsequent lending of subsidy principal and interest repayments by a revolving loan fund, provided the following requirements are met:

(a) *Submission of application.*—(1) An application for AHP subsidy under this section shall include the revolving loan fund's criteria for the initial lending of the subsidy, identification of and information on a specific proposed AHP project if required in the Bank's discretion, the revolving loan fund's

criteria for subsequent lending of subsidy principal and interest repayments, and any other information required by the Bank.

(2) The information in the application shall be sufficient for the Bank to:

(*i*) Determine that the criteria for the initial lending of the subsidy, the specific proposed project if applicable, and the criteria for subsequent lending of subsidy principal and interest repayments, meet the eligibility requirements of § 1291.23; and

(ii) Evaluate the criteria for the initial lending of the subsidy, and the specific proposed project if applicable, pursuant to the scoring methodology established by the Bank pursuant to § 1291.25(a).

(b) *Review of application.* A Bank shall review the application for AHP subsidy to determine that the criteria for the initial lending of the subsidy, the specific proposed project if applicable, and the criteria for subsequent lending of subsidy principal and interest repayments, meet the eligibility requirements of § 1291.23, and shall evaluate the criteria for the initial lending of the subsidy and the specific proposed project, if applicable, pursuant to the scoring methodology established by the Bank pursuant to § 1291.25(a).

(c) *Initial lending of subsidy.*—(1) The revolving loan fund's initial lending of the AHP subsidy shall meet the eligibility requirements of paragraph (a) of this section, shall be to projects or households meeting the commitments in the approved application for AHP subsidy, and shall be subject to the requirements in §§ 1291.15 and 1291.50, respectively.

(2) If a project funded under this paragraph (c) is in noncompliance with the commitments in the approved AHP application, or is sold or refinanced prior to the end of the applicable AHP retention period, the required amount of AHP subsidy shall be repaid to the revolving loan fund in accordance with §§ 1291.15(a)(8) and 1291.60, and the revolving loan fund shall re-lend such repaid subsidy, excluding the amounts of AHP subsidy principal already repaid to the revolving loan fund, to another project meeting the initial lending requirements of this paragraph (c) for the remainder of the retention period.

(d) *Subsequent lending of AHP subsidy principal and interest repayments*—(1) AHP subsidy principal and interest repayments received by the revolving loan fund from the initial lending of the AHP direct subsidy shall be re-lent by the revolving loan fund in accordance with the requirements of this paragraph (d), except that the revolving loan fund, in its discretion, may provide part or all of such repayments as nonrepayable grants to eligible projects in accordance with the requirements of this paragraph (d).

(2) The revolving loan fund's subsequent lending of AHP subsidy principal and interest repayments shall be for the purchase, construction, or rehabilitation of owner-occupied projects for households with incomes at or below 80 percent of the median income for the area, or of rental projects where at least 20 percent of the units are occupied by and affordable for households with incomes at or below 50 percent of the median income for the area, and shall meet all other eligibility requirements of this paragraph (d).

(3) A Bank may, in its discretion, require the revolving loan fund's subsequent lending of subsidy principal and interest repayments to be subject to retention period, monitoring, and recapture requirements for rental projects, as defined by the Bank in its AHP Implementation Plan.

(e) *Return of unused AHP subsidy.* The revolving loan fund shall return to the Bank any AHP subsidy that will not be used according to the requirements in this section.

§ 1291.30 Use of AHP subsidy in loan pools.

Pursuant to written policies established by a Bank's board of directors after consultation with its Advisory Council, a Bank, in its discretion, may provide AHP subsidy under its General Fund or any Bank Targeted Funds for the origination of first mortgage or rehabilitation loans with subsidized interest rates to AHP-eligible households through a purchase commitment by an entity that will purchase and pool the loans, provided the following requirements are met:

(a) *Eligibility requirements.* The loan pool sponsor's use of the AHP subsidies shall meet the requirements under this section, and shall not be used for the purpose of providing liquidity to the originator or holder of the loans, or paying the loan pool's operating or secondary market transaction costs.

(b) *Forward commitment*—(1) The loan pool sponsor shall purchase the loans pursuant to a forward commitment that identifies the loans to be originated with interest-rate reductions as specified in the approved application for AHP subsidy to households with incomes at or below 80 percent of the median income for the area. Both initial purchases of loans for the AHP loan pool and subsequent purchases of loans to substitute for repaid loans in the pool shall be made pursuant to the terms of such forward commitment and subject to time limits on the use of the AHP subsidy as specified by the Bank in its AHP Implementation Plan and the Bank's agreement with the loan pool sponsor, which shall not exceed 1 year from the date of approval of the AHP application.

