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Presidential Documents

Title 3—

The President

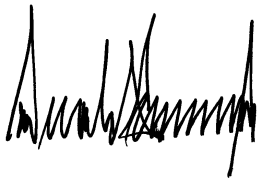
Notice of September 10, 2018

Continuation of the National Emergency With Respect to Certain Terrorist Attacks

Consistent with section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), I am continuing for 1 year the national emergency previously declared on September 14, 2001, in Proclamation 7463, with respect to the terrorist attacks of September 11, 2001, and the continuing and immediate threat of further attacks on the United States.

Because the terrorist threat continues, the national emergency declared on September 14, 2001, and the powers and authorities adopted to deal with that emergency must continue in effect beyond September 14, 2018. Therefore, I am continuing in effect for an additional year the national emergency declared on September 14, 2001, in response to certain terrorist attacks.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
September 10, 2018.

[FR Doc. 2018–19945
Filed 9–11–18; 8:45 am]
Billing code 3295–F8–P

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Doc. No. AMS–SC–18–0012; SC18–929–2 FR]

Cranberries Grown in States of Massachusetts, et al.; Establishment of 2018–19 Seasonal Volume Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation to establish a grower allotment percentage for the 2018–19 crop year and allows for the diversion of processed products from that year under the marketing order for cranberries grown in the production area (Order). This action also specifies handlers subject to the regulation, revises the definition of outlets for excess fruit, revises dates by which certain actions are due, and establishes exemptions to the action.

DATES: Effective October 12, 2018.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov*.

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

SUPPLEMENTARY INFORMATION: This final rule, 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 final rule is issued under Marketing Agreement and Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. Part 929 (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 Cranberry Marketing Committee (Committee) locally administers the Order and is comprised of growers of cranberries operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 13563 and 13175. 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 final rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Order provisions provide that the Committee may recommend and implement, subject to USDA approval, volume control regulation which would decrease the available supply of cranberries whenever the Secretary of Agriculture (Secretary) finds that ''such regulation will tend to effectuate the declared policy of the Act.'' Accordingly, this rule establishes a marketable quantity and grower allotment percentage for cranberries produced during the 2018–19 crop year, beginning September 1, 2018, and ending August 31, 2019.

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

This final rule establishes a marketable quantity and grower allotment percentage for the 2018–19 crop year. This rule is the result of the Committee's recommendations made during its August 4, and August 31, 2017, meetings, and a February 18, 2018, email vote. This rule establishes a marketable quantity of 7.275 million barrels and a grower allotment percentage of 75 percent. This action also allows handlers to process up to 50 percent of the excess cranberries they receive above their growers' allotment, provided they divert an equivalent amount of 2018–19 cranberry processed products. It also establishes an exemption for organically grown cranberries, specifies handlers subject to the regulation, revises the definition of outlets for excess fruit, and revises dates by which certain actions are due.

The Committee also recommended an exemption for organically grown cranberries, and an exemption of 2,500 barrels for each grower. After much consideration, USDA determined the recommended grower exemption of 2,500 barrels should be revised. Consequently, this final rule does not include the exemption of 2,500 barrels for each grower and instead exempts handlers that processed less than 125,000 barrels during the 2017–18 fiscal year, or handlers that did not have carryover inventory at the end of the 2017–18 fiscal year. Accordingly, growers delivering their fruit to exempt handlers are not subject to the allotment.

In addition, in a February 18, 2018, vote by email, the Committee voted unanimously to adjust reporting dates associated with the allotment regulation. These changes were previously discussed and supported by the Committee at a meeting on April 22,

2014, as part of the consideration of another volume regulation for which a rule was not issued.

The recommendations included in this rule will adjust supply to more closely meet market demand, improve grower and handler returns, and help reduce inventory.

Sections 929.49 and 929.52 provide, in part, authority to establish a marketable quantity and grower allotment percentage. Section 929.14 defines marketable quantity as the volume of cranberries needed to meet market demand and provide for an adequate carryover into the next season. The allotment percentage is derived by dividing the marketable quantity by the total of all growers' sales histories. Section 929.48 outlines procedures for computing a grower's sales history.

Section 929.49 also prescribes how the grower allotment percentage is calculated and distributed to growers and handlers. Each grower's allotment volume is calculated by multiplying the individual's sales history by the allotment percentage. A grower's allotment is the total volume a handler may purchase from, or handle on behalf of, that grower during a year of volume regulation. Cranberries received by a handler that exceed the sum of their growers' allotments can be used to fill unused allotment. Any remaining cranberries are defined as excess cranberries as defined in § 929.59, which also outlines the procedures and dates by which excess cranberries are to be diverted. Section 929.61 prescribes outlets for excess cranberries, which are further defined in § 929.104.

In addition, § 929.50 provides authority for the transfer of sales history and annual allotment. Section 929.51 requires the Committee to consider market conditions, including supply and demand, prior to recommending an allotment percentage, and that any recommendation be made by March 1. Section 929.58(a) provides the authority to exempt from any or all requirements the handling of cranberries in such minimum quantities as the Committee, with the approval of the Secretary, may prescribe. Section 929.58(b) provides, in part, the authority to exempt from any or all requirements the handling of cranberries of such forms or types, including organic cranberries, as the Committee, with the approval of the Secretary, may prescribe.

Domestic cranberry production has been increasing over the past few years, up from 8.0 million barrels in 2012 to 9.6 million barrels in 2016. During the last few years, demand has remained relatively flat, and has not kept pace with the increases in supply. This has led to increasing levels of inventories. Ending inventory levels increased from 5.8 million barrels in 2012 to 9.7 million barrels in 2016.

Demand for cranberries is inelastic, meaning changes in consumer price have a minimal effect on total sales. However, grower prices are very sensitive to changes in supply. Consequently, higher inventory levels place downward pressure on grower prices for cranberries and reduce grower returns. Data reviewed by the Committee indicates that the price per barrel received by some growers has fallen from $30 a barrel in 2011 to $10 a barrel in 2016. With the cost of production estimated at approximately $35 a barrel, for many growers returns have fallen below the cost of production.

The Committee met on August 4, 2017, and again on August 31, 2017, and discussed the estimated levels of supply and demand and how market conditions were impacting the industry. The Committee discussed the approximate levels of production for the 2017–18 season, forecasting production at approximately 9.1 million barrels. Carryover inventory was estimated at approximately 9.9 million barrels and foreign acquired cranberries were expected to provide an additional 2.1 million barrels, for a total available supply of approximately 21.1 million barrels for the year. After accounting for shrinkage, the Committee agreed on an adjusted supply of 20.4 million barrels for the 2017–18 crop year.

Using these numbers, with estimated sales of 9.5 million barrels for 2017–18, the Committee calculated a potential carryover for the 2018–19 season of 10.9 million barrels. This is an approximately one million barrel increase from the carryover inventory for the 2017–18 crop year. Based on these numbers, carryover inventory for the 2018–19 crop year would be approximately 115 percent of annual sales.

In discussing market conditions, the Committee recognized that sales have been relatively flat. The Committee also noted supply has been exceeding demand by about one million barrels a year. Using crop and sales estimates similar to 2017–18, and the estimated carryover from the 2017–18 season of 10.9 million barrels, the potential carryover supply at the end of the 2018–19 crop year could increase by another one million barrels to 11.9 million if no action is taken to regulate supply.

In reviewing these numbers, the Committee agreed the industry is faced with a large inventory that continues to build. To address the problems associated with oversupply and to try to stabilize grower returns, the Committee discussed the need to establish volume regulation. The Committee considered several options, including establishing free and restricted percentages under a handler withholding for the 2017–18 crop year, establishing a grower allotment for the 2018–19 season, or recommending both regulations.

Considering the levels of inventory and low grower returns, the Committee voted to recommend a handler withholding, setting the free and restricted percentages of 85 percent and 15 percent, respectively, for the 2017–18 season. AMS agreed with the Committee's analysis and recommendation and published the rule establishing these percentages in the **Federal Register** on April 4, 2018 (83 FR 14350). The Committee estimated that the 15 percent restriction would remove approximately one million barrels from inventory, helping to maintain inventories at current levels. While the Committee recognized a small restriction would not immediately balance supply with demand, even a small restriction would remove a portion of the volume from the market and help prevent an additional increase in inventory.

With the handler withholding removing an estimated one million barrels from the market, the industry would still have approximately 10 million barrels remaining in inventory. Given the static demand and anticipated market conditions for the 2018–19 fiscal year, the Committee also recommended establishing a grower allotment percentage for the 2018–19 fiscal year.

The Committee discussed various levels of restriction, being sensitive to the impact volume control could have on small growers and handlers. Some small handlers are able to sell all their production each year and do not maintain an inventory. Several Committee members stated a large restriction would place a hardship on these small handlers. However, the Committee also recognized that volume control measures could help increase grower returns by helping to align supply with demand.

In addition, establishing an allotment regulation can help growers reduce production costs. Growers could choose to take bogs out of production, or reduce inputs such as fertilizer and pesticides in order to reduce their production volume to match their allotment. These and other steps could help growers reduce their costs of production for the 2018–19 crop.

Based on the information available, the Committee recommended

establishing a marketable quantity of 7.275 million barrels and an allotment percentage of 75 percent for the 2018–19 crop year. With volume regulation, returns are expected to be higher than without volume regulation. This increase is beneficial to all growers and handlers regardless of size, and enhances total revenues in comparison to no volume regulation. Establishing an allotment percentage allows the industry to help stabilize supplies. This rule could remove a potential 2 million barrels from supply, reduce industry inventory, and increase industry returns. This rule adds a new § 929.253 to establish the marketable quantity and grower allotment.

The Committee also recommended that handlers have the option to receive cranberries over their grower allotment and process up to 50 percent of the excess cranberries received rather than divert them in fresh form, as currently required. Handlers that do so need to divert an amount of 2018–19 cranberry processed products equivalent to the volume of excess cranberries processed.

The Committee made this recommendation recognizing that processing fresh fruit to produce one of its top-selling items, sweetened dried cranberries (SDC), results in juice concentrate as a by-product. A significant amount of current inventory is in the form of juice concentrate. By allowing handlers to process a portion of the excess cranberries they receive, more fresh cranberries are available to produce products requiring whole cranberries, such as SDC, and the diversion of concentrate will help prevent additional build-up of inventory. Handlers still have the option to divert fresh berries as excess supply.

To allow for the diversion of processed products, § 929.104(b), which currently prohibits the handling of excess fruit, is removed. To ensure the diversion of processed products in lieu of fresh cranberries is correctly accounted for, the final rule for volume regulation for the 2017–18 season (83 FR 14350) adds guidance under § 929.107 along with a conversion table. The table recognizes different conversion equivalencies of cranberries to processed product based on the volume of Brix concentrate.

Brix is the method for measuring the amount of sugar contained in the cranberry products, and the industry average for concentrate is 50 Brix. The Committee acknowledged that the Brix level can vary depending on the growing region and farming practices. The table helps ensure that the diversion of processed product in lieu of fresh berries is applied equitably among all handlers.

Using the conversion table, handlers can determine the amount of cranberry concentrate they need to divert, in lieu of fresh berries, to cover the fresh cranberry equivalent of any excess cranberries processed. Juice concentrate should comprise the vast majority of processed product used for diversion. Should requests be made to use other processed products for diversion, conversion rates for those products will be provided by the Committee based on information provided by the requesting handler.

For example, a grower with a sales history of 1,000 barrels will have an allotment of 750 barrels (1,000 × .75). If the grower delivered all 1,000 barrels to the handler, the handler will have 250 barrels of excess fruit. Under this final rule, the handler could divert 250 barrels of fresh fruit to approved outlets or divert half (125 barrels of fresh fruit) and process half, diverting a 125 barrel equivalent in 2018–19 processed product.

The Committee also recommended changes to date requirements currently specified in the Order. Section 929.59(b) currently states that ''prior to January 1, or such other date as recommended by the committee and approved by the Secretary, handlers holding excess cranberries shall submit to the committee a written plan outlining procedures for the systematic disposal of such cranberries in the outlets prescribed in § 929.61.'' The Committee agreed the date for submitting disposal plans should be extended in order to give handlers more time to consider how to divert their excess cranberries. Therefore, the Committee recommended changing the deadline prescribed in § 929.59(b) from January 1 to March 1 of the regulated season.

Section 929.59(c) states that ''prior to March 1, or such other date as recommended by the committee and approved by the Secretary, all excess cranberries shall be disposed of pursuant to § 929.61.'' Given the change in the due date for the diversion plans, the Committee agreed that this date should also be changed to provide handlers with enough time to comply with this requirement. Therefore, the Committee recommended changing the date by which diversion is to be completed from March 1 to August 31. AMS agrees with the Committee's analysis and recommendation and is issuing this rule to add a new § 929.159 to make these date changes.

Section 929.62(a) requires each grower to file a report with the Committee by January 15 of each year providing the following information: Total acreage harvested and whether owned or leased; total commercial cranberry sales in barrels from such acreage; the amount of acres either in production but not harvested, or taken out of production, and the reason(s) why; the amount of new or replanted acreage coming into production; the name of the handler(s) to whom commercial cranberry sales were made; and such other information as may be needed for implementation and operation of this section. Growers might not have all necessary information to complete the report by the current deadline. Therefore, the Committee recommended changing the grower reporting date from January 15 to March 1.

The Committee also recommended organically grown cranberries be exempt from this regulation as they serve a niche market and represent a very small portion of the total crop. All other cranberry production, including fresh cranberries, are subject to regulation under the grower allotment volume regulation.

To address the burden the volume regulation would have on small growers and handlers, the Committee also recommended providing an exemption of 2,500 barrels for all growers. Under the Committee's recommendation, the exemption would be applied following the calculation of a grower's allotment. However, after much consideration, USDA determined the exemption recommendation should be revised. Rather than provide an exemption of 2,500 barrels for each grower, this action exempts small handlers who processed less than 125,000 barrels from the allotment requirement. Further, handlers who did not have carryover inventory at the end of the 2017–18 fiscal year are also exempt from the allotment requirement. Accordingly, growers delivering their fruit to exempt handlers are not subject to the allotment.

These changes allow handlers who have matched their production with market demand to continue to serve their customer base and maintain their market share. Small growers also have the option of delivering their fruit to handlers who are not subject to the regulation. Handlers subject to the allotment percentage should be able to meet any market shortfalls by utilizing cranberries or cranberry products available in inventory. The provision allowing handlers to process a portion of their excess cranberries also helps provide some flexibility.

With this action, only those handlers carrying inventory are subject to

meeting the allotment requirement. In reviewing the Committee's recommendation and other available industry information, USDA has determined that existing inventories in excess of 9 million barrels are putting the most downward pressure on returns to both growers and handlers. Consequently, this rule puts more focus on reducing the volume in inventory.

Section 929.125 provides authority for a grower to request a review by an appeals subcommittee if the grower is dissatisfied with his or her sales history calculation provided by the Committee. The grower must request the review within 30 days after receipt of the Committee's determination of sales history and must submit documentation showing why he or she believes the calculation is inaccurate. Within 15 days after notification of the appeals subcommittee's decision, if the grower is not satisfied with the decision, the grower may further appeal to the Secretary.

A grower may transfer all or part of their allotment to another grower, provided that the transferred allotment remains assigned to the same handler. Transfers of allotment between growers having different handlers may occur with the consent of both handlers. All such transfers have to be reported to the Committee. After all allotment transfers have occurred, any unused allotment would be transferred to the Committee. The Committee would then redistribute any unused allotment to handlers having excess cranberries in an amount proportionate to each handler's total allotment. These provisions help ensure that excess supply is utilized, to the extent possible, through unfilled allotment.

The Committee considered the estimated level of production and anticipated demand, and determined that without some action on the part of the Committee, inventory levels will continue to increase throughout the 2018–19 season. The Committee believes using the volume control authorities in the Order will help stabilize marketing conditions for cranberries by helping to adjust supply to meet market demand and improve grower returns.

Accordingly, this final rule establishes a grower allotment at 75 percent for the 2018–19 season. It also gives handlers the option to process up to 50 percent of the excess cranberries they receive above their growers' allotment, provided they divert an equivalent amount of 2018–19 cranberry processed products. This final rule also exempts organically grown cranberries, specifies handlers subject to the regulation, revises the definition of outlets for excess fruit, and revises dates by which certain actions are due.

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 action 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 rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,100 cranberry growers in the regulated area and approximately 65 cranberry handlers subject to regulation under the Order. Small agricultural growers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to industry and Committee data, the average grower price for cranberries during the 2016–17 season was $23.50 per barrel and total sales were approximately 9.5 million barrels. The value for cranberries that year totaled $223,250,000 ($23.50 per barrel multiplied by 9.5 million barrels). Taking the total value of production for cranberries and dividing it by the total number of cranberry growers provides an average return per grower of $202,955. Using the average price and utilization information, and assuming a normal distribution, the majority of cranberry growers receive less than $750,000 annually.

According to USDA's Market News report, the average free on board (f.o.b.) price for cranberries was approximately $30.00 per barrel. Multiplying the f.o.b. price by total utilization of 9.5 million barrels results in an estimated handler-level cranberry value of $285 million. Dividing this figure by the number of handlers (65) yields an estimated average annual handler receipt of $4.3 million, which is below the SBA threshold for small agricultural service firms. Therefore, the majority of growers and handlers of cranberries may be classified as small entities.

While cranberry production has continued to rise, demand has failed to keep pace, and inventories have been increasing. In an industry such as cranberries, product can be stored in inventory for long periods of time. Large inventories are costly to maintain, difficult to market, and have a price-depressing effect. When supply outpaces demand and results in high levels of inventories, grower and handler returns can be negatively impacted.

Demand for cranberries is inelastic, meaning changes in price have a minimal effect on total sales volume. However, grower prices are very sensitive to changes in supply. A grower allotment program results in a decrease in supply as handlers can only purchase a portion of a grower's production, which is based on the grower's past sales history. Even a small shift in supply can have a positive effect on grower prices. Therefore, using a grower allotment program to reduce supply should increase grower prices and revenues.

This final rule establishes a grower allotment of 75 percent for the 2018–19 crop year. It also allows handlers to process up to 50 percent of the excess cranberries they receive above their growers' allotment, provided they divert an equivalent amount of 2018–19 cranberry processed products. In addition, this rule exempts organically grown cranberries, specifies handlers subject to the regulation, revises the definition of outlets for excess fruit, and revises dates by which certain actions are due. These actions are designed to help stabilize marketing conditions, reduce burdensome inventories, and improve grower and handler returns. This rule revises §§ 929.104 and 929.105 and establishes new §§ 929.159 and 929.253. The authority for these actions is provided for in §§ 929.48, 929.49, 929.51, 929.52, 929.58, 929.59, 929.61, and 929.62. These changes are based on Committee recommendations from meetings on August 4 and August 31, 2017, and a February 18, 2018, email vote.

While these actions could result in some additional costs to the industry, the benefits are expected to outweigh them. The purpose of establishing an allotment percentage is to address oversupply conditions and to stabilize grower prices. The industry has a significant volume in inventory, and this has had a negative impact on grower and handler returns. Without volume control, inventories will likely continue to increase, further lowering returns.

Inventories have significantly increased since 2011. In 2011, existing inventories were around 4.6 million barrels. By the end of the 2016–17 season, inventories were approximately 9.9 million barrels, and by the end of the 2017–18 season, inventories are projected to be approximately 10.9 million barrels. Inventories as a percentage of total sales have also been increasing from approximately 50 percent in 2010 to approximately 103 percent in 2016, and could reach an anticipated 115 percent after the 2017–18 season. These inventories have had a depressing effect on grower prices, which for many growers have fallen below their cost of production.

Retail demand for cranberries is highly inelastic, which indicates changes in consumer prices do not result in significant changes in the quantity demanded. Consumer prices are also not significantly impacted by minor changes in cranberry supplies. Therefore, this action should have little or no effect on consumer prices and should not result in a reduction in retail sales. However, even a small shift in supply could increase grower and handler returns. The use of allotment percentages will likely have a positive impact on grower and handler returns for this crop year.

This rule will result in some fruit being taken off the market. However, a sufficient amount of fruit will still be available to supply all aspects of the market. In addition, allowing handlers the option to process up to 50 percent of the excess cranberries they receive above their growers' allotment, provided they divert an equivalent amount of 2018–19 cranberry processed products, provides handlers some additional flexibility and may help reduce inventories of juice concentrate, one of the largest segments of existing inventory.

There are also secondary outlets available for excess fruit, including foreign markets except Canada, charitable institutions, nonhuman food use, and research and development projects. While these alternatives may provide different levels of return than sales to primary markets, they play an important role for the industry. In addition, if demand is greater than anticipated, there are significant amounts of fruit in inventory that can be utilized to meet demand.

This action also exempts small handlers who processed less than 125,000 barrels in 2017–18 from the allotment percentage. Consequently, small handlers whose acquired volume is 125,000 barrels or less are exempt from the allotment volume restriction. This will reduce the burden the volume restriction has on small handlers and their growers.

In addition, handlers who did not have carryover inventory at the end of the 2017–18 fiscal year are also exempt from the allotment percentage. This allows handlers that have matched their production with market demand to continue to serve their customer base and maintain their market share. Handlers subject to the restriction should be able to meet any shortfalls by utilizing cranberries or cranberry products they have in inventory.

Further, making the recommendation to regulate the volume handled under a grower allotment program could result in some cost savings for growers depending upon what actions they may take to adjust supply.

As the allotment represents a percentage of the grower's sales history, the costs, when applicable, are proportionate and should not place an extra burden on small entities as compared to large entities. Likewise, growers and handlers, regardless of size, benefit from the stabilizing effects of this action.

One alternative considered by the Committee was not to impose a volume regulation during the 2018–19 crop year. However, Committee members believed that inventory levels were such that some form of volume control was necessary to help stabilize marketing conditions.

The Committee also considered other allotment percentage levels. However, some members were concerned that setting an allotment percentage that was too restrictive could negatively impact small growers. The Committee also considered not recommending a provision to allow a percentage of excess cranberries to be processed into cranberry products. The Committee determined that allowing handlers to process up to 50 percent of the excess cranberries they receive above their growers' allotment would provide additional volumes of fresh cranberries for processing and would provide handlers some flexibility while not adding additional juice concentrate to the existing inventory levels. Therefore, for the reasons mentioned above, these alternatives were rejected by the Committee.

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. 0581–0189, Fruit Crops. 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 final rule will not impose any additional reporting or recordkeeping requirements on either small or large cranberry growers or 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.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

In addition, the Committee's meetings were widely publicized throughout the cranberry industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the August 4, 2017 and August 31, 2017 meetings were public meetings and all entities, both large and small, were able to express views on these issues.

A proposed rule concerning this action was published in the **Federal Register** on April 27, 2018 (83 FR 18462). Copies of the proposed rule were sent via email to Committee members and cranberry handlers. Additionally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending May 29, 2018, was provided to allow interested persons to respond to the proposal.

During the comment period, 24 comments were received in response to the proposal. Of the comments received, 12 were in support of the regulation, but also requested some changes to the proposal, 11 were opposed to the regulation, and 1 took no position.

Comments: In the comments that supported volume regulation, but with changes from what was included in the proposed rule, the 12 commenters stated the volume regulation was a way to reduce supply and benefit the industry. These 12 comments also specifically supported the handler's flexibility to divert excess fruit, stating it would help handlers maximize the value of the fruit.

The 12 comments also suggested handlers be allowed to divert 100 percent of their excess fruit in processed form, rather than the 50 percent allowed under the proposed rule. They stated

that with a significant amount of the current inventory in the form of juice concentrate, this would help prevent additional build-up of inventory.

Response: While a significant portion of existing inventory is concentrate, not all handlers produce concentrate or concentrate as a byproduct of SDC production. Allowing the use of 50 percent of 2018–19 cranberry products to meet the excess fruit restriction recognizes the need to reduce cranberry concentrate inventory, while also addressing the overall oversupply facing the industry.

Comments: Eleven of these commenters also expressed that the exemption for small handlers does not help small growers. These commenters asked USDA to reconsider its decision to do away with the 2,500 barrel exemption for each grower as recommended by the Committee.

Response: In reviewing the Committee's recommendation and other available industry information, USDA has determined that existing inventories in excess of 9 million barrels are putting the most downward pressure on returns to both growers and handlers. Consequently, this rule puts more focus on reducing the volume in inventory, which should benefit both small growers and small handlers.

Rather than provide an exemption of 2,500 barrels for each grower, an action which would have exempted nearly 2.75 million barrels, this action exempts small handlers who processed less than 125,000 barrels during the 2017–18 fiscal year from the allotment requirement. Small handlers processing less than 125,000 barrels make up nearly 88 percent of all handlers, yet combined, account for less than 10 percent of the total volume of cranberries processed. Based on Committee data, these small handlers were holding little or no volume in inventory at the end of the 2016–17 season. USDA's revisions to the Committee's proposal therefore exempts these handlers from the allotment requirement. Although focused on handlers, this change is expected to have a positive impact on grower returns by reducing overall supply in the market. Additionally, small growers would have the option of delivering their fruit to handlers who are not subject to the regulation.

In addition, handlers who did not have carryover inventory at the end of the 2017–18 fiscal year are also exempt. USDA believes that this will allow handlers who have matched their production with market demand to continue to serve their customer base and maintain their market share. Only those handlers carrying inventory will be subject to meeting the allotment requirement.

Handlers subject to the allotment percentage should be able to meet any market shortfalls by utilizing cranberries or cranberry products available in inventory. The provision allowing handlers to process a portion of their excess cranberries also helps provide some flexibility.

Comment: Another comment stated they did not support using 2017 deliveries to determine the 2018 exemptions, and that the no carryover inventory exemption is flawed.

Response: Regarding using 2017–18 information to determine 2018–19 exemptions, this is a grower's production allotment volume regulation. As such, it is important for growers to have an idea of what their allotment will be for the upcoming season. Growers can then use that information to make determinations regarding their production. By using the information from 2017–18, USDA provided growers with exemptions they could use to determine whether their production would be subject to the allotment, or the potential opportunity to choose to deliver their production to an exempt handler.

Comments: Of the 11 comments in opposition of the proposed rule, five support the reinstatement of the 2,500 barrel exemption for each grower as discussed above. Four stated the proposed change would do little or nothing to accomplish USDA's stated goal of controlling the overage of cranberry concentrate.

Response: Concentrate represents a large portion of existing inventory. However, at the end of the 2016–17 fiscal year, of the estimated 9.7 million barrels in inventory, approximately 4.2 million barrels were frozen berries, while approximately 3.7 million barrels were concentrate. The rule provides for the diversion of processed product to meet 50 percent of the restriction as a way to reduce the inventory of concentrate. However, reducing overall supply, including whole fruit, is also important in addressing the current level of inventory.

Comments: Six comments stated that the proposed regulation would negatively impact independent growers and another stated that this would hurt small growers. Four commenters stated this regulation would adversely affect midsize handlers.

Response: While these actions could result in some additional costs to the industry, the allotment percentage established by this rule applies uniformly to all those regulated, regardless of size. A grower's allotment is the total volume a handler may purchase from, or handle on behalf of, that grower during a year of volume regulation. Each grower's allotment volume is calculated by multiplying the individual's sales history by the allotment percentage. As the allotment percentage is applied to each grower's sales history, the costs, when applicable, are proportionate and should not place an extra burden on small entities as compared to large entities.

Further, the benefits are expected to outweigh any additional costs and positively impact all growers and handlers, regardless of size. The industry has a significant volume in inventory, and this has had a negative impact on all grower and handler returns. If steps are not taken to reduce the level of inventory, these downward pressures will persist. The purpose of establishing the allotment percentage is to address the oversupply conditions which are negatively impacting industry returns. Generally, reducing supply levels results in prices increasing for growers and handlers. Therefore, lowering inventory levels is expected to result in positive returns for the entire industry.