(2) As an alternative to using a forward commitment, the loan pool sponsor may purchase an initial round of loans that were not originated pursuant to an AHP-specific forward commitment, provided that the entities from which the loans were purchased are required to use the proceeds from the initial loan purchases within time limits on the use of the AHP subsidy as specified by the Bank in its AHP Implementation Plan and the Bank's agreement with the loan pool sponsor, which shall not exceed 1 year from the date of approval of the AHP application. The proceeds shall be used by such entities to assist households that are income-eligible under the approved AHP application during subsequent rounds of lending, and such assistance shall be provided in the form of a below-market AHP-subsidized interest rate as specified in the approved AHP application.

(c) Each AHP-assisted rental project receiving AHP direct subsidy or a subsidized advance shall be subject to the requirements of §§ 1291.15, 1291.50(a), and 1291.60, respectively.

(d) Where AHP direct subsidy is being used to buy down the interest rate of a loan or loans from a member or other party, the loan pool sponsor shall use the full amount of the AHP direct subsidy to buy down the interest rate on a permanent basis at the time of closing on such loan or loans.

Subpart D—Homeownership Set-Aside Programs

§ 1291.40 Establishment of programs.

A Bank may establish, in its discretion, one or more Homeownership Set-Aside Programs pursuant to the requirements of this part. The Bank's analyses supporting establishment of such programs shall be included in its Targeted Community Lending Plan, as provided in § 1291.13(a).

§ 1291.41 Eligible applicants.

A Bank shall accept applications for AHP direct subsidy under its Homeownership Set-Aside Programs only from institutions that are members of the Bank at the time the application is submitted to the Bank.

§ 1291.42 Eligibility requirements.

A Bank's Homeownership Set-Aside Programs shall meet the eligibility requirements set forth in this section. A

Bank may not adopt additional eligibility requirements for its Homeownership Set-Aside Programs except for eligible households pursuant to paragraph (b) of this section.

(a) *Member allocation criteria.* AHP direct subsidies shall be provided to members pursuant to allocation criteria established by the Bank in its AHP Implementation Plan.

(b) *Eligible households.* Members shall provide AHP direct subsidies only to households that:

(1) Have incomes at or below 80 percent of the median income for the area at the time the household is accepted for enrollment by the member in the Bank's Homeownership Set-Aside Program, with such time of enrollment by the member defined by the Bank in its AHP Implementation Plan;

(2) Complete a homebuyer or homeowner counseling program provided by, or based on one provided by, an organization experienced in homebuyer or homeowner counseling, in the case of households that are first-time homebuyers; and

(3) Are first-time homebuyers or households receiving AHP subsidy for the purpose of owner-occupied rehabilitation, in the case of households receiving subsidy pursuant to the one-third set-aside funding allocation requirement in § 1291.12(b), and meet such other eligibility criteria that may be established by the Bank in its AHP Implementation Plan, such as a matching funds requirement, homebuyer or homeowner counseling requirement for households that are not first-time homebuyers, or criteria that give priority for the purchase or rehabilitation of housing in particular areas or as part of a disaster relief effort.

(c) *Maximum grant amount.* Members shall provide AHP direct subsidies to households as a grant, in an amount up to a maximum established by the Bank, not to exceed $22,000 per household, which limit shall automatically adjust upward on an annual basis in accordance with increases in FHFA's Housing Price Index (HPI). In the event of a decrease in the HPI, the subsidy limit shall remain at its then-current level until the HPI increases above the subsidy limit, at which point the subsidy limit shall adjust to that higher level. FHFA will notify the Banks annually of the maximum subsidy amount, based on the HPI. A Bank may establish a different maximum grant amount for each Homeownership Set-Aside Program it establishes. A Bank's maximum grant amount for each such program shall be included in its AHP Implementation Plan, which limit shall apply to all households in the specific program for which it is established.

(d) *Eligible uses of AHP direct subsidy.* Households shall use the AHP direct subsidies to pay for down payment, closing cost, counseling, or rehabilitation assistance in connection with the household's purchase or rehabilitation of an owner-occupied unit, including a condominium or cooperative housing unit or manufactured housing, to be used as the household's primary residence.

(e) *Financial or other concessions.* The Bank may, in its discretion, require members and other lenders to provide financial or other concessions, as defined by the Bank in its AHP Implementation Plan, to households in connection with providing the AHP direct subsidy or financing to the household.

(f) *Financing costs.* The rate of interest, points, fees, and any other charges for all loans made in conjunction with the AHP direct subsidy shall not exceed a reasonable market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk.

(g) *Counseling costs.* The AHP direct subsidies may be used to pay for counseling costs only where:

(1) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; and

(2) The cost of the counseling has not been covered by another funding source, including the member.

(h) *Cash back to household.* A member may provide cash back to a household at closing on the mortgage loan in an amount not exceeding $250, as determined by the Bank in its AHP Implementation Plan, and a member shall use any AHP direct subsidy exceeding such amount that is beyond what is needed at closing for closing costs and the approved mortgage amount as a credit to reduce the principal of the mortgage loan or as a credit toward the household's monthly payments on the mortgage loan.

§ 1291.43 Approval of AHP applications.

A Bank shall approve applications for AHP direct subsidy in accordance with the Bank's criteria governing the allocation of funds.

§ 1291.44 Procedures for funding.

(a) *Disbursement of AHP direct subsidies to members*—(1) A Bank may disburse AHP direct subsidies only to institutions that are members of the Bank at the time they request a draw-down of the subsidies.

(2) If an institution with an approved application for AHP direct subsidy loses its membership in a Bank, the Bank may disburse AHP direct subsidies to a member of such Bank to which the institution has transferred its obligations under the approved AHP application, or the Bank may disburse AHP direct subsidies through another Bank to a member of that Bank that has assumed the institution's obligations under the approved AHP application.

(b) *Reservation of homeownership set-aside subsidies.* A Bank shall establish and implement policies for reservation of homeownership set-aside subsidies for households enrolled in the Bank's Homeownership Set-Aside Program. The policies shall provide that set-aside subsidies be reserved no more than two years in advance of the Bank's time limit in its AHP Implementation Plan for draw-down and use of the subsidies by the household and the reservation of subsidies be made from the set-aside allocation of the year in which the Bank makes the reservation.

(c) *Progress towards use of AHP direct subsidy.* A Bank shall establish and implement policies, including time limits, for determining whether progress is being made towards draw-down and use of the AHP direct subsidies by eligible households, and whether to cancel AHP application approvals for lack of such progress. If a Bank cancels any AHP application approvals due to lack of such progress, it shall make the AHP direct subsidies available for other applicants for AHP direct subsidies under the Homeownership Set-Aside Program or for other AHP-eligible projects.

Subpart E—Outcome Requirements for Statutory and Regulatory Priorities

§ 1291.48 Outcome requirements for statutory and regulatory priorities.

(a) *Statutory priorities—government properties; project sponsorship.* Each year, each Bank shall award at least 55 percent of the total AHP funds allocated, in the aggregate, to the Bank's General Fund and any Bank Targeted Funds to projects that meet paragraph (a)(1) or paragraph (a)(2) of this section. If an awarded project meets both paragraphs, it may be counted towards meeting only one of the paragraphs.

(1) *Use of donated or conveyed government-owned or other properties.* The financing of housing that uses a significant proportion, as defined by the Bank in its AHP Implementation Plan, of:

(i) Land or units donated or conveyed by the federal government or any agency or instrumentality thereof; or

(ii) Land or units donated or conveyed by any other party for an amount significantly below the fair market value of the property, as defined by the Bank in its AHP Implementation Plan.

(2) *Sponsorship by a not-for-profit organization or government entity.* Project sponsorship by a not-for-profit organization, a state or political subdivision of a state, a state housing agency, a local housing authority, a Native American Tribe, an Alaskan Native Village, or the government entity for Native Hawaiian Home Lands.

(b) *Statutory priority—purchase of homes by low- or moderate-income households.* Each year, each Bank shall award at least 10 percent of its required annual AHP contribution to low- or moderate-income households, or to projects targeting such households, for the purchase by such households of homes under any or some combination of the Bank's General Fund, any Bank Targeted Funds, and any Bank Homeownership Set-Aside Programs.

(c) *Regulatory priority—very low-income targeting for rental units.* Each year, each Bank shall ensure that at least 55 percent of all rental units in rental projects receiving AHP awards under the Bank's General Fund and any Bank Targeted Funds are reserved for very low-income households.

(d) *Regulatory priorities—Underserved Communities and Populations; Creating Economic Opportunity; and Affordable Housing Preservation.* Each year, each Bank shall ensure that at least 55 percent of the Bank's required annual AHP contribution is awarded under the Bank's General Fund and any Bank Targeted Funds to projects that, in the aggregate, meet at least two of the three regulatory priorities in this paragraph (d) (paragraphs (d)(1), (d)(2), and (d)(3)) by meeting one or more of the specified housing needs included under the regulatory priority, and awarding at least 10 percent of the funds to projects meeting each of such regulatory priorities. If an awarded project meets more than one of the regulatory priorities, it may be counted towards meeting only one of them. If an awarded project meets more than one specified housing need under a regulatory priority, it may be counted towards meeting only one of those housing needs. An award to a project may not be counted towards meeting a regulatory priority in this paragraph (d) unless the specified housing need that it meets is identified in the Bank's Targeted Community Lending Plan as an affordable housing need the Bank indicated it would address through its AHP scoring criteria.