Comments: Four comments stated the shortage in the 2017 crop makes the grower allotment unnecessary and harmful, and the rule will create an artificial spike in market price for finished goods. Another commenter questioned regulating cranberries when Canadian production is not subject to the allotment.

Response: In reviewing the Committee's recommendation and other available industry information, USDA has determined that existing inventory is putting the most downward pressure on returns to both growers and handlers. Even with the shortfall in the 2017 crop and the handler withhold established for the 2017–18 season, the industry will enter the 2018–19 season with inventory levels that will continue to negatively affect industry returns. In addition, existing inventory, combined with an additional 9 million barrels of anticipated 2017 domestic production, will provide a more than ample domestic supply to meet sales requirements. Consequently, this regulation should have little effect on consumer prices. Moreover, while the Order does not regulate the volume of imports, given the current levels of available domestic supply, this rule is not expected to lead to an increase in imported product.

Comment: One comment in opposition to the proposal stated it

would be implemented too late, as growers have already made their production decisions. It further stated the rule should be implemented next season when they have more time to make economic decisions relating to their crop.

Response: Utilizing a production allotment allows growers to make adjustments to reduce their costs. Given the oversupply, it is important to take action on this issue. Further, growers have been aware of this recommendation for some time, and the proposed rule on this action published on April 27, 2018.

Comment: Another commenter stated the proposed regulation originated from the major cooperative.

Response: As stated above, the proposal for production allotment was discussed and ultimately recommended by the Committee for USDA's consideration at the August 4, 2017 and August 31, 2017 meetings. The Committee is comprised of growers of cranberries operating within the production area and a public member, and all meetings are open to industry and public participation.

Comment: The one comment taking a neutral position on the proposed action also indicated support for reestablishing the 2,500-barrel exemption for each grower, as recommended by the Committee, should USDA decide to go forward with the regulation.

Response: For the reasons given above, the 2,500-barrel exemption for growers will not be reestablished.

Comments: Additional comments were received that addressed issues outside the scope of the proposed rule.

For the reasons discussed above, no changes will be made to the rule as proposed, based on the comments received.

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

After consideration of all relevant matter presented, including the information and recommendation of the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

■ 1. The authority citation for part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Subpart B—Administrative Requirements

■ 2. In § 929.104, revise paragraph (a) introductory text and remove and reserve paragraph (b).

The revision reads as follows:

§ 929.104 Outlets for excess cranberries.

(a) In accordance with § 929.61, excess cranberries may be diverted only to the following noncommercial or noncompetitive outlets:

* * * * *

■ 3. In § 929.105, add paragraph (c) to read as follows:

§ 929.105 Reporting.

* * * * *

(c) Beginning with crop year 2018–19, the due date for the grower report required under § 929.62(a) is changed to March 1.

■ 4. Add § 929.159 to read as follows:

§ 929.159 Excess cranberries.

(a) Beginning with crop year 2018–19, handlers holding excess cranberries shall submit to the Committee a written plan outlining procedures for the systematic disposal of such cranberries as specified in § 929.59(b) by March 1.

(b) Beginning with crop year 2018–19, all excess cranberries shall be diverted as specified in § 929.59(c) prior to August 31.

■ 6. Add § 929.253 to read as follows:

§ 929.253 Marketable quantity and allotment percentage for the 2018–19 crop year.

(a) The marketable quantity for the 2018–19 crop year is set at 7.275 million barrels and the allotment percentage is designated at 75 percent.

(b) Organically grown fruit shall be exempt from the volume regulation requirements of this section. Small handlers who processed less than 125,000 barrels during the 2017–18 fiscal year are exempt from the volume regulation requirements of this section. Any handler who did not have carryover inventory at the end of the 2017–18 fiscal year is also exempt from the volume regulation requirements of this section.

(c) Handlers have the option to process up to 50 percent of the excess cranberries received over their growers' allotments into dehydrated cranberries or other processed products. Handlers utilizing this option shall divert an amount of 2018–19 processed products equivalent to the volume of excess cranberries processed as provided for in § 929.107. The remaining volume of excess cranberries must be diverted as whole fruit.

Dated: September 7, 2018.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2018–19825 Filed 9–11–18; 8:45 am]

BILLING CODE 3410–02–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1070

[Docket No. CFPB–2016–0039]

RIN 3170–AA63

Disclosure of Records and Information

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: This final rule amends the procedures used by the public to obtain information from the Bureau of Consumer Financial Protection (Bureau) under the Freedom of Information Act, the Privacy Act of 1974, and in legal proceedings.

DATES: This final rule is effective October 12, 2018.

FOR FURTHER INFORMATION CONTACT: David Snyder, Senior Counsel, Legal Division, at 202–435–7758. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau first published the procedures used by the public to obtain information from it under the Freedom of Information Act, the Privacy Act of 1974, and in legal proceedings in an interim final rule on July 28, 2011, 76 FR 45371 (Jul. 28, 2011). This was followed by a final rule on February 15,

2013, 78 FR 11483 (Feb. 15, 2013). Based on its experience over the last several years, the Bureau published a notice of proposed rulemaking on August 24, 2016, 81 FR 58310 (Aug. 24, 2016), that proposed to amend the rule to clarify, correct, and amend certain provisions of the rule, and it solicited comments on the proposal. The Bureau is issuing this final rule in response to the comments. The Bureau's August 24, 2016 notice of proposed rulemaking also proposed to amend the Bureau's rule regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law. This final rule only pertains to portions of the Bureau's proposal related to the Freedom of Information Act, the Privacy Act of 1974, and requests for Bureau information in legal proceedings.

II. Summary of the Final Rule

The final rule revises subparts A, B, C, and E of section 1070 of title 12 of the Code of Federal Regulations.

The revisions to subpart A address procedures related to the certification of authenticity of Bureau records and the service of summonses or complaints on the Bureau. Subpart A also contains definitions of terms used throughout the remainder of the part, and the final rule revises the definition of ''Chief FOIA Officer.''

Subpart B implements the Freedom of Information Act, 5 U.S.C. 552 (the FOIA). The Bureau has revised this subpart to clarify its practices, provide additional flexibility for requesters, and reflect recent changes made to the FOIA by the FOIA Improvement Act of 2016 (Pub. L. 114–185). Additionally, these changes streamline the Bureau's process for assessing FOIA fees and notifying requesters of such fees. These changes will allow the Bureau to process FOIA requests more efficiently and provide records to requesters more quickly. The Bureau has made some minor revisions to its proposal in response to comments.

The final rule does not revise subpart D.

Subpart C (sometimes referred to as *Touhy* Regulations) sets forth procedures for requests for information from the Bureau in connection with legal proceedings between others, and describes the Bureau's procedures for considering such requests or demands for official information. The Bureau has made organizational and clarifying revisions to the provisions previously set forth in this subpart. The Bureau received no comments on this subpart and it finalizes the proposed subpart without modification.

Subpart E contains the Bureau's rule implementing the Privacy Act of 1974, 5 U.S.C. 552a. The Bureau has revised the subpart to clarify the Chief Privacy Officer's authority, to provide additional flexibility for requestors, and to make technical corrections. The Bureau received no comments on this subpart and it finalizes the proposed subpart without modification.

III. Overview of Comments Received

The Bureau received eight comment letters that pertained to its proposal regarding FOIA implementation. These included three comment letters from industry trade associations; and one comment letter each from an individual; an opposition research and communication organization; a financial institution; a consumer advocacy organization; and a Federal agency with responsibilities related to implementation of the FOIA. These comment letters largely proposed minor modifications to the proposed rule in order to clarify it and/or facilitate public access to information. The Bureau also received input from another Federal agency during the comment period. These suggestions primarily focused on procedural and technical changes to the proposed rule. The Bureau made some changes to the final rule based on this input.

The Bureau received no comment letters regarding its proposed revisions to subpart C or subpart E, regarding its *Touhy* Regulations and implementation of the Privacy Act of 1974, respectively.[1]

IV. Legal Authority

The Bureau proposed the rule pursuant to its authority under (1) Title X of the Dodd-Frank Act, 12 U.S.C. 5481 *et seq.,* including (a) Section 1022(b)(1), 12 U.S.C. 5512(b)(1); (b) Section 1022(c)(6)(A), 12 U.S.C. 5512(c)(6)(A); and (c) Section 1052(d), 12 U.S.C. 5562(d); (2) the Freedom of Information Act, 5 U.S.C. 552; (3) the Privacy Act of 1974, 5 U.S.C. 552a; (4) the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.;* (5) the Trade Secrets Act, 18 U.S.C. 1905; (6) 18 U.S.C. 641; (7) the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and (8) the Federal Records Act, 44 U.S.C. 3101. The Bureau received no comments on the applicability of these statutes, and it promulgates the final rule pursuant to these authorities.

V. Section-by-Section Analysis

Part 1070—Disclosure of Records and Information

Subpart A—General Provisions and Definitions

Section 1070.2 General Definitions

Section 1070.2(c) Chief FOIA Officer

The Bureau had proposed no change to the defined term, ''Chief FOIA Officer.'' However, a Federal agency noted that the Bureau's status quo definition permitted a broader delegation of the Chief FOIA Officer's authority than is permitted by the FOIA. The previous definition allowed the Chief Operating Officer to delegate the Chief FOIA Officer's authority to ''any employee,'' but the FOIA requires that the Chief FOIA Officer be at the assistant secretary level or above. The Bureau agrees that this provision allowed a broader delegation of authority than is permissible under the FOIA and has removed the phrase ''or any CFPB employee to whom the Chief Operating Officer has delegated authority to act under this part'' from the final rule. The Bureau believes that this provision, in conjunction with § 1070.2(d), provides the Bureau with the necessary flexibility to delegate some of the responsibilities of the Chief FOIA Officer to other CFPB employees without delegating more authority than is permissible under the FOIA.

Section 1070.3 Custodian of Records; Certification; Alternative Authority

Section 1070.3(b) Certification of Record

Section 1070.3(b) authorizes the Bureau's Chief Operating Officer to certify the authenticity of any Bureau record or any copy of such record. The Bureau proposed revising the rule to clarify that the Chief Operating Officer can also certify the absence of a record. Such certification is contemplated in Rule 44 of the Federal Rules of Civil Procedure and Rule 902 of the Federal Rules of Evidence. *See also* Federal Rule of Evidence 803(10). The Bureau received no comments regarding this proposal, and it finalizes the proposal without modification.

Section 1070.5 Service of Summonses and Complaints

The Bureau proposed moving § 1070.31—which provides the process for serving the Bureau with summonses or complaints—to a new section in subpart A for clarity, in order to separate the rule governing service

[1] The Bureau received twenty-seven total comment letters in response to its notice of proposed rulemaking. The Bureau continues to consider the comments pertaining to its proposals related to the confidential treatment of Bureau information, and these comments are not addressed in this final rule.

when the Bureau is a party from the remaining provisions in subpart C, which deal with requests for information for other proceedings. In addition, the Bureau proposed revising paragraph (d)'s requirement that documents be ''stamped'' ''Service Accepted for Official Capacity Only'' by replacing the word ''stamped'' with the word ''marked.'' This proposal was intended to clarify that the documents may be labeled using a variety of methods. The Bureau received no comments regarding these proposals, and it finalizes them without modification.

Subpart B—Freedom of Information Act

The Bureau received several general comments concerning its proposed changes to the regulations implementing the FOIA and the Bureau's FOIA process. Some commenters expressed support for the Bureau's proposed changes to the extent that they would expedite the FOIA process. Some of these commenters also raised concerns about the timeliness of the Bureau's FOIA process and its commitment to openness and transparency. The Bureau remains committed to open government and strives to be a leader by being transparent with respect to its own activities. In addition, the Bureau will continue to improve its FOIA process to ensure that all requests are responded to in a timely fashion.

The Bureau also made several technical and typographical revisions to the rule in response to comments, including updating cross-referenced provisions, ensuring consistent spelling of certain terms, and ensuring the consistent use of terminology throughout the rule.

Section 1070.11 Information Made Available; Discretionary Disclosures

Section 1070.11(a) In General

Section 1070.11(a)(2)

Section 1070.11(a)(2) identifies a category of information and records that the FOIA requires Federal agencies to make publicly available. The Bureau proposed to remove the phrase ''and copying'' and replace it with ''in an electronic format.'' The Bureau proposed similar revisions to § 1070.13. These changes are required by the FOIA Improvement Act of 2016. The Bureau received no comments on this proposal and it finalizes the proposal without modification.

Section 1070.11(b) Discretionary disclosures

Section 1070.11(b) says that, even if a FOIA exemption applies to requested information or records, the Bureau has discretion to disclose it to the extent that the disclosure is not otherwise precluded by law. The paragraph further notes that such disclosures are not precedential. The Bureau proposed no revisions to this paragraph. However, another Federal agency suggested that the phrase ''but is merely an indication that, in the processing of the particular request, the CFPB finds no necessity for applying the exemption'' is unnecessary. The phrase at issue is contained in the part of § 1070.11(b) noting that the Bureau's decision to discretionarily disclose a record in one case has no precedential value in the processing of another request. The Bureau agrees that this phrase is unnecessary and has removed it from the final rule.

Section 1070.13 & Public Inspection and Copying

Section 1070.13(d) Redaction of Identifying Details

Section 1070.13 addresses the requirement that the Bureau make certain records available on its public website, and paragraph (d) addresses privacy-related redaction of those records. The Bureau proposed no revisions to this paragraph. However, one commenter noted that although § 1070.13(d) discusses redacting records in the Bureau's FOIA reading room for personal privacy, it does not mention any other FOIA exemptions. Although the commenter is correct that § 1070.13(d) does not mention any other FOIA exemptions, the Bureau does not believe any changes to this provision are warranted because § 1070.13(a) already informs requesters that documents published in the Bureau's FOIA reading room are ''[s]ubject to the application of the FOIA exemptions and exclusions . . . .'' The Bureau finalizes the provision in the final rule without modification.

Section 1070.14 Requests for CFPB Records

Section 1070.14(b) Form of Request

Section 1070.14(b) specifies the form of FOIA requests, and it previously distinguished between requests made in writing and by electronic means. The Bureau proposed a technical change to this provision, to remove the phrase ''or by electronic means'' and add ''as follows:'' in its place. The Bureau also proposed changes to § 1070.14(b)(1) and (2) to clarify how requesters must submit FOIA requests to the Bureau. The Bureau proposed similar changes to the following sections: 1070.17(b)(1); 1070.21(c); and 1070.22(e)(1)(i). The Bureau received no comments on these proposals and it finalizes them without modification.

Section 1070.14(c) Content of Request

Section 1070.14(c) specifies the content of FOIA requests. Although the Bureau did not propose revisions to paragraphs (c)(1), (3), and (6), it received several suggestions from another Federal agency concerning these provisions. First, the agency suggested revising paragraph (c)(1) to say that a ''FOIA request must describe the records that the requester seeks in sufficient detail.'' The Bureau agrees and will make this edit as it is a core requirement of a perfected FOIA request.

The agency also suggested removing the phrase ''[a]s a general rule'' from the last sentence of paragraph (c)(1) because it is unnecessary. The Bureau agrees and has removed this text from the final rule.

Next, the agency suggested removing the part of paragraph (c)(3) that concerns requests to inspect records. The Bureau agrees that this provision is unnecessary and that, as a practical matter, requesters do not seek to inspect records prior to production. In response, the Bureau has removed the provision concerning the inspection of records and added a provision directing that the ''request should state whether the requester wishes to receive the records in a specific format.''

Finally, the agency suggested changing paragraph (c)(6) to allow requesters to seek expedited processing at any time during the processing. The Bureau's rule previously required requesters to seek expedited processing with their initial requests. The agency noted that this provision could frustrate requesters by requiring them to withdraw and resubmit a request that includes a request for expedited processing. The Bureau agrees with the agency's suggestion, but has instead changed § 1070.17(b)(1) in the final rule to address this concern. As such, revision to § 1070.14(c)(6) is not necessary in response to this suggestion.

Section 1070.14(c)(4)

Section 1070.14(c)(4) provides that a FOIA requester should indicate in the request whether the requester is a commercial user, an educational institution, non-commercial scientific institution, representative of the news media or ''other'' requester, as those terms are defined in § 1070.22(b). The section also informs requesters that they may contact the Bureau's FOIA Public Liaison to seek assistance in determining the appropriate fee

category. Previously, the provision only permitted the Bureau to use information provided to the FOIA Public Liaison by a requester for the purpose of determining the requester's fee category. The Bureau proposed to remove this limitation so that it could use this information for other purposes, such as aiding a requester in clarifying the scope of a request, assisting in identifying records sought by a requester, and helping to resolve disputes related to a request.

The Bureau received two comment letters regarding this provision. One commenter noted that the section included a fee category, ''governmental entity,'' which is not recognized under the FOIA and is not defined anywhere in the Bureau's regulations. The Bureau agrees and has removed this fee category from the final rule. Another commenter raised concerns about the removal of language limiting the purposes for which the FOIA Public Liaison could use information provided by a requester. The commenter suggested that the Bureau narrow its proposal to codify certain specified uses for which the FOIA Public Liaison could use the information. The Bureau declines to make this change. The purpose of this proposal was to provide the FOIA Public Liaison with additional flexibilities in using the information to assist requesters in the processing of their requests. The Bureau removed this provision with the goal of maximizing the FOIA Public Liaison's ability to assist requesters with the processing of their requests and it believes that placing restrictions on the FOIA Public Liaison will hamper those efforts. For the aforementioned reasons, the Bureau finalizes the proposal without modification.

Section 1070.14(c)(5)

Section 1070.14(c)(5) provides that if a requester seeks a waiver or reduction of fees associated with processing a request, then the request shall include a statement to that effect. The text previously included a statement that any request that does not seek a waiver or reduction of fees constitutes an agreement of the requester to pay all fees up to $25. The Bureau proposed to remove this language in light of other proposed fee-related revisions. Under the Bureau's proposed revisions to § 1070.22(d) and (f), FOIA requesters could still specify an upper limit on the fees that they are willing to pay to process a request and the Bureau would notify a requester of any potential fees beyond that limit before processing the request. The Bureau received no comments on this proposal and it finalizes the proposal without modification.

Section 1070.14(e) Requests by an Individual for CFPB Records Pertaining to That Individual

Section 1070.14(e) directs individuals who wish to inspect or obtain records pertaining to themselves to seek access to the records pursuant to the Bureau's regulations that implement the Privacy Act of 1974, in subpart E of the rule. The Bureau proposed no revisions to this provision. However, another Federal agency suggested that the Bureau directly reference its Privacy Act request identity verification procedures at § 1070.53(c) for first-party FOIA requests. It is the Bureau's practice to use the same identity verification procedures outlined in § 1070.53(c) for both Privacy Act requests and first-party FOIA requests, and such a change would codify the Bureau's current practice in its regulations. As such, the Bureau agrees with the commenter's suggestion and has made this change in the final rule.

Section 1070.14(g) Assistance From FOIA Public Liaison

Section 1070.14 instructs requesters on how to request records from the Bureau under the FOIA. The Bureau received a suggestion from another Federal agency suggesting that it make the FOIA Public Liaison available more broadly to assist requesters. The Bureau agrees with the commenter's suggestion and has added a new provision to its final rule, § 1070.14(g), which informs requesters that they can contact the FOIA Public Liaison to resolve any problems that arise during the processing of their requests. The Bureau believes that this change renders the reference to the FOIA Public Liaison in § 1070.14(c)(4) unnecessary and has removed it from the final rule.

Section 1070.15 Responsibility for Responding to Requests for CFPB Records

Section 1070.15 addresses, among other things, the process by which the Bureau consults with other agencies regarding FOIA requests and/or refers FOIA requests to other agencies. The Bureau did not propose any revisions to this provision. However, one commenter noted that the Bureau separately proposed a new definition of ''agency'' in § 1070.2(a) that included entities that are not subject to the FOIA. Were § 1070.15 to be read in conjunction with this proposed definition, the rule would seem to allow the Bureau to refer FOIA requests to agencies that are not subject to the FOIA. Because the Bureau is not finalizing the proposed definitions in § 1070.2 in this final rule, this comment is moot.

In addition, a Federal agency suggested that the Bureau update and clarify its process for referrals and consultations, and that the Bureau allow for an additional process whereby the Bureau would coordinate with another agency when referral and consultation are not appropriate. The Bureau agrees with this suggestion and has added language to the final rule concerning referrals, consultations, and coordination. The changes to the rule clarify when it is appropriate for the Bureau to refer a request to, consult, or coordinate with another agency when processing a FOIA request. It also clarifies how the Bureau will document referrals and notify requesters when the Bureau has decided to refer a request to another agency.

Section 1070.16 Timing of Responses to Requests for CFPB Records

Section 1070.16(d) Unusual Circumstances

Section 1070.16(d) addresses circumstances where the Bureau requires an extension to respond to a FOIA request. The Bureau proposed no revisions to this provision. However, one commenter suggested that the Bureau add language to § 1070.16(d) stating that it will notify requesters of the availability of the services provided by the Bureau's FOIA Public Liaison and the National Archives and Records Administration (NARA), Office of Government Information Services (OGIS) when the Bureau requires an extension due to ''unusual circumstances'' under this provision. The Bureau agrees with this suggestion and has revised the final rule to incorporate this change.

In addition, a Federal agency suggested that the Bureau remove several of the references to FOIA appeals in this paragraph. Although ''unusual circumstances'' may apply to the processing of a FOIA appeal, the agency pointed out that in such circumstances the Bureau would not give the requester an opportunity to modify the scope of the appeal. The Bureau agrees with this suggestion and has implemented it in the final rule, as this part of the paragraph is intended to apply to requests, not FOIA appeals.

Section 1070.17 Requests for Expedited Processing

Section 1070.17(b) Form and Content of a Request for Expedited Processing

Section 1070.17(b) instructs requesters on how to request expedited processing of a FOIA request. The Bureau proposed no revisions to this section. However, as explained above with respect to § 1070.14(c), in response to a suggestion from another Federal agency, the Bureau has revised § 1070.17(b)(1) of the final rule to state that requesters may request expedited processing at any time during the processing of their requests.

In addition, the Federal agency recommended that the Bureau revise § 1070.17(b)(2)(ii) to clarify what a requester must show to obtain expedited processing of the requested records. The Bureau agrees and has revised the rule accordingly. The FOIA provides for expedited processing of a request upon a showing of a ''compelling need,'' which includes a request by a ''person primarily engaged in disseminating information'' where there is an ''urgency to inform the public concerning actual or alleged Federal Government activity.'' 5 U.S.C. 552(a)(6)(E). The rule did not previously explain what requesters must show to demonstrate that they are persons ''primarily engaged in disseminating information.'' The revised rule clarifies that a requester who is not a full-time member of the media must establish that the requester is a person ''whose primary professional activity or occupation is information dissemination.'' The revised rule also informs requesters that the existence of numerous articles on a given subject can be helpful in establishing that there is an ''urgency to inform'' the public on the topic of the request.

Section 1070.17(c) Determinations of Requests for Expedited Processing

Section 1070.17(c) states that the Bureau will decide requests for expedited processing within ten calendar days of its receipt of the request, and that it will notify the requester of its decision in writing. The Bureau proposed no revisions to this section. However, one commenter suggested that the Bureau revise the provision to require the Bureau to process requests for expedited processing within five business days, and to require the Bureau to provide requested records within three business days of granting a request for expedited processing. The Bureau declines to adopt this recommendation. The current rule requires the Bureau to decide whether to grant a request for expedited processing in ten calendar days, which is what the FOIA requires. Additionally, the Bureau notes that, as reflected in its most recent Annual FOIA Report, the average amount of time it takes the Bureau to adjudicate a request for expedited processing is one day.

The Bureau also declines to commit itself to releasing requested records within three business days of granting a request for expedited processing. When the Bureau grants a request for expedited processing, it processes the request as quickly and efficiently as possible. As noted above, the Bureau, on average, adjudicates requests for expedited processing in one day. Processing a request within three days after expedited processing is granted will not be feasible in many cases, particularly in cases involving a large number of responsive records.

For the aforementioned reasons, the Bureau finalizes the provision without modification.

Section 1070.18 Responses to Requests for CFPB Records

Section 1070.18(a) Acknowledgement of Requests

Section 1070.18(a) requires the Bureau to acknowledge its receipt of FOIA requests. The provision previously created this requirement only for perfected requests. A Federal agency recommended that the Bureau delete the word ''perfected,'' thus requiring the Bureau to also acknowledge and provide requesters with tracking numbers for requests that have not been perfected. The Bureau agrees with this recommendation. This is the Bureau's current practice, and it has revised the final rule to adopt this suggestion.

Section 1070.18(a)(4)

Section 1070.18(a)(4) specifies what fee-related information the Bureau will include in acknowledgement letters it sends to requesters. The Bureau proposed to make a technical change to this provision, removing the phrase ''(of not less than $25)'' to account for the proposed revisions to fee-related provisions in § 1070.22(d) and (f). The Bureau received no comments on this proposal and it finalizes the proposal without modification.

Section 1070.18(b) Initial Determination To Grant or Deny a Request

Section 1070.18(b)(2)

Section 1070.18(b)(2) addresses the Bureau's response to a request that has been granted in full or in part. The Bureau proposed no revisions to this provision. However, a Federal agency recommended that the Bureau revise § 1070.18(b)(2) to notify requesters that they can seek assistance from the Bureau's FOIA Public Liaison when the Bureau grants a request in full or in part. The Bureau agrees with this recommendation and has revised the final rule to incorporate it.

Section 1070.18(b)(4)

Section 1070.18(b)(4) addresses the Bureau's response to a request that it determines should be denied in whole or in part. The Bureau proposed to add a new provision at § 1070.18(b)(4)(iv) requiring it to inform requesters of the right to seek dispute resolution services from the Bureau's FOIA Public Liaison or OGIS. The Bureau also proposed to renumber the existing provisions under § 1070.18(b)(4) to accommodate this change. The Bureau noted in its proposal that this change is required by the FOIA Improvement Act of 2016. The Bureau received no comments on this proposal and it finalizes the proposal without modification.

Section 1070.18(c) Resolution of Disputes

The Bureau proposed a new paragraph in § 1070.18 to inform requesters about the resources available to resolve any disputes that may arise during the request process. These resources are the Bureau's FOIA Public Liaison and mediation services provided by OGIS. One commenter suggested that the Bureau remove a provision in § 1070.18(c)(2) stating that the Bureau will not ''defer to OGIS mediation decision in particular cases.'' The commenter reasoned that this provision is not necessary because OGIS does not issue decisions. The Bureau agrees and it has revised the final rule to incorporate this recommendation.

Section 1070.18(d) Format of Records Disclosed

The Bureau proposed a new paragraph to inform requesters that they may request records in a particular format. Under this proposal, the Bureau would provide records in a requested format when the requested format can readily be reproduced from the original file. The Bureau received no comments on this proposal and it finalizes the proposal without modification.

Section 1070.20 Requests for Business Information Provided to the CFPB

Section 1070.20(f) Opportunity To Object to Disclosure

Section 1070.20(f) provides a submitter of business information with

ten business days to object to the Bureau's disclosure of the submitter's business information. The Bureau proposed to make two technical changes to this provision clarifying that the Bureau will delay any release of information to afford the submitter ten business days to object to the disclosure. The Bureau received one comment in support of this proposed change and it finalizes the proposal without modification.

Section 1070.21 Administrative Appeals

Section 1070.21(b) Time Limits for Filing Administrative Appeals

Section 1070.21(b) provides the time limits for filing administrative appeals. The Bureau proposed to revise this provision to clarify that the time period for filing an appeal begins on the day after the date the initial determination is sent to the requester or the date of the letter transmitting the last records released, whichever is later. The Bureau also proposed to change the time limit for filing an administrative appeal from 45 days to 90 days. This change is required by the FOIA Improvement Act of 2016. The Bureau received no comments on these proposals and it finalizes them without modification.