(1) *Regulatory priority—Underserved Communities and Populations.* The financing of housing for underserved communities or populations, by addressing one or more of the following specific housing needs:

(i) *Housing for homeless households.* The financing of rental housing, excluding overnight shelters, reserving at least 50 percent of the units for homeless households, the creation of transitional housing for homeless households permitting a minimum of 6 months occupancy, or the creation of permanent owner-occupied housing reserving at least 50 percent of the units for homeless households, with the term ''homeless households'' as defined by the Bank in its AHP Implementation Plan.

(ii) *Housing for special needs populations.* The financing of housing in which at least 50 percent of the units are reserved for, and provide supportive services or access to supportive services for, households with specific special needs, such as: The elderly; persons with disabilities; formerly incarcerated persons; persons recovering from physical abuse or alcohol or drug abuse; victims of domestic violence, dating violence, sexual assault or stalking; persons with HIV/AIDS; or unaccompanied youth; or the financing of housing that is visitable by persons with physical disabilities who are not occupants of such housing.

(iii) *Housing for other targeted populations.* The financing of housing, not necessarily with supportive services, in which at least 50 percent of the units are reserved for populations specifically in need of housing, such as agricultural workers, military veterans, Native Americans, multigenerational households, persons with disabilities, or households requiring large units.

(iv) *Rural housing.* The financing of housing located in rural areas (with the term ''rural area'' as defined in 12 CFR 1282.1).

(v) *Rental housing for extremely low-income households.* The financing of rental projects in which at least 20 percent of the units are reserved for extremely low-income households.

(vi) *Other.* The financing of other housing addressing specific housing needs of underserved communities or populations as FHFA may provide by guidance.

(2) *Regulatory priority—Creating Economic Opportunity.* The financing of housing that facilitates economic opportunity for the residents by addressing one or more of the following specific housing needs:

(i) *Promotion of empowerment.* The provision of housing in combination with a program offering services that assist residents in attaining life skills or moving toward better economic opportunities, such as: Employment; education; training; homebuyer, homeownership or tenant counseling; child care; adult daycare services; afterschool care; tutoring; health services; resident involvement in decision making affecting the creation of operation of the project; or workforce preparation and integration.

(ii) *Residential economic diversity.* The financing of either affordable housing in a high opportunity area, or mixed-income housing in an area of concentrated poverty (as those terms are defined in 12 CFR 1282.1 and FHFA's Duty to Serve Evaluation Guidance).

(iii) *Other.* The financing of other housing that facilitates economic opportunity as FHFA may provide by guidance.

(3) *Regulatory priority—Affordable Housing Preservation.* The financing of affordable rental housing preservation or homeownership preservation, by addressing one or more of the following specific housing needs:

(i) *Affordable rental housing preservation.* Providing financing that preserves affordable rental housing such as existing housing in need of rehabilitation as indicated by deteriorating physical condition, high vacancy rates, or poor financial performance, affordable rental housing with energy or water efficiency improvements (meeting the requirements of 12 CFR 1282.34(d)(2)), and affordable housing under the following programs: Section 8 (42 U.S.C. 1437f), Section 236 (12 U.S.C. 1715z–1), Section 221(d)(4) (12 U.S.C. 1715l), Section 202 (12 U.S.C. 1701q), Section 811 (42 U.S.C. 8013), McKinney-Vento Homeless Assistance (42 U.S.C. 11361 *et seq.*), Section 515 (42 U.S.C. 1485), Low-Income Housing Tax Credits (26 U.S.C. 42), HUD Choice Neighborhoods Initiative (42 U.S.C. 1437v); HUD Rental Assistance Demonstration program (42 U.S.C. 1437f note), or other state or local affordable housing programs comparable to the foregoing housing programs.

(ii) *Affordable homeownership preservation.* The financing of housing that preserves affordable homeownership, including owner-occupied rehabilitation, shared equity programs, owner-occupied housing with energy or water efficiency improvements (meeting the requirements of 12 CFR 1282.34(d)(3)), or other housing finance strategies to preserve homeownership.

(iii) *Other.* The financing of other mechanisms for affordable rental

housing preservation or affordable homeownership preservation as FHFA may provide by guidance.

(e) *Annual report.* Each Bank shall submit an annual report to FHFA, at a time and in a form designated by FHFA, demonstrating compliance with this section.

§ 1291.49 Determination of compliance with outcome requirements; notice of determination.

(a) *Determination of compliance.* On an annual basis, the Director shall determine each Bank's compliance with the outcome requirements in § 1291.48.

(b) *Noncompliance with outcome requirements.* If the Director preliminarily determines that a Bank has failed to comply with § 1291.48, the Director shall notify the Bank in writing of such preliminary determination. Any notification to a Bank of such preliminary determination shall provide the Bank with an opportunity to respond in writing in accordance with the following procedures:

(1) *Notice.* The Director shall provide written notice to the Bank of the preliminary determination, the reasons for such determination, and the information on which the Director based the determination.

(2) *Response period*—(i) *In general.* During the 30-day period beginning on the date on which notice is provided under paragraph (b)(1) of this section, the Bank may submit to the Director any written information that the Bank considers appropriate for consideration by the Director in finally determining whether such noncompliance has occurred or whether compliance with § 1291.48 was feasible.

(ii) *Extended period.* The Director may extend the period under paragraph (b)(2)(i) of this section for good cause for not more than 30 additional days.

(iii) *Shortened period.* The Director may shorten the period under paragraph (b)(2)(i) of this section for good cause.

(iv) *Failure to respond.* The failure of a Bank to provide information during the response period shall waive any right of the Bank to comment on the proposed determination or action of the Director.

(3) *Consideration of information and final determination*—(i) *Considerations.* In making a final determination under paragraph (b)(3)(ii) of this section, the Director shall take into consideration any relevant information submitted by the Bank during the response period.

(ii) *Notice of final determination.* After the expiration of the response period or receipt of information provided during such period by the Bank, the Director shall provide written notice to the Bank within a reasonable period of time of the final determination of:

(A) Whether the Bank has failed to comply with § 1291.48; and

(B) Whether, taking into consideration market and economic conditions and the financial condition of the Bank, compliance with § 1291.48 was feasible.

Subpart F—Monitoring

§ 1291.50 Monitoring under General Fund and Targeted Funds.

(a) *Initial monitoring policies for owner-occupied and rental projects.* A Bank shall adopt written policies pursuant to which the Bank shall monitor each AHP owner-occupied project and rental project approved under its General Fund and any Bank Targeted Funds prior to, and within a reasonable period of time after, project completion to verify, at a minimum, satisfaction of the requirements in this section.

(1) *Satisfactory progress.* The Bank shall determine that:

(i) The project is making satisfactory progress towards completion, in compliance with the commitments made in the approved AHP application, Bank policies, and the requirements of this part; and

(ii) Following completion of the project, satisfactory progress is being made towards occupancy of the project by eligible households.

(2) *Project sponsor or owner certification, rent roll and other documentation; backup and other project documentation.* Within a reasonable period of time after project completion, the Bank shall review a certification from the project sponsor or owner, the project rent roll, and any other documentation to verify that the project meets the following requirements, at a minimum:

(*i*) The AHP subsidies were used for eligible purposes according to the commitments made in the approved AHP application;

(ii) The household incomes and rents comply with the income targeting and rent commitments made in the approved AHP application;

(iii) The project's actual costs were reasonable in accordance with the Bank's project cost guidelines, and the AHP subsidies were necessary for the completion of the project as currently structured, as determined pursuant to § 1291.24(a)(4);

(iv) Each rental project is subject to an AHP retention agreement that meets the requirements of § 1291.15(a)(7); and

(v) The services and activities committed in the approved AHP application have been provided in connection with the project.

(3) *Back-up and other project documentation.* The Bank's written monitoring policies shall include requirements for:

(i) Bank review within a reasonable period of time after project completion of back-up project documentation regarding household incomes and rents (not including the rent roll) maintained by the project sponsor or owner, except for projects that received funds from other federal, state or local government entities whose programs meet the requirements in paragraphs (b)(1) and (2) of this section as specified in separate FHFA guidance, or projects that have also been allocated federal Low-Income Housing Tax Credits; and

(ii) Maintenance and Bank review of other project documentation in the Bank's discretion.

(4) *Sampling plan.* The Bank shall not use a sampling plan to select the projects to be monitored under this paragraph (a), but may use a reasonable risk-based sampling plan to review the back-up project documentation.

(b) *Long-term monitoring—reliance on other governmental monitoring for certain rental projects.* For completed AHP rental projects that also received funds other than federal Low-Income Housing Tax Credits from federal, state, or local government entities, a Bank may, in its discretion, for purposes of long-term AHP monitoring under its General Fund and any Bank Targeted Funds, rely on the monitoring by such entities of the income targeting and rent requirements applicable under their programs, provided that the Bank can show that:

(1) The compliance profiles regarding income targeting, rent, and retention period requirements of the AHP and the other programs are substantively equivalent;

(2) The entity has demonstrated and continues to demonstrate its ability to monitor the project;

(3) The entity agrees to provide reports to the Bank on the project's incomes and rents for the full 15-year AHP retention period; and

(4) The Bank reviews the reports from the monitoring entity to confirm that they comply with the Bank's monitoring policies.