Section 1070.21(d) Processing of Administrative Appeals

Section 1070.21(d) specifies how the Bureau will process administrative appeals. The Bureau proposed to remove the requirement that appeals be stamped with the date of their receipt by the FOIA Office. The FOIA Office does not stamp an appeal with the date the Bureau received it, but the date is recorded in the Bureau's system for tracking FOIA requests. This requirement is outmoded and the Bureau proposed to remove it to account for its current practice.

Section 1070.21(d) also previously provided that appeals would be processed in the order in which they are received. Since adopting this provision in 2011, the Bureau has found that it is not always practicable to complete action on appeals in the order in which they are received, and sometimes has chosen to act on a simple later-received appeal rather than delay action pending completion of a more complex earlier-received appeal. In order to better align the regulation with current practice, the Bureau proposed to delete the provision calling for first-in-first-out processing of appeals.

The Bureau received no comments on these proposals and it finalizes them without modification.

Section 1070.21(e) Determinations To Grant or Deny Administrative Appeals

Section 1070.21(e) authorizes the General Counsel to decide administrative appeals, and § 1070.21(e)(3) allows for remand of a FOIA determination as one option for the General Counsel's disposition of an appeal. The Bureau proposed to amend the first sentence of § 1070.21(e) to add a reference to remands so that all options for disposition of appeals are listed in that sentence. The Bureau received no comments on its proposed revision and it finalizes the revision without modification. In addition, one commenter recommended that the Bureau also include a provision in § 1070.21(e) committing the Bureau to work as an active partner during the OGIS dispute resolution process when the Bureau agrees to participate in the process concerning a particular request. The Bureau agrees with this recommendation and has revised the final rule to incorporate it.

Section 1070.22 Fees for Processing Requests for CFPB Records

Section 1070.22(a) In General

Section 1070.22(a) directs the Bureau to determine whether and to what extent to charge a requester fees for processing a FOIA request. Among other things, the provision previously stated that the Bureau charges certain fees ''unless circumstances exist . . . that render fees inapplicable or inadvisable or unless the requester has requested and the [Bureau] has granted a reduction in or waiver of fees. . . .'' The Bureau proposed no revisions to this provision. However, a Federal agency recommended that the Bureau remove the phrase ''or inadvisable'' from § 1070.22(a) because it is not clear what the phrase means in this context. The Bureau agrees and has removed this phrase from the final rule.

Section 1070.22(b) Categories of Requesters

Section 1070.22(b) identifies appropriate fee categories for requesters. One commenter suggested that community-based organizations and non-profits ''be added to the category that would obtain the lowest fees'' or, alternatively, that the Bureau create a new fee category for such groups where they would pay the lowest processing fees. The Bureau declines to adopt this recommendation. The fee categories are defined by statute and the Office of Management and Budget's fee guidance, and the Bureau does not believe it would be appropriate for it to create a new fee category that was not contemplated by the FOIA. The Bureau also cannot commit to placing all non-profits and community based organizations in the lowest fee categories because not all such organizations will meet the requirements for placement in these fee categories. The Bureau believes that the current FOIA fee categories and the fee waiver provisions in the Bureau's rule are sufficient to address the concerns raised by the commenter.

Section 1070.22(b)(1)(i)

Section 1070.22(b)(1)(i) defines the ''Commercial user'' category of requester. The Bureau proposed to amend this provision to clarify that the Bureau's decision to place a requester in the commercial user category will be made on a case-by-case basis based on how the requester will use the information. The Bureau proposed this change to clarify how it will make decisions whether to place a requester in the commercial user category. The Bureau received no comments on this proposal and it finalizes the proposal without modification.

Section 1070.22(b)(1)(ii)

Section 1070.22(b)(1)(ii) defines the ''Educational institution'' category of requester. Several commenters suggested that the Bureau update the definition to more accurately reflect the text of the FOIA and recent case law expanding the scope of the term ''educational institution'' to include students at educational institutions who submit a FOIA request in furtherance of coursework or other school-sponsored activities. *See Sack* v. *U.S. Dep't of Defense,* 823 F.3d 687 (D.C. Cir. 2016). The Bureau agrees with the commenters and has so revised this provision in the final rule, including by adding three examples of requesters to clarify under which circumstances a requester would fall within the scope of this fee category. The Bureau has also made corresponding changes to § 1070.22(c)(2), removing information that is no longer necessary in light of the revisions to § 1070.22(b)(1)(ii).

Section 1070.22(b)(2)

Section 1070.22(b)(2) provides that the Bureau will notify a requester of its determination as to the proper fee category to apply to the requester. The provision previously provided that the Bureau make its determination based on a review of the requester's submission and the Bureau's own records. The Bureau proposed to delete this limitation to clarify that it may base its determination on other appropriate information, including phone

conversations with the requester and publicly available information. The Bureau received no comments on this proposal and it finalizes the proposal without modification.

Section 1070.22(d) Other Circumstances When Fees Are Not Charged

Section 1070.22(d) provides certain circumstances where the Bureau may not charge a requester a fee for processing a FOIA request. The Bureau proposed to insert a new paragraph at § 1070.22(d)(2) and to renumber § 1070.22(d) to accommodate the new paragraph. The Bureau explained in its proposal that the new paragraph would provide that it will not charge a requester any fees when the fee, excluding duplication costs, is less than $250. The Bureau proposed this change as part of its larger goal of revising the process for how it assesses FOIA processing fees and how the Bureau notifies requesters of such fees. The Bureau explained that this new provision would streamline its process for assessing FOIA fees. This change would allow the Bureau to process FOIA requests more quickly and efficiently because the Bureau would no longer need to contact a FOIA requester concerning processing fees when the cost to process the request is less than $250. As such, this provision would provide information to these requesters more quickly and at a reduced cost to the requesters.

A Federal agency suggested that the Bureau should remove § 1070.22(d)(1) because it is no longer necessary given other revisions the Bureau has proposed to its FOIA regulations. The agency also recommended that the Bureau clarify § 1070.22(d)(2) because it is not clear from the proposed revisions whether duplication costs would be included in the proposed $250 threshold.

The Bureau intended its proposed $250 fee threshold to only apply to search and review costs, not duplication costs. Under its proposal, the Bureau would not charge any fees if the search and review fees were less than $250, but it did not intend for duplication costs to be subject to this threshold. The Bureau intended to subject duplication costs to § 1070.22(d)(1), which provides that the Bureau will not charge a requester any FOIA processing fee when the cost of collecting the fee is equal to or greater than the fee itself. The Bureau intended to make this distinction because most of its FOIA responses are transmitted to requesters electronically and result in no duplication costs. The Bureau did not intend to offer requesters up to $250 worth of duplication without charge when the Bureau can almost always provide records in an electronic format. The Bureau has made clarifying revisions to its rule to address the agency's comments.

Section 1070.22(d)(4)

Section 1070.22(d)(4) addresses miscellaneous circumstances where the Bureau may not assess fees. The Bureau proposed to revise this provision to prohibit it from charging search fees, or in certain cases duplication fees, when the Bureau has failed to comply with time limits under § 1070.16 or § 1070.21, unless (1) unusual circumstances apply to the processing of the request; (2) the Bureau has provided timely written notice of the unusual circumstances to the requester; (3) more than 5,000 pages are necessary to respond to the request; and (4) the Bureau has discussed with the requester (or made three good-faith attempts to do so) how the requester could effectively limit the scope of the request. These changes are required by the FOIA Improvement Act of 2016.

A Federal agency recommended that the Bureau revise § 1070.22(d)(4), reasoning that the proposal's exception to when the Bureau can charge FOIA processing fees when it does not meet FOIA timelines was technically broader than the FOIA's requirements. In addition, the Federal agency recommended revising the paragraph to account for a scenario where a court determines that exceptional circumstances apply to a request. The Federal agency also noted a technical error in a cross-reference in the paragraph. The Bureau had intended for proposed § 1070.22(d)(4) to be coextensive with the FOIA. In response to these suggestions, the Bureau has revised the provision to more closely align with the FOIA's requirements, and it has added a paragraph to address a potential court determination that exceptional circumstances apply. It has also fixed the identified cross-reference. The Bureau otherwise finalizes its proposal.

Section 1070.22(e) Waiver or Reduction of Fees

Section 1070.22(e)(5)

Section 1070.22(e)(5) provides that the Bureau will decide whether to grant or deny a request to reduce or waive fees prior to processing the FOIA request and that the Bureau will notify the requester of such a determination in writing. The Bureau proposed to delete this requirement because it is unnecessary in light of other proposed fee-related revisions. The Bureau explained in its proposal that in many cases involving requests for fee waivers, the Bureau would be able to process the FOIA request without deciding the merits of the fee waiver request because the processing fees would be less than $250. It further reasoned that removing this requirement would allow the Bureau to process FOIA requests more efficiently and provide information to requesters more quickly. Under the Bureau's proposal, the Bureau would notify a requester when it had denied a fee waiver request and processing the request would incur fees. The Bureau received no comments on this proposal and it finalizes the proposal without modification.

Section 1070.22(e)(6)

Section 1070.22(e)(6) specifies what information the Bureau will include in the letter it sends notifying the requester that the Bureau has denied a request for a waiver or reduction of fees. The Bureau proposed to make a technical change to this provision, removing the phrase ''(of not less than $25)'' to account for other newly proposed fee-related provisions. The Bureau received no comments on this proposal and it finalizes the proposal without modification.

Section 1070.22(f) Advance Notice and Prepayment of Fees

Section 1070.22(f) describes the Bureau's process for notifying a requester of any processing fees associated with a FOIA request. The Bureau proposed several changes to this provision to clarify and streamline its process for assessing FOIA processing fees and for notifying requesters of such fees. First, the Bureau proposed to revise § 1070.22(f) to provide that the Bureau would notify a requester of the estimated fees to process a FOIA request when the estimated fees are $250 or more and the estimated fees exceed the limit set by the requester, the requester has not specified a limit, or the Bureau has denied a request for a reduction or waiver of fees. Next, the Bureau proposed to revise § 1070.22(f) to raise the fee threshold above which a requester must pre-pay estimated processing fees from $250 to $1000. The Bureau explained in its proposal that this change was necessary because of the Bureau's proposed change to § 1070.22(d): The Bureau proposed raising its previous pre-payment threshold of $250 because it would no longer charge fees for processing a request when the fees are $250 or less. The Bureau further explained that its proposed revisions to § 1070.22(f) would require a requester to agree to

pay processing fees before the Bureau began processing the request. The Bureau said that such an agreement would provide sufficient assurance of payment for fees less than $1000, and that this change was in accordance with the Bureau's practice for requiring pre-payment of fees. Furthermore, the Bureau explained that this change would allow it to process FOIA requests more efficiently and provide records to requesters more quickly. The Bureau received no comments on these proposals and it finalizes them with only technical changes to the numbering of paragraphs in the section.

Section 1070.23 Authority and Responsibilities of the Chief FOIA Officer

Section 1070.22(a) Chief FOIA Officer

Section 1070.22(a) discusses the role of the Bureau's Chief FOIA Officer. The Bureau proposed inserting two new paragraphs. The first concerns the Chief FOIA Officer's responsibility to offer training to Bureau staff regarding their responsibilities under the FOIA, and the second concerns the Chief FOIA Officer's role as the primary Bureau liaison with the OGIS and the Department of Justice's Office of Information Policy. The Bureau also proposed to renumber the provisions in this section to accommodate these changes. These changes are required by the FOIA Improvement Act of 2016. The Bureau received no comments on these proposals and it finalizes them without modification.

Subpart C—Disclosure of CFPB Information in Connection With Legal Proceedings

Subpart C addresses the disclosure of Bureau information in connection with legal proceedings. The Bureau proposed several technical corrections throughout the subpart. The Bureau received no comments regarding these technical corrections, and it finalizes them without modification.

Section 1070.30 Purpose and Scope; Definitions

Section 1070.30(a)

Section 1070.30(a) defines the circumstances for which the procedures outlined in subpart C apply. The Bureau proposed to delete paragraph (a)(1) from this provision and to renumber the section accordingly. This was intended as a technical change to account for moving § 1070.31 to subpart A. The Bureau received no comments regarding this proposal, and it finalizes the proposal without modification.

Section 1070.30(e)

Section 1070.30(e)(2)

Section 1070.30(e)(2) defines the term ''legal proceeding'' for subpart C. The Bureau proposed to add the phrase ''their agents'' to the last sentence of this provision to clarify that this definition applies to formal and informal requests made by both attorneys and their agents. The Bureau received no comments regarding this proposal, and it finalizes the proposal without modification.

Former § 1070.31 Service of Summonses and Complaints

Former § 1070.31 provided the process for serving the Bureau with summonses or complaints. As discussed above with respect to proposed § 1070.5, the Bureau proposed to delete § 1070.31 from subpart C and move it to a new § 1070.5 in subpart A. The Bureau also proposed to renumber sections and cross-references in subpart C to account for this change. The Bureau received no comments regarding these proposals, and it finalizes them without modification.

Proposed § 1070.31 Service of Subpoenas, Court Orders, and Other Demands for CFPB Information or Action

Proposed § 1070.31(d)

Proposed § 1070.31(d) (formerly § 1070.32(d)) provides that the Bureau is not authorized to accept on behalf of its employees any subpoenas, orders, or other demands or requests, which are not related to the employees' official duties. The previous text of the provision implied that it is the Bureau's practice to accept such demands or requests ''upon the express, written authorization of the individual CFPB employee to whom such demand or request is directed.'' The Bureau proposed to delete this part of the provision because it is not the general practice of the Bureau to accept service on behalf of individual employees. The Bureau further proposed deleting the paragraph's introductory caveat, ''[e]xcept as otherwise provided in this subpart,'' because the subpart does not otherwise provide for the Bureau to act as an agent for service for subpoenas, orders, or other demands or requests that do not relate to employees' official conduct. The Bureau received no comments regarding these proposals, and it finalizes them without modification.

Section 1070.33 Procedure When Testimony or Production of Documents is Sought; General

Section 1070.33(b)

Section 1070.33(b) provides that the General Counsel may require a party seeking official information through testimony, Bureau records, or other material, to describe all reasonably foreseeable demands for such information. The Bureau proposed to make several technical changes to clarify this provision. The Bureau received no comments regarding these changes, and it finalizes the proposal without modification.

Subpart E—The Privacy Act

Section 1070.51 Authority and Responsibilities of the Chief Privacy Officer

Section 1070.51 specifies the authority and responsibilities of the Bureau's Chief Privacy Officer. The Bureau proposed to add a new paragraph at § 1070.51(a) authorizing the Chief Privacy Officer to ''[d]evelop, implement, and maintain an organization-wide privacy program'' and to renumber the other paragraphs in § 1070.51 to reflect this change. This change is in accordance with National Institute of Standards and Technology (NIST) Special Publication 800–53 Revision 4, which provides that agencies should ''[appoint] a Senior Agency Official for Privacy (SAOP)/Chief Privacy Officer (CPO) accountable for developing, implementing, and maintaining an organization-wide governance and privacy program to ensure compliance with all applicable laws and regulations regarding the collection, use, maintenance, sharing, and disposal of personally identifiable information (PII) by programs and information systems. . . .'' The Bureau proposed this change to clarify the authority of its Chief Privacy Officer. The Bureau received no comments on this proposal, and it finalizes the proposal without modification.

Section 1070.53 Request for Access to Records

Section 1070.53(a) Procedures for Making a Request for Access to Records

Section 1070.53(a) specifies the procedures for making Privacy Act requests for records. The previous text distinguished between requests made in writing and by electronic means. The Bureau proposed a technical change to this provision, to remove the phrase ''or by electronic means'' and add ''as follows:'' in its place. The Bureau also proposed changes to § 1070.53(a)(1) to

clarify how requesters must submit Privacy Act requests to the Bureau. The Bureau proposed similar changes to §§ 1070.56(a) and 1070.58(b). The Bureau received no comments on this proposal and it finalizes the proposal without modification.

Section 1070.56 Request For Amendment of Records

Section 1070.56(a) Procedures for Making Request

Section 1070.56(a)(2)(i)

Section 1070.56(a)(2)(i) provides that an individual requesting an amendment of a record must identify the system of records containing the record. The Bureau proposed to revise this provision to allow an individual to provide a description of the record in sufficient detail to allow Bureau personnel to locate the system of records containing the record. This revision was intended to provide a requester with more flexibility in the event that the requester does not know the precise name of the applicable system of records. Furthermore, this proposal was consistent with § 1070.53(b)(2), which specifies requirements for requests for access to records. The Bureau received no comments on this proposal, and it finalizes the proposal without modification.

Section 1070.61 Training; Rules of Conduct; Penalties for Non-Compliance

Section 1070.61 addresses, among other things, the Bureau's obligations to conduct privacy-related training and establish rules of conduct related to privacy. The Bureau proposed to replace references to ''employees of Government contractors'' with the term ''contract personnel'' to avoid confusion with respect to § 1070.2(k) (proposed § 1070.2(l)), which defines the term ''employee.'' The Bureau received no comments on this proposal, and it finalizes the proposal without modification.

VI. Section 1022(b)(2)(A) of the Dodd-Frank Act

In developing this final rule, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act.[2] This analysis describes these impacts solely for the Touhy procedures as the remaining provisions of this rule are not promulgated under federal consumer financial protection laws. The benefits and costs of those provisions are discussed above. The Bureau has consulted, or offered to consult with, the prudential regulators and the Federal Trade Commission, including consultation regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The Bureau has chosen to consider the benefits, costs, and impacts of the final rule as compared to the status quo, namely the Bureau's regulations as set forth by the Bureau on February 15, 2013, 78 FR 11483 (Feb. 15, 2013).[3] The Bureau does not have data with which to quantify the benefits or costs of the final rule, nor were any data provided by commenters. As such, the discussion below considers the qualitative costs, benefits, and impacts that the Bureau anticipates from the rule. The Bureau also notes that the discussion below should be read in conjunction with the discussion of benefits and costs in the Section-by-Section discussion above.

As relevant, the final rule revises subparts A and C of part 1070 of title 12 of the Code of Federal Regulations: The revisions to Subpart A offer clarifications of procedures related to the certification of authenticity of Bureau records and the service of summonses or complaints on the Bureau; the revisions to Subpart C include organizational and clarifying revisions to the provisions related to the Bureau's *Touhy* regulations.

As these revisions mainly include clarifications, corrections and technical changes, they will have limited impacts on consumers and covered persons.

The final rule will not have an appreciable impact on consumers' access to consumer financial products or services, as the scope of the final rule is limited to matters related to access to certain types of information, and does not relate to credit access.

The final rule will not have a unique impact on insured depository institutions or insured credit unions with $10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act as the rule does not distinguish information regarding such institutions or procedures applicable to such institutions.

The final rule will not have a unique impact on consumers in rural areas as the rule does not distinguish information regarding consumers in rural areas or procedures applicable to such consumers.

VII. Procedural Requirements

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (the RFA), requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The undersigned so certifies. The rule does not impose any obligations or standards of conduct for purposes of analysis under the RFA, and it therefore does not give rise to a regulatory compliance burden for small entities.

Finally, the Bureau has determined that this rule does not impose any new recordkeeping, reporting, or disclosure requirements on members of the public that would be collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 12 CFR Part 1070

Confidential business information, Consumer protection, Freedom of information, Privacy.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends 12 CFR part 1070 to read as follows:

PART 1070—DISCLOSURE OF RECORDS AND INFORMATION

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

Authority: 12 U.S.C. 5481 *et seq.;* 5 U.S.C. 552; 5 U.S.C. 552a; 18 U.S.C. 1905; 18 U.S.C. 641; 44 U.S.C. ch. 31; 44 U.S.C. ch. 35; 12 U.S.C. 3401 *et seq.*

[2] Section 1022(b)(2)(A) of the Dodd-Frank Act addresses the consideration of the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with objectives those agencies administer.

[3] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline.

Subpart A—General Provisions and Definitions

■ 2. Revise § 1070.1 to read as follows:

§ 1070.1 Authority, purpose, and scope.

(a) *Authority.* (1) This part is issued by the Bureau of Consumer Financial Protection, an independent Bureau within the Federal Reserve System, pursuant to the Consumer Financial Protection Act of 2010, 12 U.S.C. 5481 *et seq.;* the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act of 1974, 5 U.S.C. 552a; the Federal Records Act, 44 U.S.C. 3101; the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.;* the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401; the Trade Secrets Act, 18 U.S.C. 1905; 18 U.S.C. 641; and any other applicable law that establishes a basis for the exercise of governmental authority by the CFPB.

(2) This part establishes mechanisms for carrying out the CFPB's statutory responsibilities under the statutes in paragraph (a)(1) of this section to the extent those responsibilities require the disclosure, production, or withholding of information. In this regard, the CFPB has determined that the CFPB, and its delegates, may disclose information of the CFPB, in accordance with the procedures set forth in this part, whenever it is necessary or appropriate to do so in the exercise of any of the CFPB's authority. The CFPB has determined that all such disclosures, made in accordance with the rules and procedures specified in this part, are authorized by law.

(b) *Purpose and scope.* This part contains the CFPB's rules relating to the disclosure of records and information generated by and obtained by the CFPB.

(1) Subpart A contains general provisions and definitions used in this part.

(2) Subpart B implements the Freedom of Information Act, 5 U.S.C. 552.

(3) Subpart C sets forth the procedures with respect to subpoenas, orders, or other requests for CFPB information in connection with legal proceedings.

(4) Subpart D provides for the protection of confidential information and procedures for sharing confidential information with supervised institutions, government Agencies, and others in certain circumstances.

(5) Subpart E implements the Privacy Act of 1974, 5 U.S.C. 552a.

■ 3. Revise § 1070.2(c) to read as follows:

§ 1070.2 General definitions.

* * * * *

(c) *Chief FOIA Officer* means the Chief Operating Officer of the CFPB.

* * * * *

■ 4. Revise §§ 1070.3 and 1070.4 to read as follows:

§ 1070.3 Custodian of records; certification; alternative authority.

(a) *Custodian of records.* The Chief Operating Officer is the official custodian of all records of the CFPB, including records that are in the possession or control of the CFPB or any CFPB employee.

(b) *Certification of record.* The Chief Operating Officer may certify the authenticity of any CFPB record or any copy of such record, or the absence thereof, for any purpose, and for or before any duly constituted Federal or State court, tribunal, or agency.

(c) *Alternative authority.* Any action or determination required or permitted to be done by the Chief Operating Officer may be done by any employee who has been duly designated for this purpose by the Chief Operating Officer.

§ 1070.4 Records of the CFPB not to be otherwise disclosed.

Except as provided by this part, employees or former employees of the CFPB, or others in possession of a record of the CFPB that the CFPB has not already made public, are prohibited from disclosing such records, without authorization, to any person who is not an employee of the CFPB.

■ 5. Add § 1070.5 to read as follows:

§ 1070.5 Service of summonses and complaints.

(a) Only the General Counsel is authorized to receive and accept summonses or complaints sought to be served upon the CFPB or CFPB employees sued in their official capacity. Such documents should be served upon the General Counsel, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. This authorization for receipt shall in no way affect the requirements of service elsewhere provided in applicable rules and regulations.

(b) If, notwithstanding paragraph (a) of this section, any summons or complaint described in that paragraph is delivered to an employee of the CFPB, the employee shall decline to accept the proffered service and may notify the person attempting to make service of the regulations set forth herein. If, notwithstanding this instruction, an employee accepts service of a document described in paragraph (a) of this section, the employee shall immediately notify and deliver a copy of the summons and complaint to the General Counsel.

(c) When a CFPB employee is sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the CFPB (whether or not the officer or employee is also sued in an official capacity), the employee by law is to be served personally with process. *See* Fed. R. Civ. P. 4(i)(3). An employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the CFPB shall immediately notify, and deliver a copy of the summons and complaint to, the General Counsel.

(d) The CFPB will only accept service of process for an employee sued in his or her official capacity. Documents for which the General Counsel accepts service in official capacity shall be marked ''Service Accepted in Official Capacity Only.'' Acceptance of service shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under applicable laws or rules.

■ 6. Revise subparts B and C to read as follows:

Subpart B—Freedom of Information Act

Sec.

Subpart C—Disclosure of CFPB Information in Connection With Legal Proceedings

Sec.

Subpart B—Freedom of Information Act

§ 1070.10 General.

This subpart contains the regulations of the CFPB implementing the Freedom of Information Act (the FOIA), 5 U.S.C. 552, as amended. These regulations set forth procedures for requesting access to records maintained by the CFPB. These regulations should be read together with the FOIA, the 1987 Office of Management and Budget Guidelines for FOIA Fees, the CFPB's Privacy Act regulations set forth in subpart E of this part, and the FOIA web page on the CFPB's website, *http://www.consumerfinance.gov,* which provide additional information about this topic.

§ 1070.11 Information made available; discretionary disclosures.

(a) *In general.* The FOIA provides for public access to information and records developed or maintained by Federal agencies. Generally, the FOIA divides agency information into three major categories and provides methods by which each category of information is to be made available to the public. The three major categories of information are as follows:

(1) Information required to be published in the **Federal Register** (see § 1070.12);

(2) Information required to be made available for public inspection in an electronic format or, in the alternative, to be published and offered for sale (see § 1070.13); and

(3) Information required to be made available to any member of the public upon specific request (see §§ 1070.14 through 1070.22).

(b) *Discretionary disclosures.* Even though a FOIA exemption may apply to the information or records requested, the CFPB may, if not precluded by law, elect under the circumstances not to apply the exemption. The fact that the exemption is not applied by the CFPB in response to a particular request shall have no precedential significance in processing other requests.

(c) *Disclosures of records frequently requested.* Subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)), the CFPB shall make publicly available, as provided by § 1070.13, all records regardless of form or format, which have been released previously to any person under 5 U.S.C. 552(a)(3) and §§ 1070.14 through 1070.22, and which the CFPB determines have become or are likely to become the subject of subsequent requests for substantially the same records. When the CFPB receives three (3) or more requests for substantially the same records, then the CFPB shall also make the released records publicly available.

§ 1070.12 Publication in the *Federal Register*.

(a) *Requirement.* The CFPB shall separately state, publish and maintain current in the **Federal Register** for the guidance of the public the following information:

(1) Descriptions of its central and field organization and the established place at which, the persons from whom, and the methods whereby, the public may obtain information, make submissions or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the CFPB; and

(5) Each amendment, revision, or repeal of matters referred to in paragraphs (a)(1) through (4) of this section.

(b) *Exceptions.* Publication of the information under paragraph (a) of this section shall be subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)) and the limitations provided in 5 U.S.C. 552(a)(1).

§ 1070.13 Public inspection in an electronic format.

(a) *In general.* Subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)), the CFPB shall, in conformance with 5 U.S.C. 552(a)(2), make available for public inspection in an electronic format, including by posting on the CFPB's website, *http://www.consumerfinance.gov,* or, in the alternative, promptly publish and offer for sale the following information:

(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the CFPB but are not published in the **Federal Register**;

(3) Its administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records made publicly available pursuant to § 1070.11; and

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b) *Information made available online.* For records required to be made available for public inspection in an electronic format pursuant to 5 U.S.C. 552(a)(2) (paragraphs (a)(1) through (4) of this section), as soon as practicable, the CFPB shall make such records available on its e-FOIA Library, located at *http://www.consumerfinance.gov.*

(c) *Record availability at the on-site e-FOIA Library.* Any member of the public may, upon request, access the CFPB's e-FOIA Library via a computer terminal at 1700 G Street NW, Washington, DC 20552. Such a request may be made by electronic means as set forth on the CFPB's website, *http://www.consumerfinance.gov,* or in writing, to the Chief FOIA Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. The request must indicate a preferred date and time for the requested access. The CFPB reserves the right to arrange a different date and time with the requester, if necessary.

(d) *Redaction of identifying details.* To prevent a clearly unwarranted invasion of personal privacy, the CFPB may redact identifying details contained in any matter described in paragraphs (a)(1) through (4) of this section before making such matters available for inspection or publication. The justification for the redaction shall be explained fully in writing, and the extent of such redaction shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in 5 U.S.C. 552(b) under which the redaction is made. If technically feasible, the extent of the redaction shall be indicated at the place in the record where the redaction is made.