(c) *Long-term monitoring policies for rental projects.* In cases where a Bank does not rely on monitoring by a federal, state, or local government entity pursuant to paragraph (b) of this section, pursuant to written policies established by the Bank, the Bank shall monitor completed AHP rental projects approved under its General Fund and

any Bank Targeted Funds, commencing in the second year after project completion through the AHP 15-year retention period, to verify, at a minimum, satisfaction of the requirements in this section.

(1) *Annual project sponsor or owner certifications; backup and other project documentation.* A Bank's written monitoring policies shall include requirements for:

(i) Bank review of annual certifications by project sponsors or owners to the Bank that household incomes and rents are in compliance with the commitments made in the approved AHP application during the AHP 15-year retention period, along with information on the ongoing financial viability of the project, including whether the project is current on its property taxes and loan payments, its vacancy rate, and whether it is in compliance with its commitments to other funding sources;

(ii) Bank review of back-up project documentation regarding household incomes and rents, including the rent rolls, maintained by the project sponsor or owner, except for projects that also received funds from other federal, state or local government entities whose programs meet the requirements in paragraphs (b)(1) and (2) of this section as specified in separate FHFA guidance, or projects that have also been allocated federal Low-Income Housing Tax Credits (LIHTC), provided that the Bank shall review any notices received from project sponsors or owners pursuant to § 1291.15(a)(5)(ii) that an AHP project is in noncompliance with LIHTC income-targeting or rent requirements during the AHP 15-year retention period; and

(iii) Maintenance and Bank review of other project documentation in the Banks' discretion.

(2) *Risk factors and other monitoring*—(i) *Risk factors; other monitoring.* A Bank's written monitoring policies shall take into account risk factors such as the amount of AHP subsidy in the project, type of project, size of project, location of project, sponsor experience, and any monitoring of the project provided by a federal, state, or local government entity.

(ii) *Risk-based sampling plan.* A Bank may use a reasonable, risk-based sampling plan to select the rental projects to be monitored under this paragraph (c), and to review the back-up and any other project documentation. The risk-based sampling plan and its basis shall be in writing.

(d) *Annual adjustment of targeting commitments.* For purposes of determining compliance with the targeting commitments in an approved AHP application for both initial and long-term AHP monitoring purposes under a Bank's General Fund and any Bank Targeted Funds, such commitments shall be considered to adjust annually according to the current applicable median income data. A rental unit may continue to count toward meeting the targeting commitment of an approved AHP application as long as the rent charged to a household remains affordable, as defined in § 1291.1, for the household occupying the unit.

§ 1291.51 Monitoring under Homeownership Set-Aside Programs.

(a) *Adoption and implementation.* Pursuant to written policies adopted by a Bank, the Bank shall monitor compliance with the requirements of its Homeownership Set-Aside Programs, including monitoring to determine, at a minimum, whether:

(1) The AHP subsidy was provided to households meeting all applicable eligibility requirements in § 1291.42(b) and the Bank's Homeownership Set-Aside Program policies; and

(2) All other applicable eligibility requirements in § 1291.42 and the Bank's Homeownership Set-Aside Program policies are met.

(b) *Member certifications; back-up and other documentation.* The Bank's written monitoring policies shall include requirements for:

(1) Bank review of certifications by members to the Bank, prior to disbursement of the AHP subsidy, that the subsidy will be provided in compliance with all applicable eligibility requirements in § 1291.42;

(2) Bank review of back-up documentation regarding household incomes maintained by the member; and

(3) Maintenance and Bank review of other documentation in the Bank's discretion.

(c) *Sampling plan.* The Bank may use a reasonable sampling plan to select the households to be monitored, and to review the back-up and any other documentation received by the Bank, but not the member certifications required in paragraph (b) of this section. The sampling plan and its basis shall be in writing.

Subpart G—Remedial Actions for Noncompliance

§ 1291.60 Remedial actions for project noncompliance.

(a) *Scope.* This section applies to noncompliance of an AHP-assisted project with the commitments made in its application for AHP subsidies and the requirements of this part, including any use of AHP subsidy by the project sponsor or project owner for purposes other than those committed to in the AHP application. This section does not apply to individual AHP-assisted households or to the sale or refinancing by such households of their homes.

(b) *Elimination of project noncompliance*—(1) *Cure.* In the event of project noncompliance, the project sponsor or owner must cure the noncompliance within a reasonable period of time. If the noncompliance is cured within a reasonable period of time, no AHP subsidy is required to be repaid to the Bank by the project sponsor or owner.

(2) *Project modification.* If the project sponsor or project owner cannot cure the noncompliance within a reasonable period of time, the Bank shall determine whether the circumstances of the noncompliance can be eliminated through a modification of the terms of the AHP application pursuant to § 1291.27. If the circumstances of the noncompliance can be eliminated through a modification, the Bank shall approve the modification and no AHP subsidy is required to be repaid to the Bank by the project sponsor or owner.

(c) *Reasonable collection efforts*—(1) *Demand for repayment.* If the circumstances of a project's noncompliance cannot be eliminated through a cure or modification, the Bank, or the member if delegated the responsibility, shall make a demand on the project sponsor or owner for repayment of the full amount of the AHP subsidy not used in compliance with the commitments in the AHP application or the requirements of this part (plus interest, if appropriate). If the noncompliance is occupancy by households with incomes exceeding the income-targeting commitments in the AHP application, the amount of AHP subsidy due is calculated based on the number of units in noncompliance, the length of the noncompliance, and the portion of the AHP subsidy attributable to the noncompliant units.

(2) *Settlement*—(i) If the demand for repayment of the full amount due is unsuccessful, the member, in consultation with the Bank, shall make reasonable efforts to collect the subsidy from the project sponsor or project owner, which may include settlement for less than the full amount due, taking into account factors such as the financial capacity of the project sponsor or project owner, assets securing the AHP subsidy, other assets of the project sponsor or project owner, the degree of culpability of the project sponsor or

project owner, and the extent of the Bank's or member's collection efforts.

(ii) The settlement with the project sponsor or owner must be supported by sufficient documentation showing that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance, including any factors in paragraph (c)(2)(i) of this section that were considered in reaching the settlement.

§ 1291.61 Recovery of subsidy for member noncompliance.

If a member uses AHP subsidy for purposes other than those committed to in the AHP application or the requirements of this part, the Bank shall recover from the member the amount of subsidy used for such impermissible purposes.

§ 1291.62 Bank reimbursement of AHP fund.

(a) *By the Bank.* A Bank shall reimburse its AHP fund in the amount of any AHP subsidies (plus interest, if appropriate) not used in compliance with the commitments in an AHP application or the requirements of this part as a result of the actions or omissions of the Bank.

(b) *By FHFA order.* FHFA may order a Bank to reimburse its AHP fund in an appropriate amount upon determining that:

(1) The Bank has failed to reimburse its AHP fund as required under paragraph (a) of this section; or

(2) The Bank has failed to recover the full amount of AHP subsidy due from a project sponsor, project owner or member pursuant to the requirements of §§ 1291.60 and 1291.61, and has not shown that such failure is reasonably justified, considering factors such as those in § 1291.60(c)(2)(i).

§ 1291.63 Suspension and debarment.

(a) *At a Bank's initiative.* A Bank may suspend or debar a member, project sponsor, or project owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an approved application for AHP subsidy or the requirements of this part.

(b) *At FHFA's initiative.* FHFA may order a Bank to suspend or debar a member, project sponsor, or project owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an approved application for AHP subsidy or the requirements of this part.

§ 1291.64 Use of repaid AHP subsidies for other AHP-eligible projects and households.

Amounts of AHP subsidy, including any interest, repaid to a Bank pursuant to this part shall be made available by the Bank for other AHP-eligible projects or households.

§ 1291.65 Remedial actions for Bank noncompliance with outcome requirements.

If the Director determines, pursuant to § 1291.49, that a Bank has failed to comply with an outcome requirement in § 1291.48 and that compliance was feasible, the Director may require the Bank to take actions to remedy the noncompliance, which may include, but are not limited to, the following actions:

(a) *Housing plan.* The Director may require the Bank to submit a housing plan for approval by the Director.

(1) *Nature of plan.* If the Director requires a housing plan, the housing plan shall:

(i) Be feasible;

(ii) Be sufficiently specific to enable the Director to monitor compliance periodically;

(iii) Describe the specific actions that the Bank will take to comply with § 1291.48 for the next calendar year; and

(iv) Address any additional matters relevant to the plan as required, in writing, by the Director.

(2) *Deadline for submission.* The Bank shall submit the housing plan to the Director within 45 days after issuance of a notice requiring the Bank to submit a housing plan under this section. The Director may extend the deadline for submission of a plan, in writing and for a time certain, to the extent the Director determines an extension is necessary.

(3) *Review of housing plan.* The Director shall review and approve or disapprove a housing plan under this section as follows:

(i) *Approval.* The Director shall review each submission by a Bank, including a housing plan submitted under this section and approve or disapprove the plan or other action within a reasonable time. The Director shall approve any plan that the Director determines is likely to succeed and conforms with the Bank Act, this part, and any other applicable provision of law.

(ii) *Notice of approval and disapproval.* The Director shall provide written notice to a Bank submitting a housing plan under this section of the approval or disapproval of the plan, which shall include the reasons for any disapproval of the plan, and of any extension of the period for approval or disapproval.