§ 1070.14 Requests for CFPB records.

(a) *In general.* Subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)), the CFPB shall promptly make its records available to any person pursuant to a

request that conforms to the rules and procedures of this section.

(b) *Form of request.* A request for records of the CFPB shall be made in writing as follows:

(1) If a request is submitted by mail or delivery service, it shall be addressed to the Chief FOIA Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. The request shall be labeled ''Freedom of Information Act Request.''

(2) If a request is submitted by electronic means, it shall be submitted as set forth on the CFPB's website, *http://www.consumerfinance.gov.* The request shall be labeled ''Freedom of Information Act Request.''

(c) *Content of request.* (1) In order to ensure the CFPB's ability to respond in a timely manner, a FOIA request must describe the records that the requester seeks in sufficient detail to enable CFPB personnel to locate them with a reasonable amount of effort. Whenever possible, the request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. If known, the requester should include any file designations or descriptions for the records requested. The more specific the requester is about the records or type of records requested, the more likely the CFPB will be able to locate those records in response to the request;

(2) In order to ensure the CFPB's ability to communicate effectively with the requester, a request should include contact information for the requester, including the name of the requester and, to the extent available, a mailing address, telephone number, and email address at which the CFPB may contact the requester regarding the request;

(3) The request should state whether the requester wishes to receive the records in a specific format;

(4) A requester should indicate in the request whether the requester is a commercial user, an educational institution, non-commercial scientific institution, representative of the news media, or ''other'' requester, as those terms are defined in § 1070.22(b), and the basis for claiming that fee category;

(5) If a requester seeks a waiver or reduction of fees associated with processing a request, then the request shall include a statement to that effect as is required by § 1070.22(e); and

(6) If a requester seeks expedited processing of a request, then the request must include a statement to that effect as is required by § 1070.17.

(d) *Perfected requests; effect of request deficiencies.* For purposes of computing its deadline to respond to a request, the CFPB will deem itself to have received a request only if, and on the date that, it receives a request that contains substantially all of the information required by and that otherwise conforms with paragraphs (b) and (c) of this section. The CFPB need not accept a request, process a request, or be bound by any deadlines in this subpart for processing a request that fails to conform, in any material respect, to the requirements of paragraphs (b) and (c) of this section. If a request is deficient in any material respect, then the CFPB may return it to the requester and if it does so, it shall advise the requester in what respect the request is deficient, and what additional information is needed to respond to the request. The requester may then amend or resubmit the request. A determination by the CFPB that a request is deficient in any respect is not a denial of a request for records and such determinations are not subject to appeal. If a requester fails to respond to a CFPB notification that a request is deficient within thirty (30) days of the CFPB's notification, the CFPB will deem the request withdrawn.

(e) *Requests by an individual for CFPB records pertaining to that individual.* An individual who wishes to inspect or obtain copies of records of the Bureau that pertain to that individual shall provide identity verification in accordance with § 1070.53(c).

(f) *Requests for CFPB records pertaining to another individual.* Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration by that individual made in compliance with the requirements set forth in 28 U.S.C. 1746 authorizing disclosure of the records to the requester, or submits proof that the individual is deceased (*e.g.,* a copy of a death certificate or an obituary). The CFPB may require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(g) *Assistance from FOIA Public Liaison.* Requesters may contact the CFPB's FOIA Public Liaison to seek assistance in determining the appropriate fee category, formatting of requests, or resolving any problems that arise prior to submitting a request or during the processing of a request. The FOIA Public Liaison can be contacted at the telephone number listed on the CFPB's website, *http://www.consumerfinance.gov.*

§ 1070.15 Responsibility for responding to requests for CFPB records.

(a) *In general.* In determining which records are responsive to a request, the CFPB ordinarily will include only records in its possession as of the date the CFPB begins its search for them. If any other date is used, the CFPB shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The Chief FOIA Officer shall be authorized to grant or deny any request for a record of the CFPB.

(c) *Consultations, referrals and coordination.* When reviewing a record in response to a request, the CFPB will determine whether another agency is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the agency must proceed in one of the following ways:

(1) *Referral.* (i) When a requested record has been created by an agency other than the CFPB, the CFPB shall refer the record to that agency for a direct response to the requester.

(ii) Whenever the CFPB refers any part of the responsibility for responding to a request to another agency, it must document the referral, maintaining a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name of the agency to which the record was referred, including that agency's FOIA contact information.

(2) *Consultation.* When a FOIA request is received for a record created by the CFPB that includes information originated by another agency, the CFPB shall consult the originating agency for review and recommendation on disclosure. The CFPB shall not release any such records without prior consultation with the originating agency.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the agency that received the request should coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the agency that originally received the request.

§ 1070.16 Timing of responses to requests for CFPB records.

(a) *In general.* Except as set forth in paragraphs (b) through (d) of this section, and § 1070.17, the CFPB shall respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) The CFPB may establish separate tracks to process simple and complex requests. The CFPB may assign a request to the simple or complex track(s) based on the amount of work and/or time needed to process the request. The CFPB shall process requests in each track based on the date the request was perfected in accordance with § 1070.14(d).

(2) The CFPB may provide a requester in its complex track with an opportunity to limit the scope of the request to qualify for faster processing within the specified limits of the simple track(s).

(c) *Time period for responding to requests for records.* Ordinarily, the CFPB shall have twenty (20) business days from when a request is received by the CFPB to determine whether to grant or deny a request for records. The twenty (20) business day time period set forth in this paragraph (c) shall not be tolled by the CFPB except that the CFPB may:

(1) Make one reasonable demand to the requester for clarifying information about the request and toll the twenty (20) business day time period while it awaits the clarifying information; or

(2) Toll the twenty (20) business day time period while it awaits clarification from or addresses any dispute with the requester regarding the assessment of fees.

(d) *Unusual circumstances.* (1) Where the CFPB determines that due to unusual circumstances it cannot respond either to a request within the time period set forth in paragraph (c) of this section or to an appeal within the time period set forth in § 1070.21, the CFPB may extend the applicable time periods by informing the requester in writing of the unusual circumstances and of the date by which the CFPB expects to complete its processing of the request or appeal. Any extension or extensions of time with respect to a request or an appeal shall not cumulatively total more than ten (10) business days. However, if the CFPB determines that it needs additional time beyond a ten (10) business day extension to process a request, then the CFPB shall notify the requester, provide the requester with an opportunity to limit the scope of the request, arrange for an alternative time frame for processing the request, or modify the request, and notify the requester of the availability of services provided by its FOIA Public Liaison and the Office of Government Information Services (OGIS).

(2) As used in this paragraph (d), ''unusual circumstances'' means:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more CFPB offices having substantial subject matter interest therein.

§ 1070.17 Requests for expedited processing.

(a) *In general.* The CFPB shall process a request on an expedited basis whenever a requester demonstrates a compelling need for expedited processing in accordance with the requirements of this paragraph (a) or in other cases that the CFPB deems appropriate.

(b) *Form and content of a request for expedited processing.* A request for expedited processing shall be made as follows:

(1) A request for expedited processing shall be made in writing and submitted as part of a request for records in accordance with § 1070.14(b), or at any time during the processing of the request. When a request for records includes a request for expedited processing, the request shall be labeled ''Expedited Processing Requested.''

(2) A request for expedited processing shall contain a statement that demonstrates a compelling need for the requester to obtain expedited processing of the requested records. A ''compelling need'' is defined as follows:

(i) Failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The requester shall fully explain the circumstances warranting such an expected threat so that the CFPB may make a reasoned determination that a delay in obtaining the requested records could pose such a threat; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal government activity. A requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ''urgency to inform'' the public on the topic.

(3) The requester shall certify the written statement that purports to demonstrate a compelling need for expedited processing to be true and correct to the best of the requester's knowledge and belief. The certification must be in the form prescribed by 28 U.S.C. 1746: ''I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date].'' The requester shall mail or submit electronically a copy of such written certification to the Chief FOIA Officer as set forth in § 1070.14(b). The CFPB may waive this certification requirement in appropriate circumstances.

(c) *Determinations of requests for expedited processing.* Within ten (10) calendar days of its receipt of a request for expedited processing, the CFPB shall decide whether to grant it and shall notify the requester of the determination in writing.

(d) *Effect of granting requests for expedited processing.* If the CFPB grants a request for expedited processing, then the CFPB shall give the expedited request priority over non-expedited requests and shall process the expedited request as soon as practicable. The CFPB may assign expedited requests to their own simple and complex processing tracks based upon the amount of work and/or time needed to process them. Within each such track, an expedited request shall be processed in the order of its receipt.

(e) *Appeals of denials of requests for expedited processing.* If the CFPB denies a request for expedited processing, then the requester shall have the right to submit an appeal of the denial determination in accordance with § 1070.21. The CFPB shall communicate this appeal right as part of its written notification to the requester denying expedited processing. The requester shall label its appeal request ''Appeal for Expedited Processing.'' The CFPB shall act expeditiously upon an appeal of a denial of a request for expedited processing.

§ 1070.18 Responses to requests for CFPB records.

(a) *Acknowledgements of requests.* Upon receipt of a request, the CFPB will assign to the request a unique tracking number. The CFPB will send an acknowledgement letter to the requester by mail or email within ten (10) calendar days of receipt of the request. The acknowledgment letter will contain the following information:

(1) The applicable request tracking number;

(2) The date of receipt of the request, as determined in accordance with § 1070.14(d), as well as the date when the requester may expect a response;

(3) A brief statement identifying the subject matter of the request; and

(4) A confirmation, with respect to any fees that may apply to the request pursuant to § 1070.22, that the requester has sought a waiver or reduction in such fees, has agreed to pay any and all applicable fees, or has specified an upper limit that the requester is willing to pay in fees to process the request.

(b) *Initial determination to grant or deny a request.* (1) The officer designated in § 1070.15(b), or his or her delegate, shall make initial determinations either to grant or to deny in whole or in part requests for records.

(2) If the request is granted in full or in part, and if the requester requests a copy of the records requested, then a copy of the records shall be mailed or emailed to the requester in the requested format, to the extent the records are readily producible in the requested format. The CFPB shall also send the requester a statement of the applicable fees, either at the time of the determination or shortly thereafter, and inform the requester of the availability of its FOIA Public Liaison to offer assistance.

(3) In the case of a request for inspection, the requester shall be notified in writing of the determination, when and where the requested records may be inspected, and of the fees incurred in complying with the request. The CFPB shall then promptly make the records available for inspection at the time and place stated, in a manner that will not interfere with CFPB's operations and will not exclude other persons from making inspections. The requester shall not be permitted to remove the records from the room where inspection is made. If, after making inspection, the requester desires copies of all or a portion of the requested records, copies shall be furnished upon payment of the established fees prescribed by § 1070.22. Fees may be charged for search and review time as stated in § 1070.22.

(4) If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail or by email. The letter of notification shall:

(i) State the exemptions relied upon in denying the request;

(ii) If technically feasible, indicate the amount of information deleted and the exemptions under which the deletion is made at the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(iii) Set forth the name and title or position of the responsible official;

(iv) Advise the requester of the right to seek dispute resolution services from the Bureau's FOIA Public Liaison or the Office of Governmental Information Services;

(v) Advise the requester of the right to administrative appeal in accordance with § 1070.21; and

(vi) Specify the official or office to which such appeal shall be submitted.

(5) If it is determined, after a reasonable search for records, that no responsive records have been found to exist, the requester shall be notified in writing or by email. The notification shall also advise the requester of the right to administratively appeal the CFPB's determination that no responsive records exist (*i.e.,* to challenge the adequacy of the CFPB's search for responsive records) in accordance with § 1070.21. The response shall specify the official or office to which the appeal shall be submitted for review.

(c) *Resolution of disputes.* The CFPB is committed to efficiently resolving disputes during the request process. The following resources are available to requesters to resolve any disputes that may arise during the request process:

(1) *FOIA Public Liaison.* Any request related questions or concerns should be directed to the FOIA Public Liaison, who is responsible for reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

(2) *Dispute resolution.* The National Archives and Records Administration (NARA), Office of Government Information Services (OGIS) offers non-compulsory, non-binding dispute resolution services to help resolve FOIA disputes. A requester may contact OGIS directly at Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740–6001, Email: *ogis@nara.gov,* Phone: (301) 837–1996, Fax: (301) 837–0348. This information is provided as a public service only. By providing this information, the CFPB does not commit to refer disputes to OGIS.

(d) *Format of records disclosed.* (1) The CFPB will provide records in the requested format if the records can readily be reproduced from the original file to that specific format.

(2) The CFPB may charge fees associated with converting records or files into the requested format in accordance with § 1070.22.

§ 1070.19 Classified information.

Whenever a request is made for a record containing information that another agency has classified, or which may be appropriate for classification by another agency under Executive Order 13526 or any other executive order concerning the classification of information, the CFPB shall refer the responsibility for responding to the request to the classifying or originating agency, as appropriate.

§ 1070.20 Requests for business information provided to the CFPB.

(a) *In general.* Business information provided to the CFPB by a business submitter shall not be disclosed pursuant to a FOIA request except in accordance with this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information* means commercial or financial information obtained by the CFPB from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person from whom the CFPB obtains business information, directly or indirectly. The term includes, without limitation, corporations, State, local, and tribal governments, and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4 of the FOIA. These designations will expire ten (10) years after the date of the submission unless the submitter requests otherwise and provides justification for, a longer designation period.

(d) *Notice to submitters.* The CFPB shall provide a submitter with prompt written notice of receipt of a request or appeal encompassing its business information whenever required in accordance with paragraph (e) of this section. Such written notice shall either

describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *When notice is required.* (1) The CFPB shall provide a submitter with notice of receipt of a request or appeal whenever:

(i) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The CFPB has reason to believe that the information may be protected from disclosure under Exemption 4.

(2) The notice requirements of this paragraph (e) shall not apply if:

(i) The CFPB determines that the information is exempt under the FOIA;

(ii) The information lawfully has been published or otherwise made available to the public;

(iii) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(iv) The designation made by the submitter under paragraph (e)(1)(i) of this section appears obviously frivolous, except that, in such a case, the CFPB shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(f) *Opportunity to object to disclosure before release.* (1) Through the notice described in paragraph (d) of this section, the CFPB shall delay any release in order to afford a submitter ten (10) business days from the date of the notice to provide the CFPB with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the FOIA and, in the case of Exemption 4, shall demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter shall be considered to have no objection to disclosure of the information. Information provided by a submitter pursuant to this paragraph (f) may itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, the requester shall be advised that such notice has been given to the submitter. The requester shall be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that the CFPB may review the submitter's objection to disclose, if any.

(g) *Notice of intent to disclose.* The CFPB shall consider a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the CFPB decides to disclose business information over the objection of a submitter, the CFPB shall forward to the submitter a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date which is not less than ten (10) business days after the notice of the final decision to release the requested information has been mailed to the submitter. Except as otherwise prohibited by law, a copy of the disclosure notice shall be forwarded to the requester at the same time.

(h) *Notice to submitter of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the CFPB shall promptly notify the submitter of that business information of the existence of the suit.

(i) *Notice to requester of business information.* The CFPB shall notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

§ 1070.21 Administrative appeals.

(a) *Grounds for administrative appeals.* A requester may appeal an initial determination of the CFPB, including for the following reasons:

(1) To deny access to records in whole or in part (as provided in § 1070.18(b));

(2) To assign a particular fee category to the requester (as provided in § 1070.22(b));

(3) To deny a request for a reduction or waiver of fees (as provided in § 1070.22(e));

(4) That no records exist that are responsive to the request (as provided in § 1070.18(b)); or

(5) To deny a request for expedited processing (as provided in § 1070.17(e)).

(b) *Time limits for filing administrative appeals.* An appeal, other than an appeal of a denial of expedited processing, must be postmarked or submitted electronically on a date that is within ninety (90) calendar days after the date the initial determination is sent to the requester or the date of the letter transmitting the last records released, whichever is later. An appeal of a denial of expedited processing must be made within ten (10) days of the date of the initial determination letter to deny expedited processing (see § 1070.17).

(c) *Form and content of administrative appeals.* In order to ensure a timely response to an appeal, the appeal shall be made in writing as follows:

(1) If appeal is submitted by mail or delivery service, it shall be addressed to and submitted to the officer specified in paragraph (e) of this section at the address set forth in § 1070.14(b). The appeal shall be labeled ''Freedom of Information Act Appeal.''

(2) If an appeal is submitted by electronic means, it shall be addressed to the officer specified in paragraph (e) of this section and submitted as set forth on the CFPB's website, *http://www.consumerfinance.gov.* The appeal shall be labeled ''Freedom of Information Act Appeal.''

(3) The appeal shall set forth contact information for the requester, including, to the extent available, a mailing address, telephone number, or email address at which the CFPB may contact the requester regarding the appeal; and

(4) The appeal shall specify the applicable request tracking number, the date of the initial request, and the date of the letter of initial determination, and, where possible, enclose a copy of the initial request and the initial determination being appealed.

(d) *Processing of administrative appeals.* The FOIA office will record the date that appeals are received. The receipt of the appeal will be acknowledged by the CFPB and the requester will be advised of the date the appeal was received, the appeal tracking number, and the expected date of response.

(e) *Determinations to grant or deny administrative appeals.* The General Counsel is authorized to and shall decide whether to affirm the initial determination (in whole or in part), to reverse the initial determination (in whole or in part) or to remand the initial determination to the Chief FOIA Officer for further action and shall notify the requester of this decision in writing

within twenty (20) business days after the date of receipt of the appeal, unless extended pursuant to § 1070.16(d).

(1) If it is decided that the appeal is to be denied (in whole or in part) the requester shall be:

(i) Notified in writing of the denial;

(ii) Notified of the reasons for the denial, including which of the FOIA exemptions were relied upon;

(iii) Notified of the name and title or position of the official responsible for the determination on appeal;

(iv) Provided with a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has a principal place of business, the judicial district in which the requested records are located, or the District of Columbia in accordance with 5 U.S.C. 552(a)(4)(B); and

(v) Provided with notification that dispute resolution services are available to the requester as a non-exclusive alternative to litigation through the Office of Government Information Services in accordance with 5 U.S.C. 552(h)(3). Dispute resolution is a voluntary process. If the CFPB agrees to participate in the dispute resolution services provided by the Office of Governmental Information Services, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(2) If the initial determination is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

(3) If the initial determination is remanded on appeal to the Chief FOIA Officer for further action, the requester shall be so notified and the request shall be processed in accordance with the decision on appeal. The remanded request shall be treated as a new request received by the CFPB as of the date when the General Counsel transmits the remand notification to the requester. The procedures and deadlines set forth in this subpart for processing, deciding, responding to, and filing administrative appeals of new FOIA requests shall apply to the remanded request.

(f) *Adjudication of administrative appeals of requests in litigation.* An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

§ 1070.22 Fees for processing requests for CFPB records.

(a) *In general.* The CFPB shall determine whether and to what extent to charge a requester fees for processing a FOIA request, for the services and in the amounts set forth in this paragraph (a), by determining an appropriate fee category for the requester (as set forth in paragraph (b) of this section) and then by charging the requester those fees applicable to the assigned category (as set forth in paragraph (c) of this section), unless circumstances exist (as described in paragraph (d) of this section) that render fees inapplicable or unless the requester has requested and the CFPB has granted a reduction in or waiver of fees (as set forth in paragraph (e) of this section).

(1) The CFPB shall charge a requester fees for the cost of copying or printing records at the rate of $0.10 per page.

(2) The CFPB shall charge a requester for all time spent by its employees searching for records that are responsive to a request. The CFPB shall charge the requester fees for search time as follows:

(i) The CFPB shall charge for search time at the salary rate(s) (basic pay plus sixteen (16) percent) of the employee(s) who conduct the search. However, the CFPB shall charge search fees at the rate of $9.00 per fifteen (15) minutes of search time whenever only administrative/clerical employees conduct a search and at the rate of $23.00 per fifteen (15) minutes of search time whenever only professional/executive employees conduct a search. Search charges shall also include transportation of employees and records necessary to the search at actual cost. Fees may be charged for search time even if the search does not yield any responsive records, or if records are exempt from disclosure.

(ii) The CFPB shall charge the requester for the actual direct costs of conducting an electronic records search, including computer search time, runs, and output. The CFPB shall also charge for time spent by computer operators or programmers (at the rates set forth in paragraph (a)(2)(i) of this section) who conduct or assist in the conduct of an electronic records search.

(3) The CFPB shall charge a requester for time spent by its employees examining responsive records to determine whether any portions of such record are exempt from disclosure, pursuant to the FOIA exemptions of 5 U.S.C. 552(b). The CFPB shall also charge a requester for time spent by its employees redacting any such exempt information from a record and preparing a record for release to the requester. The CFPB shall charge a requester for time spent reviewing records at the salary rate(s) (*i.e.,* basic pay plus sixteen (16) percent) of the employees who conduct the review. However, the CFPB shall charge review fees at the rate of $9.00 per fifteen (15) minutes of search time whenever only administrative/clerical employees review records and at the rate of $23.00 per fifteen (15) minutes of search time whenever only professional/executive employees review records. Fees shall be charged for review time even if records ultimately are not disclosed.

(4) Fees for all services provided shall be charged whether or not copies are made available to the requester for inspection. However, no fee shall be charged for monitoring a requester's inspection of records.

(5) Other services and materials requested which are not covered by this part nor required by the FOIA are chargeable at the actual cost to the CFPB. This includes, but is not limited to:

(i) Certifying that records are true copies; or

(ii) Sending records by special methods such as express mail, etc.

(b) *Categories of requesters.* (1) For purposes of assessing fees as set forth in this section, each requester shall be assigned to one of the following categories:

(i) *Commercial user* refers to one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. The CFPB's decision to place a requester in the commercial use category will be made on a case-by-case basis based on how the requester will use the information.

(ii) *Educational institution* refers to any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. Agencies may seek verification from the requester that the request is in furtherance of scholarly research and agencies will advise requesters of their placement in this category.

Example 1 to paragraph (b)(1)(ii). A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

Example 2 to paragraph (b)(1)(ii). A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

Example 3 to paragraph (b)(1)(ii). A student who makes a request in furtherance of their coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

(iii) *Non-commercial scientific institution* refers to an institution that is not operated on a ''commercial user'' basis as that term is defined in paragraph (b)(2)(i) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(iv) *Representative of the news media* refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this paragraph (b)(1)(iv), the term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of ''news'') who make their products available for purchase by or subscription by or free distribution to the general public. Other examples of news media entities include online publications and websites that regularly deliver news content to the public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the CFPB may also consider the past publication record of the requester in making such a determination.

(v) *Other requester* refers to a requester who does not fall within any of the categories described in paragraphs (b)(1)(i) through (iv) of this section.

(2) Within twenty (20) calendar days of its receipt of a request, the CFPB shall make a determination as to the proper fee category to apply to a requester. The CFPB shall inform the requester of the determination in the request acknowledgment letter, or if no such letter is required, in another writing. Where the CFPB has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the CFPB should seek additional clarification before assigning the request to a specific category.

(3) If the CFPB assigns to a requester a fee category, then the requester shall have the right to submit an appeal of the CFPB's determination in accordance with § 1070.21. The CFPB shall communicate this appeal right as part of its written notification to the requester of an adverse fee category determination. The requester shall label its appeal request ''Appeal of Fee Category Determination.''

(c) *Fees applicable to each category of requester.* The following fee schedule applies uniformly throughout the CFPB to requests processed under the FOIA. Specific levels of fees are prescribed for each category of requester defined in paragraph (b) of this section.

(1) Commercial users shall be charged the full direct costs of searching for, reviewing, and duplicating the records they request. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the CFPB is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The CFPB may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records or no records are located.

(2) Educational and non-commercial scientific institution requesters shall be charged only for the cost of duplicating the records they request, except that the CFPB shall provide the first one hundred (100) pages of duplication free of charge.

(3) Representatives of the news media shall be charged only for the cost of duplicating the records they request, except that the CFPB shall provide them with the first one hundred (100) pages of duplication free of charge.

(4) Other requesters who do not fit any of the categories described in paragraphs (c)(1) through (3) of this section shall be charged the full direct cost of searching for and duplicating records that are responsive to the request, except that the CFPB shall provide the first one hundred (100) pages of duplication and the first two hours of search time free of charge. The CFPB may recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located. Requests from persons for records about themselves filed in the CFPB's systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974, 5 U.S.C. 552a, which permit fees only for duplication, after the first one hundred (100) pages are furnished free of charge.

(d) *Other circumstances when fees are not charged.* In the following situations the CFPB may not charge a requester certain FOIA processing fees.

(1) If the cost of collecting a fee would be equal to or greater than the total FOIA processing fee, then the CFPB shall not charge a requester any FOIA processing fees.

(2) If the total search and review fees are less than $250, then the CFPB shall not charge a requester any search and review fees.

(3) If the CFPB has waived or reduced FOIA processing fees in accordance with paragraph (e) of this section, then the CFPB shall not charge the portion of the FOIA processing fees that has been waived or reduced.

(4) If the CFPB fails to comply with any time limit under § 1070.15 or § 1070.21, then the CFPB shall not assess search fees or if the requester is a representative of the news media or an educational or noncommercial scientific institution, then the CFPB shall not assess duplication fees, unless:

(i) A court has determined that exceptional circumstances, as defined by the FOIA, exist; or

(ii) The CFPB has determined that unusual circumstances apply to the processing of the request; and

(A) Provided timely written notice to the requester of the unusual circumstances in accordance with § 1070.16(d);

(B) Determined that more than 5,000 pages are necessary to respond to the request; and

(C) Discussed with the requester via mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request.

(5) If the CFPB determines, as a matter of administrative discretion, that waiving or reducing the fees would serve the interest of the United States Government.

(e) *Waiver or reduction of fees.* (1) A requester shall be entitled to receive from the CFPB a waiver or reduction in the fees otherwise applicable to a FOIA request whenever the requester:

(i) Requests such waiver or reduction of fees in writing as part of the FOIA request;

(ii) Labels the request for waiver or reduction of fees ''Fee Waiver or

Reduction Requested'' on the FOIA request; and

(iii) Demonstrates that the fee reduction or waiver request that a waiver or reduction of the fees is in the public interest because:

(A) Furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government; and

(B) Furnishing the information is not primarily in the commercial interest of the requester.

(2) To determine whether the requester has satisfied the requirements of paragraph (e)(1)(iii)(A) of this section, the CFPB shall consider the following factors:

(i) The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, and not remote or attenuated.

(ii) The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially similar form, is not as likely to contribute to the public's understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(3) To determine whether the requester has satisfied the requirements of paragraph (e)(1)(iii)(B) of this section, the CFPB shall consider the following factors:

(i) The CFPB shall consider any commercial interest of the requester (with reference to the definition of ''commercial user'' in paragraph (b)(1)(i) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The CFPB ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) If the CFPB denies a request to reduce or waive fees, then the CFPB shall advise the requester, in the denial notification letter, that the requester may incur fees if the CFPB proceeds to process the request. The notification letter shall also advise the requester that the CFPB will not proceed to process the request further unless the requester, in writing, directs the CFPB to do so and either agrees to pay any fees that may apply to processing the request or specifies an upper limit that the requester is willing to pay to process the request. If the CFPB does not receive this written direction and agreement/specification within thirty (30) calendar days of the date of the denial notification letter, then the CFPB shall deem the request to be withdrawn.

(6) If the CFPB denies a request to reduce or waive fees, then the requester shall have the right to submit an appeal of the denial determination in accordance with § 1070.21. The CFPB shall communicate this appeal right as part of its written notification to the requester denying the fee reduction or waiver request. The requester should label its appeal request ''Appeal for Fee Reduction/Waiver.''