(iii) *Resubmission.* If the Director disapproves an initial housing plan submitted by a Bank under this section, the Bank shall submit an amended plan acceptable to the Director not later than 30 days after the Director's disapproval of the initial plan. The Director may extend the deadline if the Director determines an extension is in the public interest. If the amended plan is not acceptable to the Director, the Director may afford the Bank 15 days to submit a new plan.

(b) *Reimbursement of AHP fund.* FHFA may order the Bank to reimburse its AHP fund for the difference in the amount of AHP funds required to be awarded to meet the outcome requirement and the amount the Bank actually awarded.

§ 1291.66 Transfer of Program administration.

Without limitation on other remedies, FHFA, upon determining that a Bank has engaged in mismanagement of its Program, may designate another Bank to administer all or a portion of the first Bank's annual AHP contribution, for the benefit of the first Bank's members, under such terms and conditions as FHFA may prescribe.

Subpart H—Affordable Housing Reserve Fund

§ 1291.70 Affordable Housing Reserve Fund.

(a) *Deposits.* If a Bank fails to use or commit the full amount it is required to contribute to the Program in any year pursuant to § 1291.10(a), 90 percent of the unused or uncommitted amount shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by FHFA. The remaining 10 percent of the unused and uncommitted amount retained by the Bank should be fully used or committed by the Bank during the following year, and any remaining portion shall be deposited in the Affordable Housing Reserve Fund.

(b) *Use or commitment of AHP funds.* Approval of applications for AHP funds from members sufficient to exhaust the amount a Bank is required to contribute pursuant to § 1291.10(a) shall constitute use or commitment of funds. Amounts remaining unused or uncommitted at year-end are deemed to be used or committed if, in combination with AHP funds that have been returned to the Bank or de-committed from canceled projects, they are insufficient to fund:

(1) The next highest scoring AHP applications in the Bank's final funding period of the year for its General Fund first and then for any Targeted Funds established by the Bank;

(2) Pending applications for funds under the Bank's Homeownership Set-Aside Programs, if any; and

(3) Project modifications for AHP subsidy increases approved by the Bank pursuant to the requirements of this part.

(c) *Carryover of insufficient amounts.* Such insufficient amounts as described in paragraph (b) of this section shall be carried over for use or commitment in the following year in the Bank's General Fund, and any Targeted Funds or Homeownership Set-Aside Programs established by the Bank.

Dated: March 1, 2018.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

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FEDERAL REGISTER

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No. 50 March 14, 2018

Part IV

The President

Notice of March 12, 2018—Continuation of the National Emergency With Respect to Iran

Federal Register
Vol. 83, No. 50
Wednesday, March 14, 2018

Presidential Documents

Title 3—

The President

Notice of March 12, 2018

Continuation of the National Emergency With Respect to Iran

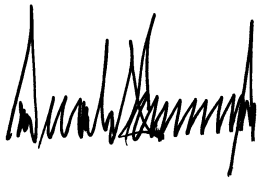
On March 15, 1995, by Executive Order 12957, the President declared a national emergency with respect to Iran to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Government of Iran. On May 6, 1995, the President issued Executive Order 12959, imposing more comprehensive sanctions on Iran to further respond to this threat. On August 19, 1997, the President issued Executive Order 13059, consolidating and clarifying those earlier orders. The President took additional steps pursuant to this national emergency through Executive Order 13553 of September 28, 2010, Executive Order 13574 of May 23, 2011, Executive Order 13590 of November 20, 2011, Executive Order 13599 of February 5, 2012, Executive Order 13606 of April 22, 2012, Executive Order 13608 of May 1, 2012, Executive Order 13622 of July 30, 2012, Executive Order 13628 of October 9, 2012, and Executive Order 13645 of June 3, 2013.

On July 14, 2015, the P5+1 (China, France, Germany, Russia, the United Kingdom, and the United States), the European Union, and Iran agreed to a Joint Comprehensive Plan of Action (JCPOA) to ensure that Iran's nuclear program remains exclusively peaceful. On January 16, 2016, Implementation Day under the JCPOA, the United States lifted nuclear-related sanctions on Iran, by terminating a number of Executive Orders that had been issued pursuant to this national emergency and by taking other actions. Though these measures constitute a significant change in our sanctions posture, comprehensive non-nuclear-related sanctions with respect to Iran remain in place.

Actions and policies of the Government of Iran, including its development of ballistic missiles, support for international terrorism, and human rights abuses continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.

For this reason, the national emergency declared on March 15, 1995, must continue in effect beyond March 15, 2018. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iran declared in Executive Order 12957. The emergency declared by Executive Order 12957 constitutes an emergency separate from that declared on November 14, 1979, by Executive Order 12170, in connection with the hostage crisis. This renewal, therefore, is distinct from the emergency renewal of November 2017.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
March 12, 2018.

[FR Doc. 2018–05340
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