(f) *Advance notice and prepayment of fees.* (1) The CFPB shall notify a requester of the estimated fees for processing a request and provide a breakdown of the fees attributable to search, review, and duplication, when the estimated fees are $250 or more and:

(i) The fees exceed the limit set by the requester;

(ii) The requester did not specify a limit; or

(iii) The CFPB has denied a request for a reduction or waiver of fees.

(2) The requester must provide an agreement to pay the estimated fees; however, the requester shall also be given an opportunity to reformulate the request in an attempt to reduce fees.

(3) If the fees are estimated to exceed $1000, the requester must pre-pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. The requester shall also be given an opportunity to reformulate the request in such a way as to lower the applicable fees.

(4) The CFPB reserves the right to request prepayment after a request is processed and before documents are released.

(5) If a requester has previously failed to pay a fee within thirty (30) calendar days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest and to make an advance payment of the full amount of the estimated fee before the CFPB begins to process a new request or the pending request.

(6) When the CFPB acts under paragraphs (f)(1) through (5) of this section, the statutory time limits of twenty (20) days (excluding Saturdays, Sundays, and legal public holidays) from receipt of initial requests or appeals, plus extensions of these time limits, shall begin only after fees have been paid, a written agreement to pay fees has been provided, or a request has been reformulated.

(g) *Form of payment.* Payment may be tendered as set forth on the CFPB's website, *http://www.consumerfinance.gov.*

(h) *Charging interest.* The CFPB may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the CFPB. The CFPB will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Aggregating requests.* Where the CFPB reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the CFPB may aggregate those requests and charge accordingly. The CFPB may presume that multiple requests of this type made within a thirty (30) day period have been made in order to avoid fees. Where requests are separated by a longer period, the CFPB will aggregate them only where there exists a solid basis for

determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

§ 1070.23 Authority and responsibilities of the Chief FOIA Officer.

(a) *Chief FOIA Officer.* The Director authorizes the Chief FOIA Officer to act upon all requests for agency records, with the exception of determining appeals from the initial determinations of the Chief FOIA Officer, which will be decided by the General Counsel. The Chief FOIA officer shall, subject to the authority of the Director:

(1) Have CFPB-wide responsibility for efficient and appropriate compliance with the FOIA;

(2) Monitor implementation of the FOIA throughout the CFPB and keep the Director, the General Counsel, and the Attorney General appropriately informed of the CFPB's performance in implementing the FOIA;

(3) Recommend to the Director such adjustments to agency practices, policies, personnel and funding as may be necessary to improve the Chief FOIA Officer's implementation of the FOIA;

(4) Review and report to the Attorney General, through the Director, at such times and in such formats as the Attorney General may direct, on the CFPB's performance in implementing the FOIA;

(5) Facilitate public understanding of the purposes of the statutory exemptions of the FOIA by including concise descriptions of the exemptions in both the CFPB's handbook and the CFPB's annual report on the FOIA, and by providing an overview, where appropriate, of certain general categories of CFPB records to which those exemptions apply;

(6) Designate one or more FOIA Public Liaisons;

(7) Offer Training to Bureau staff regarding their responsibilities under the FOIA;

(8) Serve as the primary Bureau liaison with the Office of Government Information Services and the Office of Information Policy; and

(9) Maintain and update, as necessary and in accordance with the requirements of this subpart, the CFPB's FOIA website, including its e-FOIA Library.

(b) *FOIA Public Liaisons.* FOIA Public Liaisons shall report to the Chief FOIA Officer and shall serve as supervisory officials to whom a requester can raise concerns about the service the requester has received from the CFPB's FOIA office, following an initial response from the FOIA office staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

Subpart C—Disclosure of CFPB Information in Connection with Legal Proceedings

§ 1070.30 Purpose and scope; definitions.

(a) This subpart sets forth the procedures to be followed with respect to subpoenas, court orders, or other requests or demands for any CFPB information, whether contained in the files of the CFPB or acquired by a CFPB employee as part of the performance of that employee's duties or by virtue of employee's official status.

(b) This subpart does not apply to requests for official information made pursuant to subparts B, D, and E of this part.

(c) This subpart does not apply to requests for information made in the course of adjudicating claims against the CFPB by CFPB employees (present or former) or applicants for CFPB employment for which jurisdiction resides with the U.S. Equal Employment Opportunity Commission, the U.S. Merit Systems Protection Board, the Office of Special Counsel, the Federal Labor Relations Authority, or their successor agencies, or a labor arbitrator operating under a collective bargaining agreement between the CFPB and a labor organization representing CFPB employees.

(d) This subpart is intended only to inform the public about CFPB procedures concerning the service of process and responses to subpoenas, summons, or other demands or requests for official information or action and is not intended to and does not create, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the CFPB or the United States.

(e) For purposes of this subpart:

(1) *Demand* means a subpoena or order for official information, whether contained in CFPB records or through testimony, related to or for possible use in a legal proceeding.

(2) *Legal proceeding* encompasses all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, grand juries, arbitrators, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature, and whether foreign or domestic. This phrase includes all stages of discovery as well as formal or informal requests by attorneys, their agents, or others involved in legal proceedings.

(3) *Official Information* means all information of any kind, however stored, that is in the custody and control of the CFPB or was acquired by CFPB employees, or former employees as part of their official duties or because of their official status while such individuals were employed by or served on behalf of the CFPB. Official information also includes any information acquired by CFPB employees or former employees while such individuals were engaged in matters related to consumer financial protection functions prior to the employees' transfer to the CFPB pursuant to Subtitle F of the Consumer Financial Protection Act of 2010.

(4) *Request* means any request for official information in the form of testimony, affidavits, declarations, admissions, responses to interrogatories, document production, inspections, or formal or informal interviews, during the course of a legal proceeding, including pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or other applicable rules of procedure.

(5) *Testimony* means a statement in any form, including personal appearances before a court or other legal tribunal, interviews, depositions, telephonic, televised, or videographed statements or any responses given during discovery or similar proceeding in the course of litigation.

§ 1070.31 Service of subpoenas, court orders, and other demands for CFPB information or action.

(a) Except in cases in which the CFPB is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only the General Counsel is authorized to receive and accept subpoenas or other demands or requests directed to the CFPB or its employees, whether civil or criminal in nature, for:

(1) Records of the CFPB;

(2) Official information including, but not limited to, testimony, affidavits, declarations, admissions, responses to interrogatories, or informal statements, relating to material contained in the files of the CFPB or which any CFPB employee acquired in the course and scope of the performance of his or her official duties;

(3) Garnishment or attachment of compensation of current or former employees; or

(4) The performance or non-performance of any official CFPB duty.

(b) Documents described in paragraph (a) of this section should be served upon

the General Counsel, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Service must be effected as provided in applicable rules and regulations governing service in Federal judicial and administrative proceedings. Acceptance of such documents by the General Counsel does not constitute a waiver of any defense that might otherwise exist with respect to service under the Federal Rules of Civil or Criminal Procedure or other applicable laws or regulations.

(c) In the event that any demand or request described in paragraph (a) of this section is sought to be delivered to a CFPB employee other than in the manner prescribed in paragraph (b) of this section, such employee shall decline service and direct the server of process to these regulations. If the demand or request is nonetheless delivered to the employee, the employee shall immediately notify, and deliver a copy of that document to, the General Counsel.

(d) The CFPB is not an agent for service for, or otherwise authorized to accept on behalf of its employees, any subpoenas, orders, or other demands or requests, which are not related to the employees' official duties.

(e) Copies of any subpoenas, orders, or other demands or requests that are directed to former employees of the CFPB in connection with the performance of official CFPB duties shall also be served upon the General Counsel. The CFPB shall not, however, serve as an agent for service for the former employee, nor is the CFPB otherwise authorized to accept service on behalf of its former employees. If the demand involves their official duties as CFPB employees, former employees who receive subpoenas, orders, or similar compulsory process should also notify, and deliver a copy of the document to, the General Counsel.

§ 1070.32 Testimony and production of documents prohibited unless approved by the General Counsel.

(a) Unless authorized by the General Counsel, no employee or former employee of the CFPB shall, in response to a demand or a request provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any official information.

(b) Unless authorized by the General Counsel, no employee or former employee shall, in response to a demand or request, produce any document or any material acquired as part of the performance of that employee's duties or by virtue of that employee's official status.

§ 1070.33 Procedure when testimony or production of documents is sought; general.

(a) If, as part of a proceeding in which the United States or the CFPB is not a party, official information is sought through a demand for testimony, CFPB records, or other material, the party seeking such information must (except as otherwise required by Federal law or authorized by the General Counsel) set forth in writing:

(1) The title and forum of the proceeding, if applicable;

(2) A detailed description of the nature and relevance of the official information sought;

(3) A showing that other evidence reasonably suited to the requester's needs is not available from any other source; and

(4) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony.

(b) To the extent he or she deems necessary or appropriate, the General Counsel may also require from the party seeking such information a plan of all reasonably foreseeable demands, including but not limited to the names of all employees and former employees from whom testimony or discovery will be sought, areas of inquiry, expected duration of proceedings requiring oral testimony, identification of potentially relevant documents, or any other information deemed necessary to make a determination. The purpose of this requirement is to assist the General Counsel in making an informed decision regarding whether testimony, the production of documents, or the provision of other information should be authorized.

(c) The General Counsel may consult or negotiate with an attorney for a party, or the party if not represented by an attorney, to refine or limit a request or demand so that compliance is less burdensome.

(d) The General Counsel will notify the CFPB employee and such other persons as circumstances may warrant of his or her decision regarding compliance with the request or demand.

§ 1070.34 Procedure when response to demand is required prior to receiving instructions.

(a) If a response to a demand described in § 1070.33 is required before the General Counsel renders a decision, the CFPB will request that the appropriate CFPB attorney or an attorney of the Department of Justice, as appropriate, take steps to stay, postpone, or obtain relief from the demand pending decision. If necessary, the attorney will:

(1) Appear with the employee upon whom the demand has been made;

(2) Furnish the court or other authority with a copy of the regulations contained in this subpart;

(3) Inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate CFPB official; and

(4) Request the court or authority to stay the demand pending receipt of the requested instructions.

(b) In the event that an immediate demand for production or disclosure is made in circumstances which would preclude the proper designation or appearance of an attorney of the CFPB or the Department of Justice on the employee's behalf, the employee, if necessary, shall request from the demanding court or authority a reasonable stay of proceedings for the purpose of obtaining instructions from the General Counsel.

§ 1070.35 Procedure in the event of an adverse ruling.

If a stay of, or other relief from, the effect of a demand made pursuant to §§ 1070.33 and 1070.34 is declined or not obtained, or if the court or other judicial or quasi-judicial authority declines to stay the effect of the demand made pursuant to §§ 1070.33 and 1070.34, or if the court or other authority rules that the demand must be complied with irrespective of the General Counsel's instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall decline to comply with the demand citing this subpart and *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

§ 1070.36 Considerations in determining whether the CFPB will comply with a demand or request.

(a) In deciding whether to comply with a demand or request, CFPB officials and attorneys shall consider, among other pertinent considerations:

(1) Whether such compliance would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(2) Whether the number of similar requests would have a cumulative effect on the expenditure of CFPB resources;

(3) Whether compliance is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(4) The public interest;

(5) The need to conserve the time of CFPB employees for the conduct of official business;

(6) The need to avoid spending time and money of the United States for private purposes;

(7) The need to maintain impartiality between private litigants in cases where a substantial government interest is not implicated;

(8) Whether compliance would have an adverse effect on performance by the CFPB of its mission and duties;

(9) The need to avoid involving the CFPB in controversial issues not related to its mission;

(10) Whether compliance would interfere with supervisory examinations, compromise the CFPB's supervisory functions or programs, or undermine public confidence in supervised financial institutions; and

(11) Whether compliance would interfere with the CFPB's ability to monitor for risks to consumers in the offering or provision of consumer financial products and services.

(b) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which any of the following factors, inter alia, exist:

(1) Compliance would violate a statute or applicable rule of procedure;

(2) Compliance would violate a specific regulation or Executive order;

(3) Compliance would reveal information properly classified in the interest of national security;

(4) Compliance would reveal confidential or privileged commercial or financial information or trade secrets without the owner's consent;

(5) Compliance would compromise the integrity of the deliberative processes of the CFPB;

(6) Compliance would not be appropriate or necessary under the relevant substantive law governing privilege;

(7) Compliance would reveal confidential information; or

(8) Compliance would interfere with ongoing investigations or enforcement proceedings, compromise constitutional rights, or reveal the identity of a confidential informant.

(c) The CFPB may condition disclosure of official information pursuant to a request or demand on the entry of an appropriate protective order.

§ 1070.37 Prohibition on providing expert or opinion testimony.

(a) Except as provided in this section, and subject to 5 CFR 2635.805, CFPB employees or former employees shall not provide opinion or expert testimony based upon information which they acquired in the scope and performance of their official CFPB duties, except on behalf of the CFPB or the United States or a party represented by the CFPB, or the Department of Justice, as appropriate.

(b) Any expert or opinion testimony by a former employee of the CFPB shall be excepted from paragraph (a) of this section where the testimony involves only general expertise gained while employed at the CFPB.

(c) Upon a showing by the requester of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, the General Counsel may, consistent with 5 CFR 2635.805, exercise his or her discretion to grant special, written authorization for CFPB employees, or former employees, to appear and testify as expert witnesses at no expense to the United States.

(d) If, despite the final determination of the General Counsel, a court of competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of a current or former CFPB employee, that person shall immediately inform the General Counsel of such order. If the General Counsel determines that no further legal review of or challenge to the court's order will be made, the CFPB employee, or former employee, shall comply with the order. If so directed by the General Counsel, however, the employee, or former employee, shall decline to testify.

■ 7. Revise subpart E to read as follows:

Subpart E—Privacy Act

Sec.

Subpart E—Privacy Act

§ 1070.50 Purpose and scope; definitions.

(a) This subpart implements the provisions of the Privacy Act of 1974, 5 U.S.C. 552a (the Privacy Act). The regulations apply to all records maintained by the CFPB and which are retrieved by an individual's name or personal identifier. The regulations set forth the procedures for requests for access to, or amendment of, records concerning individuals that are contained in systems of records maintained by the CFPB. These regulations should be read in conjunction with the Privacy Act, which provides additional information about this topic.

(b) For purposes of this subpart, the following definitions apply:

(1) The term *Chief Privacy Officer* means the Chief Information Officer of the CFPB or any CFPB employee to whom the Chief Information Officer has delegated authority to act under this part;

(2) The term *guardian* means the parent of a minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction;

(3) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(4) *Maintain* includes maintain, collect, use, or disseminate;

(5) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voiceprint or a photograph;

(6) *Routine use* means the disclosure of a record that is compatible with the purpose for which it was collected;

(7) *System of records* means a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(8) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

§ 1070.51 Authority and responsibilities of the Chief Privacy Officer.

The Chief Privacy Officer is authorized to:

(a) Develop, implement, and maintain an organization-wide privacy program;

(b) Respond to requests for access to, accounting of, or amendment of records contained in a system of records maintained by the CFPB;

(c) Approve the publication of new systems of records and amend existing systems of record; and

(d) File any necessary reports related to the Privacy Act.

§ 1070.52 Fees.

(a) *Copies of records.* The CFPB shall provide the requester with copies of records requested pursuant to § 1070.53 at the same cost charged for duplication of records under § 1070.22.

(b) *No fee.* The CFPB will not charge a fee if:

(1) Total charges associated with a request are less than $5; or

(2) The requester is a CFPB employee or former employee, or an applicant for employment with the CFPB, and the request pertains to that employee, former employee, or applicant.

§ 1070.53 Request for access to records.

(a) *Procedures for making a request for access to records.* An individual's requests for access to records that pertain to that individual (or to the individual for whom the requester serves as guardian) may be submitted to the CFPB in writing as follows:

(1) If submitted by mail or delivery service, the request shall be labeled ''Privacy Act Request'' and shall be addressed to the Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

(2) If submitted by electronic means, the request shall be labeled ''Privacy Act Request'' and the request shall be submitted as set forth at the CFPB's website, *http://www.consumerfinance.gov.*

(b) *Content of a request for access to records.* A request for access to records shall include:

(1) A statement that the request is made pursuant to the Privacy Act;

(2) The name of the system of records that the requester believes contains the record requested, or a description of the nature of the record sought in detail sufficient to enable CFPB personnel to locate the system of records containing the record with a reasonable amount of effort;

(3) Whenever possible, a description of the nature of the record sought, the date of the record or the period in which the requester believes that the record was created, and any other information that might assist the CFPB in identifying the record sought (*e.g.,* maiden name, dates of employment, account information, etc.);

(4) Information necessary to verify the requester's identity pursuant to paragraph (c) of this section; and

(5) The mailing or email address where the CFPB's response or further correspondence should be sent.

(c) *Verification of identity.* To obtain access to the CFPB's records pertaining to a requester, the requester shall provide proof to the CFPB of the requester's identity as provided in paragraphs (c)(1) and (2) of this section.

(1) In general, the following will be considered adequate proof of a requester's identity:

(i) A photocopy of two forms of identification, including one form of identification that bears the requester's photograph, and one form of identification that bears the requester's signature;

(ii) A photocopy of a single form of identification that bears both the requester's photograph and signature; or

(iii) A statement swearing or affirming the requester's identity and to the fact that the requester understands the penalties provided in 5 U.S.C. 552a(i)(3).

(2) Notwithstanding paragraph (c)(1) of this section, a designated official may require additional proof of the requester's identity before action will be taken on any request, if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, if a requester seeks records pertaining to an individual in the requester's capacity as that individual's guardian, the requester shall be required to provide adequate proof of the requester's legal relationship before action will be taken on any request.

(d) *Request for accounting of previous disclosures.* An individual may request an accounting of previous disclosures of records pertaining to that individual in a system of records as provided in 5 U.S.C. 552a(c). Such requests should conform to the procedures and form for requests for access to records set forth in paragraphs (a) and (b) of this section.

§ 1070.54 CFPB procedures for responding to a request for access.

(a) *Acknowledgment and response.* The CFPB will provide written acknowledgement of the receipt of a request within twenty (20) business days from the receipt of the request and will, where practicable, respond to each request within that twenty (20) day period. When a full response is not practicable within the twenty (20) day period, the CFPB will respond as promptly as possible.

(b) *Disclosure.* (1) When the CFPB discloses information in response to a request, the CFPB will make the information available for inspection and copying during regular business hours as provided in § 1070.13, or the CFPB will mail it or email it to the requester, if feasible, upon request.

(2) The requester may bring with him or her anyone whom the requester chooses to see the requested material. All visitors to the CFPB's buildings must comply with the applicable security procedures.

(c) *Denial of a request.* If the CFPB denies a request made pursuant to § 1070.53, it will inform the requester in writing of the reason(s) for denial and the procedures for appealing the denial.

§ 1070.55 Special procedures for medical records.

If an individual requests medical or psychological records pursuant to § 1070.53, the CFPB will disclose them directly to the requester unless the CFPB determines that such disclosure could have an adverse effect on the requester. If the CFPB makes that determination, the CFPB shall provide the information to a licensed physician or other appropriate representative that the requester designates, who shall disclose those records to the requester in a manner he or she deems appropriate.

§ 1070.56 Request for amendment of records.

(a) *Procedures for making request.* (1) If an individual wishes to amend a record that pertains to that individual in a system of records, that individual may submit a request in writing to the Chief Privacy Officer, as set forth in § 1070.53(a). The request shall be labeled ''Privacy Act Amendment Request.''

(2) A request for amendment of a record must:

(i) Identify the name of the system of records that the requester believes contains the record for which the amendment is requested, or a description of the nature of the record in detail sufficient to enable CFPB personnel to locate the system of records containing the record with a reasonable amount of effort;

(ii) Specify the portion of that record requested to be amended; and

(iii) Describe the nature and reasons for each requested amendment.

(3) When making a request for amendment of a record, the CFPB will

require a requester to verify his or her identity under the procedures set forth in § 1070.53(c), unless the requester has already done so in a related request for access or amendment.

(b) *Burden of proof.* In a request for amendment of a record, the requester bears the burden of proving by a preponderance of the evidence that the record is not accurate, relevant, timely, or complete.

§ 1070.57 CFPB review of a request for amendment of records.

(a) *Time limits.* The CFPB will acknowledge a request for amendment of records within ten (10) business days after it receives the request. In the acknowledgment, the CFPB may request additional information necessary for a determination on the request for amendment. The CFPB will make a determination on a request to amend a record promptly.

(b) *Contents of response to a request for amendment.* When the CFPB responds to a request for amendment, the CFPB will inform the requester in writing whether the request is granted or denied, in whole or in part. If the CFPB grants the request, it will take the necessary steps to amend the record and, when appropriate and possible, notify prior recipients of the record of its action. If the CFPB denies the request, in whole or in part, it will inform the requester in writing:

(1) Why the request (or portion of the request) was denied;

(2) That the requester has a right to appeal; and

(3) How to file an appeal.

§ 1070.58 Appeal of adverse determination of request for access or amendment.

(a) *Appeal.* A requester may appeal a denial of a request made pursuant to § 1070.53 or § 1070.56 within ten (10) business days after the CFPB notifies the requester that it has denied the request.

(b) *Content of appeal.* A requester may submit an appeal in writing as set forth in § 1070.53(a). The appeal shall be addressed to the General Counsel and labeled ''Privacy Act Appeal.'' The appeal must also:

(1) Specify the background of the request; and

(2) Provide reasons why the requester believes the denial is in error.

(c) *Determination.* The General Counsel will make a determination as to whether to grant or deny an appeal within thirty (30) business days from the date it is received, unless the General Counsel extends the time for good cause.

(1) If the General Counsel grants an appeal regarding a request for amendment, he or she will take the necessary steps to amend the record and, when appropriate and possible, notify prior recipients of the record of its action.

(2) If the General Counsel denies an appeal, he or she will inform the requester of such determination in writing, including the reasons for the denial, and the requester's right to file a statement of disagreement and to have a court review its decision.

(d) *Statement of disagreement.* (1) If the General Counsel denies an appeal regarding a request for amendment, a requester may file a concise statement of disagreement with the denial. The CFPB will maintain the requester's statement with the record that the requester sought to amend and any disclosure of the record will include a copy of the requester's statement of disagreement.

(2) When practicable and appropriate, the CFPB will provide a copy of the statement of disagreement to any prior recipients of the record.

§ 1070.59 Restrictions on disclosure.

The CFPB will not disclose any record about an individual contained in a system of records to any person or agency without the prior written consent of that individual unless the disclosure is authorized by 5 U.S.C. 552a(b). Disclosures authorized by 5 U.S.C. 552a(b) include disclosures that are compatible with one or more routine uses that are contained within the CFPB's Systems of Records Notices, which are available on the CFPB's website, at *http://www.consumerfinance.gov.*

§ 1070.60 Exempt records.

(a) *Exempt systems of records.* Pursuant to 5 U.S.C. 552a(k)(2), the CFPB exempts the systems of records listed in paragraphs (a)(1) through (4) of this section from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G)–(H), and (f), and §§ 1070.53 through 1070.59, to the extent that such systems of records contain investigatory materials compiled for law enforcement purposes, provided, however, that if any individual is denied any right, privilege, or benefit to which he or she would otherwise be entitled under Federal law, or for which he or she would otherwise be eligible as a result of the maintenance of such material, such material shall be disclosed to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the CFPB under an express promise that the identity of the source would be held in confidence:

(1) CFPB.002 Depository Institution Supervision Database.

(2) CFPB.003 Non-Depository Institution Supervision Database.

(3) CFPB.004 Enforcement Database.

(4) CFPB.005 Consumer Response System.

(b) *Information compiled for civil actions or proceedings.* This subpart does not permit an individual to have access to any information compiled in reasonable anticipation of a civil action or proceeding.

§ 1070.61 Training; rules of conduct; penalties for non-compliance.

(a) *Training.* The Chief Privacy Officer shall institute a training program to instruct CFPB employees and contractor personnel covered by 5 U.S.C. 552a(m), who are involved in the design, development, operation, or maintenance of any CFPB system of records, on a continuing basis with respect to the duties and responsibilities imposed on them and the rights conferred on individuals by the Privacy Act, the regulations in this subpart, and any other related regulations. Such training shall provide suitable emphasis on the civil and criminal penalties imposed on the CFPB and the individual employees or contractor personnel by the Privacy Act for non-compliance with specified requirements of the Act as implemented by the regulations in this subpart.

(b) *Rules of conduct.* The following rules of conduct are applicable to employees of the CFPB (including, to the extent required by the contract or 5 U.S.C. 552a(m), Government contractors and employees of such contractors), who are involved in the design, development, operation or maintenance of any system of records, or in maintaining any records, for or on behalf of the CFPB.

(1) The head of each office of the CFPB shall be responsible for assuring that employees subject to such official's supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil liabilities provided therein, and the regulations in this subpart, and that such employees are made aware of their individual and collective responsibilities to protect the security of personal information, to assure its accuracy, relevance, timeliness and completeness, to avoid unauthorized disclosure either orally or in writing, and to ensure that no system of records is maintained without public notice.

(2) Employees of the CFPB involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record shall:

(i) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a function or carry out a responsibility of the CFPB;

(ii) Collect information, to the extent practicable, directly from the individual to whom it relates;

(iii) Inform each individual asked to supply information, on the form used to collect the information or on a separate form that can be retained by the individual of—

(A) The authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) The principal purpose or purposes for which the information is intended to be used;

(C) The routine uses which may be made of the information, as published pursuant to 5 U.S.C. 552a(e)(4)(D); and

(D) The effects on the individual, if any, of not providing all or any part of the requested information;

(iv) Not collect, maintain, use or disseminate information concerning an individual's religious or political beliefs or activities or membership in associations or organizations, unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(v) Advise their supervisors of the existence or contemplated development of any record system which is capable of retrieving information about individuals by individual identifier;

(vi) Assure that no records maintained in a CFPB system of records are disseminated without the permission of the individual about whom the record pertains, except when authorized by 5 U.S.C. 552a(b);

(vii) Maintain and process information concerning individuals with care in order to ensure that no inadvertent disclosure of the information is made either within or without the CFPB;

(viii) Prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to 5 U.S.C. 552a(b)(2), make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes; and

(ix) Assure that an accounting is kept in the prescribed form, of all dissemination of personal information outside the CFPB, whether made orally or in writing, unless disclosed under 5 U.S.C. 552 or subpart B of this part.

(3) The head of each office of the CFPB shall, at least annually, review the record systems subject to their supervision to ensure compliance with the provisions of the Privacy Act of 1974 and the regulations in this subpart.

§ 1070.62 Preservation of records.

The CFPB will preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of or destroyed while they are the subject of a pending request, appeal, proceeding, or lawsuit.

§ 1070.63 Use and collection of Social Security numbers.

The CFPB will ensure that employees authorized to collect information are aware:

(a) That individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their Social Security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975; and

(b) That individuals requested to provide their Social Security numbers must be informed of:

(1) Whether providing Social Security numbers is mandatory or voluntary;

(2) Any statutory or regulatory authority that authorizes the collection of Social Security numbers; and

(3) The uses that will be made of the numbers.

Dated: August 30, 2018.

Mick Mulvaney,

Acting Director, Bureau of Consumer Financial Protection.

[FR Doc. 2018–19384 Filed 9–11–18; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2016–5909; Special Conditions No. 25–626A–SC]

Special Conditions: The Boeing Company (Boeing), Model 787–8, 787–9, and 787–10 Series Airplanes; Dynamic Test Requirements for Single-Occupant, Oblique (Side-Facing) Seats With or Without Airbag Devices or 3-Point Restraints

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amended final special conditions; request for comments.

SUMMARY: These amended special conditions are issued for the Boeing Model 787–8, 787–9, and 787–10 series airplanes. This amendment states that the Boeing Model 787–8, 787–9, and 787–10 series airplanes oblique (side-facing) seats may be installed at an angle of 18 to 45 degrees to the airplane centerline and may include a 3-point or airbag restraint system, or both, for occupant restraint and injury protection. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are oblique (side-facing) single-occupant seats equipped with airbag devices or 3-point restraints. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Boeing on September 12, 2018. Send comments on or before October 29, 2018.

ADDRESSES: Send comments identified by Docket No. FAA–2016–5909 using any of the following methods:

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

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be

found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

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

FOR FURTHER INFORMATION CONTACT: John Shelden, Airframe and Cabin Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3214; email *John.Shelden@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. The FAA, therefore, finds it unnecessary to delay the effective date and finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On November 22, 2017, Boeing applied for a change to Type Certificate No. T00021SE for the installation of oblique (side-facing) passenger seats with or without airbag devices or 3-point restraints in the Boeing Model 787–8, 787–9, and 787–10 series airplanes. The Boeing Model 787–8, 787–9, and 787–10 series airplanes are twin-engine, transport category airplanes with a maximum certified passenger capacity of up to 440, and a maximum takeoff weight of approximately 476,000 lbs.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 787–8, 787–9, and 787–10 series airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. T00021SE or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 787–8, 787–9, and 787–10 series airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 787–8, 787–9, and 787–10 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

The business-class seating configuration Boeing proposes is novel or unusual due to the seat installation at 30 degrees to the airplane centerline, the airbag-system installation, and the seat/occupant interface with the surrounding furniture that introduces occupant alignment and loading concerns. The proposed business-class seating configuration is also beyond the limits of current acceptable equivalent-level-of-safety findings. These oblique (side-facing) seats may be installed at an angle of 18 to 45 degrees to the airplane centerline and may include a 3-point or airbag restraint system, or both, for occupant restraint and injury protection.

The existing regulations do not provide adequate or appropriate safety standards for occupants of oblique-angled seats with airbag systems. To provide a level of safety that is equivalent to that afforded occupants of forward- and aft-facing seats, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement part 25 and, more specifically, supplement §§ 25.562 and 25.785.

The requirements contained in these special conditions consist of both test conditions and injury pass/fail criteria.

Discussion

The FAA has been conducting and sponsoring research on appropriate injury criteria for oblique (side-facing) seat installations. However, the FAA research program is not complete and we may update these criteria as we obtain further research results. To reflect current research findings, the FAA issued policy statement PS–ANM–25–03–R1 to update injury criteria for fully side-facing seats, and policy statement PS–AIR–25–27, to define injury criteria for oblique (side-facing) seats.

The proposed Boeing Model 787–8, 787–9, and 787–10 series airplanes business-class seat installation is novel such that the current Boeing Model 787–8, 787–9, and 787–10 series airplanes certification basis does not adequately address protection of the occupant's neck and spine for seat configurations that are positioned at an angle greater than 18 degrees from the airplane centerline. The FAA issued special conditions No. 25–580–SC for Model 787–9 airplanes on April 14, 2015, and special conditions No. 25–626–SC for certain Model 787–9 airplanes on July 27, 2016. These special conditions contained injury criteria for oblique seats based on the best knowledge the FAA had at the time. These special conditions for oblique seat installations do not adequately address oblique seats, reflecting the current research results, with or without 3-point or airbag restraint systems. Therefore, Boeing's proposed configuration will require amended special conditions.

The installation of passenger seats at angles of 18 to 45 degrees to the airplane centerline are unique due to the seat/occupant interface with the surrounding furniture that introduces occupant alignment/loading concerns with or without the installation of a 3-point or airbag restraint system, or both. On-going research has invalidated previously released special conditions for oblique (side-facing) seat installations. These updated special conditions further address potential injuries to the occupant's neck and spine. As a result, these special conditions replace special conditions 25–580–SC and 25–626–SC.

FAA-sponsored research has found that an un-restrained flailing of the upper torso, even when the pelvis and

torso are nearly aligned, can produce serious spinal and torso injuries. At lower impact severities, even with significant misalignment between the torso and pelvis, these injuries did not occur. Tests with an FAA H–III anthropomorphic test device (ATD) have identified a level of lumbar spinal tension corresponding to the no-injury impact severity. This level of tension is included as a limit in the special conditions. The spine tension limit selected is conservative with respect to other aviation injury criteria since it corresponds to a no-injury loading condition.

As noted in the special conditions for each airbag restraint system, because an airbag restraint system is essentially a single use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head injury protection from the airbag restraint system. Since an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could render the airbag restraint system useless if a larger impact follows the initial impact. This situation does not exist with energy absorbing pads or upper torso restraints, which tend to provide protection according to the severity of the impact. Therefore, the installation of the airbag restraint system should be such that the airbag restraint system will provide protection when it is required, and will not expend its protection when it is not needed.

Because these airbag restraint systems may or may not activate during various crash conditions, the injury criteria listed in these special conditions and in § 25.562 must be met in an event that is slightly below the activation level of the airbag restraint system. If an airbag restraint system is included with the oblique seats, the system must meet the requirements in one of the airbag (inflatable restraint) special conditions applicable to the Boeing Model 787–8, 787–9, and 787–10 series airplanes.

These amended special conditions will provide head injury criteria, neck injury criteria, spine injury criteria, and body-to-wall contact criteria. They contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 787–8, 787–9, and 787–10 series airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

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

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Boeing Model 787–8, 787–9, and 787–10 series airplanes.

Side-Facing Seats Special Conditions

In addition to the requirements of § 25.562:

1. Head Injury Criteria

Compliance with § 25.562(c)(5) is required, except that, if the ATD has no apparent contact with the seat/structure but has contact with an airbag, a head-injury criterion (HIC) unlimited score in excess of 1000 is acceptable, provided the HIC15 score (calculated in accordance with 49 CFR 571.208) for that contact is less than 700.

2. Body-to-Wall/Furnishing Contact

If a seat is installed aft of structure (*e.g.,* an interior wall or furnishing) that does not provide a homogenous contact surface for the expected range of occupants and yaw angles, then additional analysis and/or test(s) may be required to demonstrate that the injury criteria are met for the area that an occupant could contact. For example, if different yaw angles could result in different airbag performance, then additional analysis or separate test(s) may be necessary to evaluate performance.

3. Neck Injury Criteria

The seating system must protect the occupant from experiencing serious neck injury. The assessment of neck injury must be conducted with the airbag device activated, unless there is reason to also consider that the neck-injury potential would be higher for impacts below the airbag-device deployment threshold.

a. The N_{ij} (calculated in accordance with 49 CFR 571.208) must be below 1.0, where $N_{ij} = F_z/F_{zc} + M_y/M_{yc}$, and N_{ij} critical values are:

i. F_{zc} = 1,530 lb for tension
ii. F_{zc} = 1,385 lb for compression
iii. M_{yc} = 229 lb-ft in flexion
iv. M_{yc} = 100 lb-ft in extension

b. In addition, peak F_z must be below 937 lb in tension and 899 lb in compression.

c. Rotation of the head about its vertical axis, relative to the torso, is limited to 105 degrees in either direction from forward-facing.

d. The neck must not impact any surface that would produce concentrated loading on the neck.

4. Spine and Torso Injury Criteria

a. The lumbar spine tension (F_z) cannot exceed 1,200 lb.

b. Significant concentrated loading on the occupant's spine, in the area between the pelvis and shoulders during impact, including rebound, is not acceptable. During this type of contact, the interval for any rearward (X direction) acceleration exceeding 20g must be less than 3 milliseconds as measured by the thoracic instrumentation specified in 49 CFR part 572, subpart E filtered in accordance with SAE International (SAE) recommended practice J211/1, ''Instrumentation for Impact Test—Part 1–Electronic Instrumentation.''

c. The occupant must not interact with the armrest or other seat components in any manner significantly different than would be expected for a forward-facing seat installation.

5. Pelvis Criteria

Any part of the load-bearing portion of the bottom of the ATD pelvis must not translate beyond the edges of the seat bottom seat-cushion supporting structure.

6. Femur Criteria

Axial rotation of the upper leg (about the z-axis of the femur per SAE Recommended Practice J211/1) must be limited to 35 degrees from the nominal seated position. Evaluation during rebound does not need to be considered.

7. ATD and Test Conditions

Longitudinal tests conducted to measure the injury criteria above must be performed with the FAA Hybrid III ATD, as described in SAE 1999–01–1609, ''A Lumbar Spine Modification to the Hybrid III ATD for Aircraft Seat Tests.'' The tests must be conducted with an undeformed floor, at the most-critical yaw cases for injury, and with all lateral structural supports (*e.g.* armrests or walls) installed.

Note: Boeing must demonstrate that the installation of seats via plinths or pallets meets all applicable requirements. Compliance with the guidance contained in policy memorandum PS–ANM–100–2000–00123, ''Guidance for Demonstrating Compliance with Seat Dynamic Testing for Plinths and Pallets,'' dated February 2, 2000, is acceptable to the FAA.

8. Inflatable Airbag Restraint Systems Special Conditions

If inflatable airbag restraint systems are installed, the airbag systems must meet the requirements in one of the airbag (inflatable restraint) special conditions applicable to the Boeing Model 787–8, 787–9 and 787–10 series airplanes.

Issued in Des Moines, Washington, on September 5, 2018.

Victor Wicklund,

Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2018–19753 Filed 9–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2016–4136; Special Conditions No. 25–621A–SC]

Special Conditions: The Boeing Company (Boeing), Model 777 Series Airplanes; Dynamic Test Requirements for Single Occupant Oblique Seats, With or Without Airbag Devices or 3-Point Restraints

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amended final special conditions; request for comments.

SUMMARY: These amended special conditions are issued for the Boeing Model 777 series airplanes. This amendment states that the Boeing Model 777 series airplanes oblique (side-facing) seats may be installed at an angle of 18 to 45 degrees to the airplane centerline and may include a 3-point or airbag restraint system, or both, for occupant restraint and injury protection. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are oblique (side-facing) single-occupant passenger seats equipped with or without airbag devices or 3-point restraints. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on The Boeing Company on September 12, 2018. Send comments on or before October 29, 2018.

ADDRESSES: Send comments identified by Docket No. FAA–2016–4136 using any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: John Shelden, Airframe and Cabin Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3214; email *John.Shelden@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. The FAA therefore finds it unnecessary to delay the effective date and finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

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

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

Background

On November 22, 2017, Boeing applied for an amendment to Type

Certificate No. T00001SE for the installation of oblique (side-facing) passenger seats with or without airbag devices or 3-point restraints in the Boeing Model 777 series airplanes. The Boeing Model 777 series airplanes are twin-engine, transport category airplanes with a maximum certified passenger capacity of up to 550 and a maximum takeoff weight of approximately 775,000 lbs.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 777 series airplanes meet the applicable provisions of the regulations listed in Type Certificate No. T00001SE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777 series airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

The business-class seating configuration Boeing proposes is novel or unusual due to the seat installation at 30 degrees to the airplane centerline, the airbag-system installation, and the seat/occupant interface with the surrounding furniture that introduces occupant alignment and loading concerns. The proposed business-class seating configuration is also beyond the limits of current acceptable equivalent-level-of-safety findings. These oblique (side-facing) seats may be installed at an angle of 18 to 45 degrees to the airplane centerline and may include a 3-point or airbag restraint system, or both, for occupant restraint and injury protection.

The existing regulations do not provide adequate or appropriate safety standards for occupants of oblique-angled seats with airbag systems. To provide a level of safety that is equivalent to that afforded occupants of forward- and aft-facing seats, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement part 25 and, more specifically, supplement §§ 25.562 and 25.785.

The requirements contained in these special conditions consist of both test conditions and injury pass/fail criteria.

Discussion

The FAA has been conducting and sponsoring research on appropriate injury criteria for oblique (side-facing) seat installations. However, the FAA research program is not complete and we may update these criteria as we obtain further research results. To reflect current research findings, the FAA issued policy statement PS–ANM–25–03–R1 to update injury criteria for fully side-facing seats, and policy statement PS–AIR–25–27, to define injury criteria for oblique (side-facing) seats.

The proposed Boeing Model 777 series airplanes business-class seat installation is novel such that the current Boeing Model 777 series airplanes certification basis does not adequately address protection of the occupant's neck and spine for seat configurations that are positioned at an angle greater than 18 degrees from the airplane centerline. The FAA issued special conditions No. 25–569–SC for Model 777–300ER airplanes on September 25, 2014, and special conditions No. 25–621–SC for certain Model 777–300ER airplanes on August 3rd, 2016. These special conditions contained injury criteria for oblique seats based on the best knowledge the FAA had at the time. These special conditions for oblique seat installations do not adequately address oblique seats, reflecting the current research results, with or without 3-point or airbag restraint systems. Therefore, Boeing's proposed configuration will require amended special conditions.

The installation of passenger seats at angles of 18 to 45 degrees to the airplane centerline are unique due to the seat/occupant interface with the surrounding furniture that introduces occupant alignment/loading concerns with or without the installation of a 3-point or airbag restraint system, or both. On-going research has invalidated previously released special conditions for oblique (side-facing) seat installations. These updated special conditions further address potential injuries to the occupant's neck and spine. As a result, these special conditions replace special conditions 25–569–SC and 25–621–SC.

FAA-sponsored research has found that an un-restrained flailing of the upper torso, even when the pelvis and torso are nearly aligned, can produce serious spinal and torso injuries. At lower impact severities, even with significant misalignment between the torso and pelvis, these injuries did not occur. Tests with an FAA H–III anthropomorphic test device (ATD) have identified a level of lumbar spinal tension corresponding to the no-injury impact severity. This level of tension is included as a limit in the special conditions. The spine tension limit selected is conservative with respect to other aviation injury criteria since it corresponds to a no-injury loading condition.

As noted in the special conditions for each airbag restraint system, because an airbag restraint system is essentially a single use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head injury protection from the airbag restraint system. Since an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could render the airbag restraint system useless if a larger impact follows the initial impact. This situation does not exist with energy absorbing pads or upper torso restraints, which tend to provide protection according to the severity of the impact. Therefore, the installation of the airbag restraint system should be such that the airbag restraint system will provide protection when it is required, and will not expend its protection when it is not needed.

Because these airbag restraint systems may or may not activate during various crash conditions, the injury criteria listed in these special conditions and in § 25.562 must be met in an event that is slightly below the activation level of the airbag restraint system. If an airbag restraint system is included with the oblique seats, the system must meet the requirements in one of the airbag (inflatable restraint) special conditions applicable to the Boeing Model 777 series airplanes.

These amended special conditions will provide head injury criteria, neck injury criteria, spine injury criteria, and body-to-wall contact criteria. They contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 777 series airplane. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 777 series airplanes.

Side-Facing Seats Special Conditions

In addition to the requirements of § 25.562:

1. Head Injury Criteria (HIC)

Compliance with § 25.562(c)(5) is required, except that, if the ATD has no apparent contact with the seat/structure but has contact with an airbag, a HIC unlimited score in excess of 1,000 is acceptable, provided the HIC15 score for that contact (calculated in accordance with 49 CFR 571.208) is less than 700.

2. Body-to-Wall/Furnishing Contact

If a seat is installed aft of structure (*e.g.,* interior wall or furnishings) that does not provide a homogenous contact surface for the expected range of occupants and yaw angles, then additional analysis and tests may be required to demonstrate that the injury criteria are met for the area which an occupant could contact. For example, different yaw angles could result in different airbag device performance, then additional analysis or separate tests may be necessary to evaluate performance.

3. Neck Injury Criteria

The seating system must protect the occupant from experiencing serious neck injury. The assessment of neck injury must be conducted with the airbag device activated, unless there is a reason to also consider that the neck-injury potential would be higher for impacts below the airbag-device deployment threshold.

a. The N_{ij}, calculated in accordance with 49 CFR 571.208, must be below 1.0, where $N_{ij} = F_z/F_{zc} + M_y/M_{yc}$, and N_{ij} critical values are:

i. F_{zc} = 1,530 lbs for tension
ii. F_{zc} = 1,385 lbs for compression
iii. M_{yc} = 229 lb-ft in flexion
iv. M_{yc} = 100 lb-ft in extension

b. In addition, peak upper-neck F_z must be below 937 lbs. in tension and 899 lbs. in compression.

c. Rotation of the head about its vertical axis, relative to the torso is limited to 105 degrees in either direction from forward-facing.

d. The neck must not impact any surface that would produce concentrated loading on the neck.

4. Spine and Torso Injury Criteria:

a. The lumbar spine tension (F_z) cannot exceed 1,200 lbs.

b. Significant concentrated loading on the occupant's spine, in the area between the pelvis and shoulders during impact, including rebound, is not acceptable. During this type of contact, the interval for any rearward (X direction) acceleration exceeding 20 g must be less than 3 milliseconds as measured by the thoracic instrumentation specified in 49 CFR part 572, subpart E, filtered in accordance with SAE recommended practice J211/1, ''Instrumentation for Impact Test–Part 1—Electronic Instrumentation.''

c. The occupant must not interact with the armrest or other seat components in any manner significantly different than would be expected for a forward-facing seat installation.

5. Pelvis Criteria

Any part of the load-bearing portion of the bottom of the ATD pelvis must not translate beyond the edges of the seat bottom seat-cushion supporting structure.

6. Femur Criteria

Axial rotation of the upper leg (about the z-axis of the femur per SAE Recommended Practice J211/1) must be limited to 35 degrees from the nominal seated position. Evaluation during rebound does not need to be considered.

7. ATD and Test Conditions

Longitudinal tests conducted to measure the injury criteria above must be performed with the FAA Hybrid III ATD, as described in SAE 1999–01–1609, ''A Lumbar Spine Modification to the Hybrid III ATD for Aircraft Seat Tests.'' The tests must be conducted with an undeformed floor, at the most-critical yaw cases for injury, and with all lateral structural supports (*e.g.,* armrests or walls) installed.

Issued in Des Moines, Washington, on September 5, 2018.

Victor Wicklund,

Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2018–19752 Filed 9–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 180718671–8671–01]

RIN 0694–AH57

Addition of Certain Entities to the Entity List, Revision of Entries on the Entity List and Removal of Certain Entities From the Entity List

Correction

In rule document 2018–18766 beginning on page 44821 in the issue of Tuesday, September 4, 2018, make the following correction:

1. On page 44824, in the third column, amendatory instruction number 2e is corrected to read as follows:

''2. * * *

e. Under Russia,

i. By removing the entity ''Joint Stock Company Mikron'';

ii. By adding in alphabetical order two entities ''Joint Stock Company (JSC) NIIME'' and ''PJSC Mikron'';

2. On page 44825, in the table, under the country heading for Hong Kong, the Joinus Freight Systems entry should read as follows:

* * * * *

Joinus Freight Systems (H.K.) Limited, a.k.a., the following two aliases: –JFS Global Logistics; *and*. –Joinus Freight Systems Global Logistics Limited. Unit 07–07, 25F, Tower B, Regent Centre, 63 Wo Yi Hop Road, Kwai Chung, N.T. Hong Kong *and* Units 801–803 and 805, Park Sun Building, No. 97–107 Wo Yi Hop Road, Kwai Chung, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR 14958, 3/21/16. 83 FR [Insert FR Page Number] 9/4/2018.

* * * * *

3. On page 44826, in the table, under the country heading for Russia, the PJSC Mikron entry should read as follows:

* * * * *

PJSC Mikron, 1st Zapadniy Proezd 12/1, Zelenograd, Russia, 124460.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	81 FR 61601, 9/7/16. 83 FR [Insert FR Page Number] 9/4/2018.

* * * * *

[FR Doc. C2–2018–18766 Filed 9–11–18; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 110

[Docket No. FDA–2011–N–0920]

Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; partial withdrawal.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is removing instruction 13 from the Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food (Preventive Controls for Human Food) regulation. Instruction 13 directs the **Federal Register** to remove and reserve as of September 17, 2018, the Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food (Human Food CGMP) regulation. Removal of instruction 13 is necessary because the compliance dates for certain facilities subject to the modernized current good manufacturing practice requirements in the Preventive Controls for Human Food regulation have been extended. Retaining the Human Food CGMP regulation will maintain the status quo while these facilities prepare for compliance with the new CGMP requirements and will avoid an unintended gap in public health protection.

DATES: Effective September 12, 2018, FDA withdraws amendatory instruction 13 on page 56144 of the final rule published at 80 FR 55908 at 56144 on September 17, 2015. Submit either electronic or written comments by October 12, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 12, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of October 12, 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–2011–N–0920 for ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food.'' 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: Jenny Scott, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2166.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Discussion

In the **Federal Register** of September 17, 2015, FDA published the final rule, ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food'' (80 FR 55908; the ''rule establishing part 117''). Among other things, in the final rule establishing part 117 (21 CFR part 117), we modernized and placed in part 117, subpart B the longstanding current good manufacturing practice requirements (CGMPs) codified in part 110 (21 CFR part 110). We staggered the compliance dates for part 117 based on business size. We also instructed the **Federal Register** to remove and reserve part 110 effective September 17, 2018, the latest of the staggered compliance dates, which we treated as a conforming amendment (see instruction number 13 at 80 FR 55908 at 56144).

Subsequently, in a final rule published in the **Federal Register** of August 24, 2016 (81 FR 57784; the ''compliance date final rule''), among other things, we extended by up to 16 months the part 117 compliance dates for certain facilities, to address concerns about the practicality of compliance, consider changes to the regulatory text, and better align compliance dates across various rules. The compliance date final rule extended the part 117 compliance dates for the following establishments, as set out in table 1:

TABLE 1—FACILITIES THAT RECEIVED EXTENDED PART 117 COMPLIANCE DATES

	Compliance date announced in final rule establishing part 117	Compliance date with extension as announced in compliance date final rule
Facility solely engaged in packing and/or holding activities on produce RACs, that is:		
• a very small business	September 17, 2018	January 27, 2020.
• a small business	September 18, 2017	January 28, 2019.
• not a small or very small business	September 19, 2016	January 26, 2018.
Facility that would qualify as a secondary activities farm except for ownership of the facility, that is:		
• a very small business	September 17, 2018	January 27, 2020.
• a small business	September 18, 2017	January 28, 2019.
• not a small or very small business	September 19, 2016	January 26, 2018.
Facilities that would qualify as a farm if it did not color RACs, that is:		
a very small business	September 17, 2018	January 27, 2020.
a small business	September 18, 2017	January 28, 2019.
not a small or very small business	September 19, 2016	January 26, 2018.

A small business is a business (including any subsidiaries and affiliates) employing fewer than 500 full-time equivalent employees. A very small business is a business (including any subsidiaries and affiliates) averaging less than $1 million, adjusted for inflation, per year, during the 3-year period preceding the applicable calendar year in sales of human food plus the market value of human food manufactured, processed, packed or held without sale (*e.g.,* held for a fee). (See § 117.3.)

After issuing the compliance date final rule, FDA announced that as a matter of enforcement policy it did not intend to enforce certain part 117 requirements for certain facilities, including some of the facilities in table 1 whose compliance dates had been extended by the compliance date final rule. See the January 2018 guidance entitled ''Policy Regarding Certain Entities Subject to the Current Good Manufacturing Practice and Preventive Controls, Produce Safety, and/or Foreign Supplier Verification Programs'' (*https://www.fda.gov/downloads/food/guidanceregulation/guidancedocumentsregulatoryinformation/ucm590661.pdf*). The present rulemaking does not change the policies contained in this guidance.

As mentioned above, in the final rule establishing part 117 we instructed the **Federal Register** to remove and reserve part 110, effective September 17, 2018, which at the time was the latest of the staggered compliance dates. The goal was to have firms subject to the Human Food CGMP regulation until the Preventive Controls for Human Food regulation took its place, leaving no gap in public health protection. However, in the compliance date final rule we extended the compliance dates for part 117 by up to 16 months but failed to

revise the previous instruction to remove part 110. Without the current action, the small and very small facilities described in table 1 will not be subject to any CGMPs until, respectively, January 28, 2019, and January 27, 2020. However, FDA's intent always has been that part 110 would remain unchanged and in effect until all establishments have reached the date when they must be in compliance with part 117. Therefore, we are amending the rule establishing part 117 to remove the instruction to the **Federal Register** to remove and reserve part 110. We intend to remove part 110 in a separate action after all establishments have reached their compliance dates for the part 117 CGMPs.

When FDA conducts rulemaking, it normally does so using notice-and-comment procedures established under the Administrative Procedure Act (APA) and FDA regulations. These procedures allow the public an opportunity to participate in Agency rulemaking by submitting written comments on proposed rules. FDA considers these comments as it finalizes rules. (5 U.S.C. 553(b) and (c); § 10.40 (21 CFR 10.40.)) The APA, however, does not require an agency to use notice-and-comment procedures in all rulemaking. For example, the APA provides that Agencies shall not use notice-and-comment procedures, and shall proceed with a final rule, when the Agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to public interest, and incorporates the finding and a brief statement of reasons therefor in the rules issued. (5 U.S.C. 553(b)(B).) Likewise, FDA's regulations provide that the requirements of notice and public procedure do not apply when the Commissioner of Food and Drugs determines for good cause that they are impracticable, unnecessary, or contrary to the public interest, in which case, the notice issuing the regulation will state the reasons for the determination, and provide an opportunity for comment to determine whether the regulation should subsequently be modified or revoked. (§ 10.40(e)(1).) Pursuant to this regulation, FDA requests comments on the timing for the removal of part 110.

In this instance, for several reasons, FDA finds good cause for issuing this final rule without notice and comment.

Notice and comment are unnecessary because this final rule is a minor and technical repair of an obvious oversight in the compliance date final rule, maintains the CGMP regulatory status quo for industry, affirms FDA's plan for transitioning from part 110 to part 117 as outlined in the rule establishing part 117, and is not expected to generate public concern. FDA is addressing the gap in CGMP regulatory coverage from September 17, 2018, to January 27, 2020, by issuing a narrowly tailored amendment to remove instruction 13 from the rule to establish part 117. The result of this amendment will be that the part 110 CGMPs will continue in effect for establishments that have not reached their part 117 compliance date. This action will serve to correct an obvious oversight made in the compliance date final rule. FDA does not anticipate public concern with this action. The Agency previously sought public comment on its proposal to remove part 110 in coordination with the compliance dates for part 117 and received no comments that disagreed. The present continuation and planned eventual removal of part 110 is a repeat of what was previously proposed without public objection. Furthermore, it is clear from the rule establishing part 117 that we intended for facilities to remain subject to part 110 until their part 117 compliance date (80 FR 55908 at 56127). Thus, we do not believe there was ever any reasonable expectation on the part of the establishments listed in table 1 that they would not be continuously subject to CGMPs. For these various reasons, we have determined that notice and comment is unnecessary.

FDA finds further good cause for issuing this final rule without notice and comment because notice and comment are contrary to the public interest and impracticable. There could be negative public health implications if there were a temporal gap in CGMP coverage; for example, there have been outbreaks associated with the types of facilities still subject to part 110 (*e.g.,* listeria in cantaloupe). Many of the establishments listed in table 1 are not required to comply with the replacement CGMPs in part 117 until January 2019 or January 2020, depending on business size. This means that these establishments would have no applicable CGMP requirements for 4 to 16 months. CGMP requirements have existed for all human food manufacturers since at least 1970 (see 34 FR 6977) and serve as a significant basis for FDA's determination of what constitutes an insanitary food production environment that may result in food that is injurious to public health under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(4)), among other authorities. It would be contrary to the public interest to allow the temporal gap in CGMP coverage.

To summarize, a gap in CGMP coverage would leave FDA without a primary tool to execute its function of ensuring that food manufacturing establishments follow basic food safety practices, potentially endangering the public health, in order to provide the public an opportunity to comment on a non-controversial technical matter. For these reasons, we are issuing this amendment to the final rule establishing part 117 without prior notice and comment. (5 U.S.C. 553(b)(3)(B)).

In addition, we find good cause for this amendment to the rule establishing part 117 to become effective on the date of publication. The APA allows an effective date less than 30 days after publication as provided by the Agency for good cause found and published within the rule (5 U.S.C. 553(d)(3)). As provided at 80 FR 55908, September 17, 2015, the amendment removing part 110 was to take effect on September 17, 2018. In order to continue part 110 for an interim period, this final rule needs to be effective on or before September 16, 2018, and therefore it is not possible for this rule to take effect 30 days after publication in the **Federal Register**. As previously described, in order to prevent a gap in CGMP coverage for certain establishments, an immediate effective date is necessary to remove, before September 17, 2018, the instruction to remove and reserve part 110. Further, because the facilities' responsibility to comply with CGMP requirements remains unchanged, this rule places no burden on affected parties for which they would need a reasonable time to prepare. Therefore, the Commissioner finds good cause under 5 U.S.C. 553(d)(3) and § 10.40(c)(4)(ii) for this amendment to become effective on the date of publication.

II. Legal Authority

We are issuing this final rule removing instruction number 13 of the rule to establish part 117 under the same authority for which the rule containing instruction number 13 was originally issued. That analysis may be found in section II, ''Legal Authority,'' of the rule to establish part 117 (80 FR 55908 at 55917 to 55920).

III. Analysis of Environmental Impact

FDA has determined that the removal of instruction 13 will not change the status quo and, therefore, is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy

Act (42 U.S.C. 4321 *et seq.*). Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 110

Food packaging, Foods.

■ Therefore, in FR Rule Doc. No. 2015–21920, published September 17, 2015, at 80 FR 55908–56168, amendatory instruction 13 in the third column on page 56144 is withdrawn.

Dated: September 7, 2018.

Scott Gottlieb,

Commissioner of Food and Drugs.

[FR Doc. 2018–19855 Filed 9–11–18; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[EPA–R06–OAR–2016–0091; FRL–9982–62—Region 6]

New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; delegation of authority.

SUMMARY: The New Mexico Environment Department (NMED) has submitted updated regulations for receiving delegation and approval of a program for the implementation and enforcement of certain New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) for all sources (both Title V and non-Title V sources). These updated regulations apply to certain NSPS promulgated by the EPA and amended between September 24, 2013 and January 15, 2017; certain NESHAP promulgated by the EPA and amended between January 1, 2011 and January 15, 2017; and other NESHAP promulgated by the EPA and amended between August 30, 2013 and January 15, 2017, as adopted by the NMED. The delegation of authority under this action does not apply to sources located in Bernalillo County, New Mexico, or to sources located in areas defined as Indian Country. The EPA is providing notice that it is updating the delegation of certain NSPS to NMED, and taking final action to approve the delegation of certain NESHAP to NMED.

DATES: This rule is effective on October 12, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2016–0091. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Barrett (6MM–AP), (214) 665–7227; email: *barrett.richard@epa.gov.*

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

Table of Contents

I. Background

On April 13, 2018, EPA published a direct final rule and accompanying proposal approving the updated delegation of authority for implementation and enforcement of NSPS and NESHAPs for all sources (both part 70 and non-part 70 sources) to the NMED. The direct final rule and proposal were published without prior proposal because EPA anticipated no relevant adverse comments. *See* 83 FR 15964 and 83 FR 16027, respectively. EPA stated in the direct final rule that if we receive relevant adverse comments by May 14, 2018, we would publish a timely withdrawal in the **Federal Register**, and all public comments received would be addressed in a subsequent final rule based on the proposed rule.

EPA received an adverse comment on May 14, 2018, and accordingly withdrew the direct final rule on June 5, 2018, pursuant to sections 111 and 112 of the CAA. *See* 83 FR 25936. The comment and our response to that comment follows below.

II. Response to Comment

Comment: EPA received an anonymous adverse comment in response to the proposed rulemaking. The comment includes several personal observations and statements critical of New Mexico's ability to maintain and oversee its air quality programs. The commenter recommends that the proposed update to New Mexico's NESHAP delegation not be approved until EPA investigates the commenter's allegations and New Mexico has addressed the alleged deficiencies. *See* Docket for the entire comment.

EPA's Response: We thank the commenter for the comment. Section 112(l) of the Act and EPA's implementing regulations at 40 CFR part 63, subpart E primarily govern EPA's actions on State requests for delegation of authority to implement and enforce the NESHAP program. CAA section 112(l)(5)(B) states that EPA shall disapprove a NESHAP program submitted by a State if we find that adequate resources are not available to implement the program. *See also* 40 CFR 63.91(d)(3)(iii). Several concerns expressed by the commenter relate to the adequacy of resources (including the lack of technically experienced and qualified staff) maintained by the NMED Air Quality Bureau. NMED provided EPA with a response to those comments that included a description of current resources and experience within the Air Quality Bureau. *See* Docket for NMED's response. In addition, consistent with 40 CFR 63.91(d)(2), New Mexico's delegation update request included a reference to its previous demonstration and a reaffirmation that the up-front approval criteria for delegation are still being met. Based on this information as well as discussions with the Compliance and Enforcement Division and the Criminal Investigation Division within EPA Region 6, we have not identified sufficient information to support the necessary finding for disapproval of the requested NESHAP

delegation update. The remainder of the commenter's concerns (*e.g.,* meeting the requirements of EPA's compliance monitoring plan) relate to matters that are more appropriately addressed as part of our oversight responsibilities. EPA oversees NMED's decisions to ensure the delegated authorities are being adequately implemented and enforced. We integrate oversight of the delegated authorities into the existing mechanisms and resources for oversight currently in place. If, during oversight, we determine that NMED made decisions which decreased the stringency of the delegated standards, then NMED would be required to take corrective actions and the source(s) affected by the decisions will be notified, as required by 40 CFR 63.91(g)(1)(ii). Our oversight authorities allow us to initiate withdrawal of the program delegation if the corrective actions taken are insufficient.

III. What does this action do?

The EPA is providing notice that it is approving NMED's request updating the delegation for the implementation and enforcement of certain NSPS. The EPA is also taking final action to approve NMED's request updating the delegation of certain NESHAP. With this delegation, NMED has the primary responsibility to implement and enforce the delegated standards. *See* sections VII and VIII, below, for a discussion of which standards are being delegated and which are not being delegated.

IV. What is the authority for delegation?

Upon the EPA's finding that the procedures submitted by a State for the implementation and enforcement of standards of performance for new sources located in the State are adequate, Section 111(c)(1) of the Clean Air Act (CAA) authorizes the EPA to delegate its authority to implement and enforce such standards. The new source performance standards are codified at 40 CFR part 60.

Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorize the EPA to delegate authority for the implementation and enforcement of emission standards for hazardous air pollutants to a State that satisfies the statutory and regulatory requirements in subpart E. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63.

V. What criteria must New Mexico's programs meet to be approved?

In order to receive delegation of NSPS, a State must develop and submit to the EPA a procedure for implementing and enforcing the NSPS in the state, and their regulations and resources must be adequate for the implementation and enforcement of the NSPS. The EPA initially approved New Mexico's program for the delegation of NSPS on June 6, 1986 (51 FR 20648). The EPA reviewed the laws of the State and the rules and regulations of the New Mexico Environmental Improvement Division (now the NMED) and determined the State's procedures, regulations and resources adequate for the implementation and enforcement of the Federal standards. The NSPS delegation was most recently updated on February 2, 2015 (80 FR 5475). This action notifies the public that the EPA is updating NMED's delegation to implement and enforce certain additional NSPS.

Section 112(l)(5) of the CAA requires the EPA to disapprove any program submitted by a State for the delegation of NESHAP standards if the EPA determines that:

(A) The authorities contained in the program are not adequate to assure compliance by the sources within the State with respect to each applicable standard, regulation, or requirement established under section 112;

(B) adequate authority does not exist, or adequate resources are not available, to implement the program;

(C) the schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious; or

(D) the program is otherwise not in compliance with the guidance issued by the EPA under section 112(l)(2) or is not likely to satisfy, in whole or in part, the objectives of the CAA.

In carrying out its responsibilities under section 112(l), the EPA promulgated regulations at 40 CFR part 63, subpart E setting forth criteria for the approval of submitted programs. For example, in order to obtain approval of a program to implement and enforce Federal section 112 rules as promulgated without changes (straight delegation), a State must demonstrate that it meets the criteria of 40 CFR 63.91(d). 40 CFR 63.91(d)(3) provides that interim or final title V program approval will satisfy the criteria of 40 CFR 63.91(d).[1]

[1] Some NESHAP standards do not require a source to obtain a title V permit (*e.g.,* certain area sources that are exempt from the requirement to obtain a title V permit). For these non-title V sources, the EPA believes that the State must assure the EPA that it can implement and enforce the NESHAP for such sources. *See* 65 FR 55810, 55813 (Sept. 14, 2000).

The NESHAP delegation was most recently approved on February 2, 2015 (80 FR 5475).

VI. How did NMED meet the NSPS and NESHAP program approval criteria?

As to the NSPS standards in 40 CFR part 60, NMED adopted the Federal standards via incorporation by reference. The NMED regulations are, therefore, at least as stringent as the EPA's rules. *See* 40 CFR 60.10(a). Also, in the EPA initial approval of NSPS delegation, we determined that the State developed procedures for implementing and enforcing the NSPS in the State, and that the State's regulations and resources are adequate for the implementation and enforcement of the Federal standards. *See* 51 FR 20648 (June 6, 1986).

As to the NESHAP standards in 40 CFR parts 61 and 63, as part of its Title V submission NMED stated that it intended to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 standards into its regulations. This commitment applied to both existing and future standards as they applied to part 70 sources. The EPA's final interim approval of New Mexico's Title V operating permits program delegated the authority to implement certain NESHAP, effective December 19, 1994 (59 FR 59656). On November 26, 1996, the EPA promulgated final full approval of the State's operating permits program, effective January 27, 1997 (61 FR 60032). These interim and final title V program approvals satisfy the upfront approval criteria of 40 CFR 63.91(d). Under 40 CFR 63.91(d)(2), once a state has satisfied the up-front approval criteria, it needs only to reference the previous demonstration and reaffirm that it still meets the criteria for any subsequent submittals for delegation of the section 112 standards. NMED has affirmed that it still meets the up-front approval criteria. With respect to non-Title V sources, the EPA has previously approved delegation of NESHAP authorities to NMED after finding adequate authorities to implement and enforce the NESHAP for non-Title V sources. *See* 68 FR 69036 (December 11, 2003).

VII. What is being delegated?

By letter dated January 22, 2016, the EPA received a request from NMED to update its NSPS delegation and NESHAP delegation. With certain exceptions noted in section VIII below, NMED's request included NSPS in 40 CFR part 60, as amended between September 24, 2013 and September 15, 2015; NESHAP in 40 CFR part 61, as

amended between January 1, 2011 and September 15, 2015; and NESHAP in 40 CFR part 63, as amended between August 30, 2013 and September 15, 2015.

By letter dated June 9, 2017, the EPA received a request from NMED to update its NSPS delegation and NESHAP delegation. With certain exceptions noted in section VIII below, NMED's request included NSPS in 40 CFR part 60, as amended between September 15, 2015 and January 15, 2017; NESHAP in 40 CFR part 61, as amended between September 15, 2015 and January 15, 2017; and NESHAP in 40 CFR part 63, as amended between September 15, 2015 and January 15, 2017. This action is being taken in response to NMED's requests noted above.

VIII. What is not being delegated?

All authorities not affirmatively and expressly delegated by this action are not delegated. These include the following part 60, 61 and 63 authorities listed below:

- 40 CFR part 60, subpart AAA (Standards of Performance for New Residential Wood Heaters);
- 40 CFR part 60, subpart QQQQ (Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces);
- 40 CFR part 61, subpart B (National Emission Standards for Radon Emissions From Underground Uranium Mines);
- 40 CFR part 61, subpart H (National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities);
- 40 CFR part 61, subpart I (National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H);
- 40 CFR part 61, subpart K (National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants);
- 40 CFR part 61, subpart Q (National Emission Standards for Radon Emissions From Department of Energy facilities);
- 40 CFR part 61, subpart R (National Emission Standards for Radon Emissions From Phosphogypsum Stacks);
- 40 CFR part 61, subpart T (National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings);
- 40 CFR part 61, subpart W (National Emission Standards for Radon Emissions From Operating Mill Tailings); and
- 40 CFR part 63, subpart J (National Emission Standards for Polyvinyl Chloride and Copolymers Production).

In addition, the EPA regulations provide that we cannot delegate to a State any of the Category II authorities set forth in 40 CFR 63.91(g)(2). These include the following provisions: § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. Also, some Part 61 and Part 63 standards have certain provisions that cannot be delegated to the States. Furthermore, no authorities are delegated that require rulemaking in the **Federal Register** to implement, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. Finally, this action does not delegate any authority under section 112(r), the accidental release program.

All inquiries and requests concerning implementation and enforcement of the excluded standards in the State of New Mexico should be directed to the EPA Region 6 Office.

In addition, this delegation to NMED to implement and enforce certain NSPS and NESHAP authorities does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. Under this definition, the EPA treats as reservations, trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Consistent with previous Federal program approvals or delegations, the EPA will continue to implement the NSPS and NESHAP in Indian country because NMED has not submitted information to demonstrate authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

IX. How will statutory and regulatory interpretations be made?

In approving the NSPS delegation, NMED will obtain concurrence from the EPA on any matter involving the interpretation of section 111 of the CAA or 40 CFR part 60 to the extent that implementation or enforcement of these provisions have not been covered by prior EPA determinations or guidance. *See* 51 FR 20649 (June 6, 1986).

In approving the NESHAP delegation, NMED will obtain concurrence from the EPA on any matter involving the interpretation of section 112 of the CAA or 40 CFR parts 61 and 63 to the extent that implementation or enforcement of these provisions have not been covered by prior EPA determinations or guidance.

X. What authority does the EPA have?

We retain the right, as provided by CAA section 111(c)(2), to enforce any applicable emission standard or requirement under section 111.

We retain the right, as provided by CAA section 112(l)(7) and 40 CFR 63.90(d)(2), to enforce any applicable emission standard or requirement under section 112. In addition, the EPA may enforce any federally approved State rule, requirement, or program under 40 CFR 63.90(e) and 63.91(c)(1)(i). The EPA also has the authority to make decisions under the General Provisions (subpart A) of parts 61 and 63. We are delegating to NMED some of these authorities, and retaining others, as explained in sections V and VI above. In addition, the EPA may review and disapprove State determinations and subsequently require corrections. *See* 40 CFR 63.91(g)(1)(ii). EPA also has the authority to review NMED's implementation and enforcement of approved rules or programs and to withdraw approval if we find inadequate implementation or enforcement. *See* 40 CFR 63.96.

Furthermore, we retain any authority in an individual emission standard that may not be delegated according to provisions of the standard. Also, listed in footnote 2 of the part 63 delegation table at the end of this rule are the authorities that cannot be delegated to any State or local agency which we therefore retain.

Finally, we retain the authorities stated in the original delegation agreement. *See* 51 FR 20648–20650 (June 6, 1986).

XI. What information must NMED provide to the EPA?

NMED must provide any additional compliance related information to EPA, Region 6, Office of Enforcement and Compliance Assurance, within 45 days of a request under 40 CFR 63.96(a). In receiving delegation for specific General Provisions authorities, NMED must submit to EPA Region 6, on a semi-annual basis, copies of determinations issued under these authorities. *See* 40 CFR 63.91(g)(1)(ii). For 40 CFR part 63 standards, these determinations include: Section 63.1, Applicability Determinations; Section 63.6(e), Operation and Maintenance Requirements—Responsibility for Determining Compliance; Section

63.6(f), Compliance with Non-Opacity Standards—Responsibility for Determining Compliance; Section 63.6(h), Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance; Sections 63.7(c)(2)(i) and (d), Approval of Site-Specific Test Plans; Section 63.7(e)(2)(i), Approval of Minor Alternatives to Test Methods; Section 63.7(e)(2)(ii) and (f), Approval of Intermediate Alternatives to Test Methods; Section 63.7(e)(iii), Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors; Sections 63.7(e)(2)(iv), (h)(2), and (h)(3), Waiver of Performance Testing; Sections 63.8(c)(1) and (e)(1), Approval of Site-Specific Performance Evaluation (Monitoring) Test Plans; Section 63.8(f), Approval of Minor Alternatives to Monitoring; Section 63.8(f), Approval of Intermediate Alternatives to Monitoring; Section 63.9 and 63.10, Approval of Adjustments to Time Periods for Submitting Reports; Section 63.10(f), Approval of Minor Alternatives to Recordkeeping and Reporting; and Section 63.7(a)(4), Extension of Performance Test Deadline.

XII. What is the EPA's oversight role?

The EPA oversees NMED's decisions to ensure the delegated authorities are being adequately implemented and enforced. We will integrate oversight of the delegated authorities into the existing mechanisms and resources for oversight currently in place. If, during oversight, we determine that NMED made decisions that decreased the stringency of the delegated standards, then NMED shall be required to take corrective actions and the source(s) affected by the decisions will be notified. *See* 40 CFR 63.91(g)(1)(ii) and 63.91(b). Our oversight authorities allow us to initiate withdrawal of the program delegation if the corrective actions taken are insufficient.

XIII. Should sources submit notices to the EPA or NMED?

Sources located outside the boundaries of Bernalillo County and outside of Indian country should submit all information required pursuant to the delegated authorities in the Federal NSPS and NESHAP (40 CFR parts 60, 61 and 63) directly to the NMED at the following address: New Mexico Environment Department, P.O. Box 5469, Santa Fe, New Mexico 87502–5469. The NMED is the primary point of contact with respect to delegated NSPS and NESHAP authorities. Sources do not need to send a copy to the EPA. The EPA Region 6 waives the requirement that notifications and reports for delegated authorities be submitted to the EPA in addition to NMED in accordance with 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii).[2] For those authorities not delegated, sources must continue to submit all appropriate information to the EPA.

XIV. How will unchanged authorities be delegated to NMED in the future?

In the future, NMED will only need to send a letter of request to update their delegation to EPA, Region 6, for those NSPS which they have adopted by reference. The EPA will amend the relevant portions of the Code of Federal Regulations showing which NSPS standards have been delegated to NMED. Also, in the future, NMED will only need to send a letter of request for approval to EPA, Region 6, for those NESHAP regulations that NMED has adopted by reference. The letter must reference the previous up-front approval demonstration and reaffirm that it still meets the up-front approval criteria. We will respond in writing to the request stating that the request for delegation is either granted or denied. A **Federal Register** action will be published to inform the public and affected sources of the delegation, indicate where source notifications and reports should be sent, and to amend the relevant portions of the Code of Federal Regulations showing which NESHAP standards have been delegated to NMED.

XV. Final Action

We are approving the request by the NMED for the updated delegation of certain NSPS to NMED, and taking final action to approve the delegation of certain NESHAP to NMED, for all sources (both Title V and non-Title V sources). These updated regulations apply to certain NSPS promulgated by the EPA at 40 CFR part 60, as amended between September 24, 2013 and January 15, 2017; certain NESHAP promulgated by the EPA at 40 CFR part 61, as amended between January 1, 2011 and January 15, 2017; and other NESHAP promulgated by the EPA at 40 CFR part 63, as amended between August 30, 2013 and January 15, 2017, as adopted by the NMED (*See* the amendatory language at the end of this document for the specific standards delegated). The delegation of authority under this action does not apply to sources located in Bernalillo County, New Mexico, or to sources located in areas defined as Indian Country.

XVI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). 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 (59 FR 7629, February 16, 1994).

The delegation is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

This action also does not have Federalism implications because it does 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state request to receive delegation of certain Federal standards, and does not alter the relationship or the distribution of power and

[2] This waiver only extends to the submission of *copies* of notifications and reports; EPA does not waive the requirements in delegated standards that require notifications and reports be submitted to an electronic database (*e.g.,* 40 CFR part 63, subpart HHHHHHH).

responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing delegation submissions, EPA's role is to approve submissions, provided that they meet the criteria of the Clean Air Act. This action is not subject to the 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects

40 CFR Part 60

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

40 CFR Part 61

Environmental protection, Administrative practice and procedure, Air pollution control, Arsenic, Benzene, Beryllium, Hazardous substances, Intergovernmental relations, Mercury, Reporting and recordkeeping requirements, Vinyl chloride.

40 CFR Part 63

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

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

Dated: September 6, 2018.

Wren Stenger,

Director, Multimedia Division, Region 6.

40 CFR parts 60, 61, and 63 are amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 60.4 is amended by revising paragraphs (b)(33) and (e)(1) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(33) State of New Mexico: New Mexico Environment Department, P.O. Box 5469, Santa Fe, New Mexico 87502–5469. Note: For a list of delegated standards for New Mexico (excluding Bernalillo County and Indian country), see paragraph (e)(1) of this section.

* * * * *

(e) * * *

(1) *New Mexico.* The New Mexico Environment Department has been delegated all part 60 standards promulgated by the EPA, except subpart AAA—Standards of Performance for New Residential Wood Heaters; and subpart QQQQ—Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces, as amended in the **Federal Register** through January 15, 2017.

* * * * *

PART 61—[AMENDED]

■ 3. The authority citation for part 61 continues to read as follows:

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

Subpart A—General Provisions

■ 4. Section 61.04 is amended by revising paragraphs (b)(33) and (c)(6)(iii) to read as follows:

§ 61.04 Address.

(b) * * *

(33) *State of New Mexico:* New Mexico Environment Department, P.O. Box 5469, Santa Fe, New Mexico 87502–5469. For a list of delegated standards for New Mexico (excluding Bernalillo County and Indian country), see paragraph (c)(6) of this section.

* * * * *

(c) * * *

(6) * * *

(iii) *New Mexico.* The New Mexico Environment Department (NMED) has been delegated the following part 61 standards promulgated by the EPA, as amended in the **Federal Register** through January 15, 2017. The (X) symbol is used to indicate each subpart that has been delegated. The delegations are subject to all of the conditions and limitations set forth in Federal law and regulations.

DELEGATION STATUS FOR NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (PART 61 STANDARDS) FOR NEW MEXICO

[Excluding Bernalillo County and Indian Country]

Subpart	Source category	NMED [1]
A	General Provisions	X
B	Radon Emissions From Underground Uranium Mines	
C	Beryllium	X
D	Beryllium Rocket Motor Firing	X
E	Mercury	X
F	Vinyl Chloride	X
G	(Reserved)	
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities	

DELEGATION STATUS FOR NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (PART 61 STANDARDS) FOR NEW MEXICO—Continued

[Excluding Bernalillo County and Indian Country]

Subpart	Source category	NMED [1]
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.	
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X
K	Radionuclide Emissions From Elemental Phosphorus Plants	
L	Benzene Emissions From Coke By-Product Recovery Plants	X
M	Asbestos	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants	X
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities	X
Q	Radon Emissions From Department of Energy Facilities	
R	Radon Emissions From Phosphogypsum Stacks	
S	(Reserved)	
T	Radon Emissions From the Disposal of Uranium Mill Tailings	
U	(Reserved)	
V	Equipment Leaks (Fugitives Emission Sources)	X
W	Radon Emissions From Operating Mill Tailings	
X	(Reserved)	
Y	Benzene Emissions From Benzene Storage Vessels	X
Z–AA	(Reserved)	
BB	Benzene Emissions From Benzene Transfer Operations	X
CC–EE	(Reserved)	
FF	Benzene Waste Operations	X

[1] Program delegated to New Mexico Environment Department (NMED).

PART 63—[AMENDED]

■ 5. The authority citation for part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 6. Section 63.99 is amended by revising paragraph (a)(32)(i) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(32) * * *

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the New Mexico Environment Department for all sources. The ''X'' symbol is used to indicate each subpart that has been delegated. The delegations are subject to all of the conditions and limitations set forth in Federal law and regulations. Some authorities cannot be delegated and are retained by the EPA. These include certain General Provisions authorities and specific parts of some standards. Any amendments made to these rules after January 15, 2017 are not delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF NEW MEXICO

[Excluding Indian Country]

Subpart	Source category	NMED [1 2]	ABCAQCB [1 3]
A	General Provisions	X	X
D	Early Reductions	X	X
F	Hazardous Organic NESHAP (HON)—Synthetic Organic Chemical Manufacturing Industry (SOCMI).	X	X
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater	X	X
H	HON—Equipment Leaks	X	X
I	HON—Certain Processes Negotiated Equipment Leak Regulation	X	X
J	Polyvinyl Chloride and Copolymers Production	(4)	(4)
K	(Reserved)		
L	Coke Oven Batteries	X	X
M	Perchloroethylene Dry Cleaning	X	X
N	Chromium Electroplating and Chromium Anodizing Tanks	X	X
O	Ethylene Oxide Sterilizers	X	X
P	(Reserved)		
Q	Industrial Process Cooling Towers	X	X
R	Gasoline Distribution	X	X
S	Pulp and Paper Industry	X	X
T	Halogenated Solvent Cleaning	X	X
U	Group I Polymers and Resins	X	X
V	(Reserved)		
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X	X
X	Secondary Lead Smelting	X	X
Y	Marine Tank Vessel Loading	X	X

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF NEW MEXICO—Continued

[Excluding Indian Country]

Subpart	Source category	NMED [1 2]	ABCAQCB [1 3]
Z	(Reserved)		
AA	Phosphoric Acid Manufacturing Plants	X	X
BB	Phosphate Fertilizers Production Plants	X	X
CC	Petroleum Refineries	X	X
DD	Off-Site Waste and Recovery Operations	X	X
EE	Magnetic Tape Manufacturing	X	X
FF	(Reserved)		
GG	Aerospace Manufacturing and Rework Facilities	X	X
HH	Oil and Natural Gas Production Facilities	X	X
II	Shipbuilding and Ship Repair Facilities	X	X
JJ	Wood Furniture Manufacturing Operations	X	X
KK	Printing and Publishing Industry	X	X
LL	Primary Aluminum Reduction Plants	X	X
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills.	X	X
NN	Wool Fiberglass Manufacturing Area Sources	X	
OO	Tanks-Level 1	X	X
PP	Containers	X	X
QQ	Surface Impoundments	X	X
RR	Individual Drain Systems	X	X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X	X
TT	Equipment Leaks—Control Level 1	X	X
UU	Equipment Leaks—Control Level 2 Standards	X	X
VV	Oil—Water Separators and Organic—Water Separators	X	X
WW	Storage Vessels (Tanks)—Control Level 2	X	X
XX	Ethylene Manufacturing Process Units Heat Exchange Systems and Waste Operations.	X	X
YY	Generic Maximum Achievable Control Technology Standards	X	X
ZZ–BBB	(Reserved)		
CCC	Steel Pickling—HCI Process Facilities and Hydrochloric Acid Regeneration	X	X
DDD	Mineral Wool Production	X	X
EEE	Hazardous Waste Combustors	X	X
FFF	(Reserved)		
GGG	Pharmaceuticals Production	X	X
HHH	Natural Gas Transmission and Storage Facilities	X	X
III	Flexible Polyurethane Foam Production	X	X
JJJ	Group IV Polymers and Resins	X	X
KKK	(Reserved)		
LLL	Portland Cement Manufacturing	X	X
MMM	Pesticide Active Ingredient Production	X	X
NNN	Wool Fiberglass Manufacturing	X	X
OOO	Amino/Phenolic Resins	X	X
PPP	Polyether Polyols Production	X	X
QQQ	Primary Copper Smelting	X	X
RRR	Secondary Aluminum Production	X	X
SSS	(Reserved)		
TTT	Primary Lead Smelting	X	X
UUU	Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants.	X	X
VVV	Publicly Owned Treatment Works (POTW)	X	X
WWW	(Reserved)		
XXX	Ferroalloys Production: Ferromanganese and Silicomanganese	X	X
AAAA	Municipal Solid Waste Landfills	X	X
CCCC	Nutritional Yeast Manufacturing	X	X
DDDD	Plywood and Composite Wood Products	X [5]	X [5]
EEEE	Organic Liquids Distribution	X	X
FFFF	Misc. Organic Chemical Production and Processes (MON)	X	X
GGGG	Solvent Extraction for Vegetable Oil Production	X	X
HHHH	Wet Formed Fiberglass Mat Production	X	X
IIII	Auto and Light Duty Truck (Surface Coating)	X	X
JJJJ	Paper and other Web (Surface Coating)	X	X
KKKK	Metal Can (Surface Coating)	X	X
MMMM	Misc. Metal Parts and Products (Surface Coating)	X	X
NNNN	Surface Coating of Large Appliances	X	X
OOOO	Fabric Printing Coating and Dyeing	X	X
PPPP	Plastic Parts (Surface Coating)	X	X
QQQQ	Surface Coating of Wood Building Products	X	X
RRRR	Surface Coating of Metal Furniture	X	X
SSSS	Surface Coating for Metal Coil	X	X
TTTT	Leather Finishing Operations	X	X

DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF NEW MEXICO—Continued

[Excluding Indian Country]

Subpart	Source category	NMED [1] [2]	ABCAQCB [1] [3]
UUUU	Cellulose Production Manufacture	X	X
VVVV	Boat Manufacturing	X	X
WWWW	Reinforced Plastic Composites Production	X	X
XXXX	Rubber Tire Manufacturing	X	X
YYYY	Combustion Turbines	X	X
ZZZZ	Reciprocating Internal Combustion Engines (RICE)	X	X
AAAAA	Lime Manufacturing Plants	X	X
BBBBB	Semiconductor Manufacturing	X	X
CCCCC	Coke Ovens: Pushing, Quenching and Battery Stacks	X	X
DDDDD	Industrial/Commercial/Institutional Boilers and Process Heaters	X [6]	X [6]
EEEEE	Iron Foundries	X	X
FFFFF	Integrated Iron and Steel	X	X
GGGGG	Site Remediation	X	X
HHHHH	Miscellaneous Coating Manufacturing	X	X
IIIII	Mercury Cell Chlor-Alkali Plants	X	X
JJJJJ	Brick and Structural Clay Products Manufacturing	X [7]	(7)
KKKKK	Clay Ceramics Manufacturing	X [7]	(7)
LLLLL	Asphalt Roofing and Processing	X	X
MMMMM	Flexible Polyurethane Foam Fabrication Operation	X	X
NNNNN	Hydrochloric Acid Production, Fumed Silica Production	X	X
OOOOO	(Reserved)		
PPPPP	Engine Test Facilities	X	X
QQQQQ	Friction Products Manufacturing	X	X
RRRRR	Taconite Iron Ore Processing	X	X
SSSSS	Refractory Products Manufacture	X	X
TTTTT	Primary Magnesium Refining	X	X
UUUUU	Coal and Oil-Fired Electric Utility Steam Generating Units	X [8]	X [8]
VVVVV	(Reserved)		
WWWWW	Hospital Ethylene Oxide Sterilizers	X	X
XXXXX	(Reserved)		
YYYYY	Electric Arc Furnace Steelmaking Area Sources	X	X
ZZZZZ	Iron and Steel Foundries Area Sources	X	X
AAAAAA	(Reserved)		
BBBBBB	Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities	X	X
CCCCCC	Gasoline Dispensing Facilities	X	X
DDDDDD	Polyvinyl Chloride and Copolymers Production Area Sources	X	X
EEEEEE	Primary Copper Smelting Area Sources	X	X
FFFFFF	Secondary Copper Smelting Area Sources	X	X
GGGGGG	Primary Nonferrous Metals Area Source: Zinc, Cadmium, and Beryllium	X	X
HHHHHH	Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources	X	X
IIIIII	(Reserved)		
JJJJJJ	Industrial, Commercial, and Institutional Boilers Area Sources	X	X
KKKKKK	(Reserved)		
LLLLLL	Acrylic and Modacrylic Fibers Production Area Sources	X	X
MMMMMM	Carbon Black Production Area Sources	X	X
NNNNNN	Chemical Manufacturing Area Sources: Chromium Compounds	X	X
OOOOOO	Flexible Polyurethane Foam Production and Fabrication Area Sources	X	X
PPPPPP	Lead Acid Battery Manufacturing Area Sources	X	X
QQQQQQ	Wood Preserving Area Sources	X	X
RRRRRR	Clay Ceramics Manufacturing Area Sources	X	X
SSSSSS	Glass Manufacturing Area Sources	X	X
TTTTTT	Secondary Nonferrous Metals Processing Area Sources	X	X
UUUUUU	(Reserved)		
VVVVVV	Chemical Manufacturing Area Sources	X	X
WWWWWW	Plating and Polishing Operations Area Sources	X	X
XXXXXX	Metal Fabrication and Finishing Area Sources	X	X
YYYYYY	Ferroalloys Production Facilities Area Sources	X	X
ZZZZZZ	Aluminum, Copper, and Other Nonferrous Foundries Area Sources	X	X
AAAAAAA	Asphalt Processing and Asphalt Roofing Manufacturing Area Sources	X	X
BBBBBBB	Chemical Preparation Industry Area Sources	X	X
CCCCCCC	Paints and Allied Products Manufacturing Area Sources	X	X
DDDDDDD	Prepared Feeds Areas Sources	X	X
EEEEEEE	Gold Mine Ore Processing and Production Area Sources	X	X
FFFFFFF—GGGGGGG.	(Reserved)		
HHHHHHH	Polyvinyl Chloride and Copolymers Production Major Sources	X	X

[1] Authorities which may not be delegated include: § 63.6(g), Approval of Alternative Non-Opacity Emission Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting; and all authorities identified in the subparts (*e.g.,* under ''Delegation of Authority'') that cannot be delegated.

[2] Program delegated to New Mexico Environment Department (NMED) for standards promulgated by the EPA, as amended in the **Federal Register** through January 15, 2017.

[3] Program delegated to Albuquerque-Bernalillo County Air Quality Control Board (ABCAQCB) for standards promulgated by the EPA, as amended in the **Federal Register** through September 13, 2013.

[4] The NMED was previously delegated this subpart on February 9, 2004 (68 FR 69036). The ABCAQCB has adopted the subpart unchanged and applied for delegation of the standard. The subpart was vacated and remanded to the EPA by the United States Court of Appeals for the District of Columbia Circuit. See *Mossville Environmental Action Network* v. *EPA,* 370 F. 3d 1232 (D.C. Cir. 2004). Because of the D.C. Court's holding this subpart is not delegated to NMED or ABCAQCB at this time.

[5] This subpart was issued a partial vacatur by the United States Court of Appeals for the District of Columbia Circuit. *See* 72 FR 61060 (October 29, 2007).

[6] Final Rule. *See* 76 FR (March 21, 2011), as amended at 78 FR 7138 (January 31, 2013); 80 FR 72807 (November 20, 2015). Note that the ABCAQCB has not yet applied for updated delegation of these standards.

[7] Final Promulgated Rule adopted by the EPA. *See* 80 FR 65470 (October 26, 2015). Note that Part 63 Subpart KKKKK was amended to correct minor typographical errors. *See* 80 FR 75817 (December 4, 2015). Note that the ABCAQCB has not yet applied for updated delegation of these standards.

[8] Final Rule. *See* 77 FR 9304 (February 16, 2012), as amended 81 FR 20172 (April 6, 2016). Final Supplemental Finding that it is appropriate and necessary to regulate HAP emissions from Coal- and Oil-fired EUSGU Units. *See* 81 FR 24420 (April 25, 2016). Note that the ABCAQCB has not yet applied for updated delegation of these standards.

* * * * *

[FR Doc. 2018–19801 Filed 9–11–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0705; FRL–9982–22]

Metschnikowia Fructicola Strain NRRLY–27328; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of *Metschnikowia fructicola* strain NRRL Y–27328 in or on the stone fruit group (group 12–12); the small fruit vine climbing subgroup, except fuzzy kiwifruit (subgroup 13–07F); and the low growing berry subgroup (subgroup 13–07G) when used in accordance with label directions and good agricultural practices. Interregional Research Project Number 4 (IR–4) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Metschnikowia fructicola* strain NRRL Y–27328 under FFDCA.

DATES: This regulation is effective September 12, 2018. Objections and requests for hearings must be received on or before November 13, 2018, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) EPA–HQ–OPP–2017–0705, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID EPA–HQ–OPP–2017–0705 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 13, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0705, by one of the following methods:

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

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

II. Background

In the **Federal Register** of March 21, 2018 (83 FR 12311) (FRL–9974–76), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 7E8560) by IR–4, Rutgers, The State University of New Jersey, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the microbial pesticide *Metschnikowia fructicola* strain NRRL Y–27328 in or on stone fruit group 12–12; small fruit vine climbing, except fuzzy kiwifruit subgroup 13–07F; and low growing berry subgroup 13–07G. That document referenced a summary of the petition prepared by the petitioner IR–4 and available in the docket via *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Final Rule

A. EPA's Safety Determination

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

EPA evaluated the available toxicological and exposure data on *Metschnikowia fructicola* strain NRRL Y–27328 and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found within the document entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Safety Determination for *Metschnikowia fructicola* strain NRRL Y–27328.'' This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

The available data demonstrated that *Metschnikowia fructicola* strain NRRL Y–27328 is not significantly toxic, pathogenic, or infective via any route of exposure. Although there may be some exposure to residues when *Metschnikowia fructicola* strain NRRL Y–27328 is used on certain food commodities in accordance with label directions and good agricultural practices, there is a lack of concern due to the lack of potential for adverse effects. EPA also determined that retention of the Food Quality Protection Act (FQPA) safety factor was not necessary as part of the qualitative assessment conducted for *Metschnikowia fructicola* strain NRRL Y–27328.

Based upon its evaluation, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Metschnikowia fructicola* strain NRRL Y–27328. Therefore, an exemption from the requirement of a tolerance is established for residues of *Metschnikowia fructicola* strain NRRL Y–27328 in or on the stone fruit group (group 12–12); the small fruit vine climbing subgroup, except fuzzy kiwifruit (subgroup 13–07F); and the low growing berry subgroup (subgroup 13–07G) when used in accordance with label directions and good agricultural practices.

B. Analytical Enforcement Methodology

An analytical method is not required because EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

IV. Statutory and Executive Order Reviews

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

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

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR

67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 16, 2018.

Richard P. Keigwin, Jr.,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Add § 180.1358 to subpart D to read as follows:

§ 180.1358 *Metschnikowia fructicola* strain NRRL Y–27328; exemption from the requirement of a tolerance.

Residues of *Metschnikowia fructicola* strain NRRL Y–27328 are exempt from the requirement of a tolerance in or on the food commodities included in the following crop groups and subgroups when this pesticide chemical is used in accordance with label directions and good agricultural practices: Fruit, stone group 12–12; Fruit, small fruit vine climbing, except fuzzy kiwifruit, subgroup 13–07F; and Berry, low growing subgroup 13–07G.

[FR Doc. 2018–19870 Filed 9–11–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2005–0011; FRL–9983–63—Region 1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Old Southington Landfill Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 1 announces the deletion of the Old Southington Landfill Superfund Site (Site) located in Southington, Connecticut, from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Connecticut, through the Connecticut Department of Energy and Environmental Protection (CTDEEP), have determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This action is effective September 12, 2018.

ADDRESSES:

Docket: EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–2005–0011. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Site information repositories. Locations, contacts, phone numbers and viewing hours are:

U.S. EPA Region 1—New England, Superfund Records Center, 5 Post Office Square, Suite 100, Boston, MA 02109, Phone: 617–918–1440, *Hours:* Monday–Friday: 9:00 a.m.–5:00 p.m., Saturday and Sunday—Closed.

Southington Public Library, 255 Main Street, Southington, CT, Phone: 860–628–0947, *Hours:* Monday–Thursday 9:00 a.m.–9:00 p.m., Friday–Saturday 9:00 a.m.–5:00 p.m., and Sunday Closed.

FOR FURTHER INFORMATION CONTACT: Almerinda Silva, Remedial Project Manager, U.S. Environmental Protection Agency, Region I, OSRR 07–4, 5 Post Office Square, Boston, MA 02109–3912. Telephone (617) 918–1246, Email *silva.almerinda@epa.gov*.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: the Old Southington Landfill Superfund Site located at Old Turnpike Road, Southington, Connecticut. A Notice of Intent to Delete for this Site was published in the **Federal Register** (83 FR 34513) on July 20, 2018.

The closing date for comments on the Notice of Intent to Delete was August 20, 2018. No public comments were received. Therefore, a responsiveness summary was not prepared and not placed in the docket, EPA–HQ–SFUND–2005–0011, on *www.regulations.gov,* nor in the local repositories listed above. EPA still believes the deletion action is still appropriate.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, and Water supply.

Dated: September 4, 2018.

Alexandra Dapolito Dunn,

Regional Administrator, Region 1.

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300—[Amended]

■ 2. Table 1 of appendix B to part 300 is amended by removing the listing under Connecticut for ''Old Southington Landfill''.

[FR Doc. 2018–19874 Filed 9–11–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170817779–8161–02]

RIN 0648–XG472

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole for Vessels Participating in the BSAI Trawl Limited Access Fishery in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for yellowfin sole in the Bering Sea and Aleutian Islands management area (BSAI) for vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2018 allocation of yellowfin sole total allowable catch for vessels participating in the BSAI trawl limited access fishery in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 7, 2018, through 2400 hrs, A.l.t., December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (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 2018 allocation of yellowfin sole total allowable catch for vessels participating in the BSAI trawl limited access fishery in the BSAI is 18,351 metric tons (mt) as established by the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8365, February 27, 2018). In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2018 allocation of yellowfin sole total allowable catch allocated as a directed fishing allowance for vessels participating in the BSAI trawl limited access fishery in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for yellowfin sole for vessels participating in the BSAI trawl limited access fishery in the BSAI.

While this closure remains in effect, 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 yellowfin sole by vessels fishing in the BSAI trawl limited access fishery in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 6, 2018.

The acting 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: September 7, 2018.

Margo B. Schulze-Haugen,

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

[FR Doc. 2018–19821 Filed 9–7–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 177
Wednesday, September 12, 2018

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–SC–18–0049; SC18–927–2 PR]

Pears Grown in Oregon and Washington; Decreased Assessment Rate for Processed Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Processed Pear Committee (Committee) to decrease the assessment rate established for ''summer/fall'' varieties of pears for canning for the 2018–2019 and subsequent fiscal periods. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by October 12, 2018.

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

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *DaleJ.Novotny@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.* Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington. Part 927, (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, handlers, and processors operating within the area of production, and a public member.

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

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Oregon and Washington pear handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable ''summer/fall'' varieties of pears specifically used for canning for the 2018–2019 fiscal period, and continue until amended, suspended, or terminated.

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

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

This proposed rule would decrease the assessment rate from $8.00, the rate that was established for the 2017–2018 and subsequent fiscal periods, to $7.15 per ton of ''summer/fall'' varieties of pears for canning handled for the 2018–2019 and subsequent fiscal periods. The assessment rate for ''winter'' and ''other'' pears for processing would remain unchanged at $0.00. The Committee met on May 30, 2018, and unanimously recommended 2018–2019 fiscal period expenditures of $693,472. In comparison, last year's budgeted expenditures were $800,150. The Committee also unanimously recommended an assessment rate of $7.15 per ton of ''summer/fall'' varieties

of pears for canning handled. The proposed assessment rate of $7.15 per ton is $0.85 lower than the $8.00 per ton rate currently in effect. The Committee recommended the lower assessment rate to balance assessment revenue with its budgeted expenditures and to maintain its monetary reserve at levels authorized in the Order.

The major expenditures recommended by the Committee for the 2018–2019 fiscal period include $495,000 for promotion and paid advertising, $136,172 for research, $15,000 for market access programs, $25,000 for administrative and management services, and $22,300 for Committee expenses. In comparison, these major expense categories for the 2017–2018 fiscal period were budgeted at $591,030, $147,694, $14,576, $25,000, and $21,850; respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments, and the amount of funds available in the authorized reserve. The quantity of assessable ''summer/fall'' pears for canning for the 2018–2019 fiscal period is estimated at 100,000 tons. Thus, the proposed $7.15 per ton should provide handler assessments of $715,000. This amount would be adequate to cover budgeted expenses of $693,472, with any excess funds used to make a small contribution to the Committee's monetary reserve. Funds in the reserve (currently $497,565) would be kept within the maximum permitted by § 927.42(a) of approximately one fiscal period's expenses.

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

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

Initial Regulatory Flexibility Analysis

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

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

There are approximately 1,500 growers of pears for processing in the production area and approximately 43 handlers of processed pears subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to data from USDA National Agricultural Statistics Service (NASS), the Committee, and the industry for the 2016–2017 season (the most recent complete season of record) the average f.o.b. price for Oregon-Washington processed Bartlett pears (the only variety used for canning in the production area) was approximately $390.50 per ton. Total shipments for that period were approximately 103,020 tons. Using the number of handlers, and assuming a normal distribution, the majority of handlers would have average annual receipts of less than $7,500,000 ($390.50 per ton times 103,020 tons equals $40,229,310 divided by 43 handlers equals $935,565 per handler).

In addition, based on data from the Committee, the industry produced 103,020 tons of processed pears in the production area during the 2016–2017 season, with an average grower price of $360 per ton. Based on the average grower price, production, and the total number of Oregon-Washington processed pear growers reported by the Committee (1,500), and assuming a normal distribution, the average annual grower revenue is below $750,000 ($360 per ton times 103,020 tons equals $37,087,200 divided by 1,500 growers equals $24,725 per grower). Thus, the majority of Oregon and Washington processed pear handlers and growers may be classified as small entities.

This proposal would decrease the assessment rate collected from handlers for the 2018–2019 and subsequent fiscal periods from $8.00 per ton to $7.15 per ton of Oregon and Washington ''summer/fall'' pears for canning handled. The Committee unanimously recommended 2018–2019 fiscal period expenditures of $693,472 and the $7.15 per ton assessment rate. The proposed assessment rate of $7.15 per ton is $0.85 lower than the rate in effect for the 2017–2018 fiscal period. The quantity of assessable ''summer/fall'' pears for canning for the 2018–2019 fiscal period is estimated at 100,000 tons. Thus, the proposed $7.15 per ton rate should provide $715,000 in assessment income. Income derived from handler assessments should be adequate to cover budgeted expenses, with any excess funds to be carried over in the Committee's monetary reserve to be used in subsequent years.

The major expenditures recommended by the Committee for the 2018–2019 fiscal period include $495,000 for promotion and paid advertising, $136,172 for research, $15,000 for market access programs, $25,000 for administrative and management services, and $22,300 for Committee expenses. In comparison, these major expense categories for the 2017–2018 fiscal period were budgeted at $591,030, $147,694, $14,576, $25,000, and $21,850, respectively.

The proposed lower assessment rate is necessary to balance assessment revenue with the Committee's 2018–2019 fiscal period budgeted expenditures and to maintain its monetary reserve at levels authorized in the Order.

Prior to arriving at this budget and assessment rate, the Committee considered the benefits and costs related to maintaining the current assessment rate of $8.00 per ton and establishing other assessment rates. However, leaving the assessment rate unchanged would generate more revenue than required to meet the Committee's 2018–2019 fiscal period budgeted expenses of $693,472, and would add a large amount of excess funds to the Committee's already sufficient monetary reserve. Based on estimated shipments, the recommended assessment rate of $7.15 per ton should provide $715,000 in assessment income. The Committee determined assessment revenue would be adequate to fully cover budgeted expenditures for the 2018–2019 fiscal period, with a small amount of excess funds to be added to the Committee's monetary reserve. Reserve funds would

be kept within the amount authorized in the Order.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average grower price for the 2018–2019 season should be approximately $296 per ton of pears for processing. Therefore, the estimated assessment revenue for the 2018–2019 fiscal period as a percentage of total grower revenue would be about 2.4 percent ($7.15 per ton assessment divided by $296 per ton grower price).

This proposed action would decrease the assessment obligation imposed on handlers for the 2018–2019 and subsequent fiscal periods. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate would reduce the burden on handlers, and may reduce the burden on producers.

The Committee's meetings were widely publicized throughout the Oregon and Washington processed pear industry. All interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the May 30, 2018, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189. No changes in those requirements would be necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

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

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

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

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

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is proposed to be amended as follows:

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 927.237 revise the intro paragraph text and paragraph (a) to read as follows:

§ 927.237 Assessment rate.

On and after July 1, 2018, the following base rates of assessment for pears for processing are established for the Processed Pear Committee:

(a) $7.15 per ton for any or all varieties or subvarieties of pears for canning classified as ''summer/fall'' excluding pears for other methods of processing;

* * * * *

Dated: September 6, 2018.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2018–19683 Filed 9–11–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. FDA–2017–N–6924]

RIN 0910–AH47

Repeal of Regulation Requiring an Approved New Drug Application for Drugs Sterilized by Irradiation

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is proposing to repeal a regulation that requires an FDA-approved new drug application (NDA) or abbreviated new drug application (ANDA) for any drug product that is sterilized by irradiation (the irradiation regulation). Repealing the irradiation regulation would mean that over-the-counter (OTC) drug products that are generally recognized as safe and effective, that are not misbranded, and that comply with all applicable regulatory requirements can be marketed legally without an NDA or ANDA, even if they are sterilized by irradiation. FDA is proposing to take this action because the irradiation regulation is out of date and unnecessary. The technology of controlled nuclear radiation for sterilization of drugs is now well understood, and our regulations require that OTC drugs be manufactured in compliance with current good manufacturing practices (CGMPs). Appropriate and effective sterilization of drugs, including by irradiation, is adequately addressed by the CGMP requirements. This action is part of FDA's implementation of Executive Orders (EOs) 13771 and 13777. Under these EOs, FDA is comprehensively reviewing existing regulations to identify opportunities for repeal, replacement, or modification that will result in meaningful burden reduction while allowing the Agency to achieve our public health mission and fulfill statutory obligations.

DATES: Submit either electronic or written comments on the proposed rule by November 13, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 13, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of November 13, 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–2017–N–6924 for ''Repeal of Regulation Requiring an Approved New Drug Application for Drugs Sterilized by Irradiation.'' 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: Sudha Shukla, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5198, Silver Spring, MD 20993–0002, 301–796–3345.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

This proposed rule would repeal the irradiation regulation, which provides that any drug sterilized by irradiation is a new drug. This action, if finalized, would mean that OTC drugs marketed pursuant to the OTC Drug Review that are generally recognized as safe and effective, that are not misbranded, and that comply with all applicable regulatory requirements can be marketed legally without an FDA-approved NDA or ANDA, even if the drugs are sterilized by irradiation. FDA is taking this action because the Agency no longer concludes that drugs sterilized by irradiation are necessarily new drugs. The technology of controlled nuclear radiation for sterilization of drugs is now well understood. In addition, drugs that are marketed pursuant to the OTC Drug Review must be manufactured in compliance with CGMPs. Appropriate and effective sterilization of drugs, including by irradiation, is adequately addressed by the CGMP requirements. Repealing the irradiation regulation would eliminate a requirement that is no longer necessary, and will not diminish public health protections.

The estimated one-time costs of this rule range from $120 to $150. Avoiding the unnecessary preparation and review of a premarket drug application will generate an estimated one-time cost savings that range from about $395,000 to $2,076,000. Over 10 years with a 7 percent discount rate, the annualized net cost savings range from $0.05 million to $0.28 million, with a primary estimate of $0.06 million; with a 3 percent discount rate, the annualized net cost savings range from $0.04 million to $0.24 million, with a primary estimate of $0.05 million. Over an infinite horizon, we assume that one sponsor will benefit from this deregulatory action every 10 years; the present value of the net cost savings over the infinite horizon range from $0.83 million to $4.37 million with a 7 percent discount rate and from $1.58 million to $8.30 million with a 3 percent discount rate.

II. Background and Discussion

On February 24, 2017, E.O. 13777, ''Enforcing the Regulatory Reform Agenda'' (*https://www.gpo.gov/fdsys/pkg/FR-2017-03-01/pdf/2017-04107.pdf*) was issued. One of the provisions in the E.O. requires Agencies to evaluate existing regulations and make recommendations to the Agency head regarding their repeal, replacement, or modification, consistent with applicable law. As part of this initiative, FDA is proposing to repeal the irradiation regulation as specified in this rule.

In addition, in a citizen petition dated August 14, 2014, Richard O. Wood of The Wood Burditt Group LLC requested that the irradiation regulation be revoked. FDA has responded to Mr. Wood's citizen petition. A copy of the response is available at: *https://www.regulations.gov* under Docket No. FDA–2014–P–1784.

A. The History of the Irradiation Regulation

In the November 29, 1955, issue of the **Federal Register**, FDA issued a statement of interpretation relating to the sterilization of drugs by irradiation (20 FR 8747 to 8748).[1] In the statement, FDA explained that there was an interest in the utilization of newly developed sources of radiation for the sterilization of drugs. The Agency went on to state that it was necessary in the interest of protecting the public health to establish by adequate investigations that the irradiation treatment does not cause the drug to become unsafe or otherwise unsuitable for use. For this reason, all drug products sterilized by irradiation would be regarded as new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (FD&C Act), which would mean that an effective new drug application would be required for such products.

In 1996, FDA proposed to revise the statement and consolidate it with similar provisions into a single list of drugs that have been determined by previous rulemaking procedures to be new drugs within the meaning of section 201(p) of the FD&C Act (61 FR 29502 at 29503 to 29504 (June 11, 1996)). The Agency proposed to remove any existing background information describing the Agency's basis for determination of new drug status from the regulatory text.

In 1997, FDA finalized these provisions, now located in 21 CFR 310.502, entitled ''Certain drugs accorded new drug status through rulemaking procedures.'' (62 FR 12084 at 12084 (March 14, 1997).) Paragraph 310.502(a) sets forth a list of drugs that have been determined by rulemaking procedures to be ''new drugs'' within the meaning of section 201(p) of the FD&C Act. Included on the list is sterilization of drugs by irradiation (§ 310.502(a)(11) (21 CFR 310.502(a)(11)). Because this regulation reflects an FDA determination that the drugs on the list are ''new drugs,'' an NDA or ANDA must be submitted and approved by FDA before they can be marketed legally. For a non-prescription drug that could otherwise be legally marketed without an approved NDA or ANDA in effect pursuant to the OTC Drug Review, the effect of § 310.502(a)(11) is that, if the drug is sterilized by irradiation, an approved NDA or ANDA is necessary.

B. Sterilization by Irradiation

Since the paragraph now reflected at § 310.502(a)(11) was published in 1955, the technology of controlled nuclear radiation for sterilization of drugs has become well understood. Gamma ray irradiation has been recognized as a method of sterilizing drug products for half a century (Refs. 1 and 2). Electron beam and x-ray irradiation are also recognized methods for sterilizing drugs (Ref. 1).

Information and data on whether a particular drug can safely and effectively be sterilized by irradiation are available in the scientific literature (Ref. 1). The United States Pharmacopeial Convention (USP) has provided guidance on irradiation sterilization of drug products since 1965 (Refs. 1 and 3). This includes chapter <1229> on ''Sterilization of Compendial Articles,'' which sets forth principles that may be applied to the sterilization of compendial and non-compendial drug products, and chapter <1229.10> on ''Radiation Sterilization,'' which sets forth guidelines on validation of sterilization by irradiation (Refs. 3 and 4). The American National Standards Institute, the Association for the Advancement of Medical Instrumentation, ASTM International, and the International Organization for Standardization (ISO) have also published standards on the irradiation of medical products, including drugs (Ref. 1). ISO standard 11137, which sets forth several methods that can be used to determine the appropriate radiation dose for health care products, was first published in 1984 [2] (Ref. 1).

USP chapter <1229.10> states that the methods set forth in ISO 11137 typically guide the choice of radiation dose (Ref. 3). Relevant factors include a drug's pre-sterilization level of microbial contamination (sometimes referred to as its bioburden) and the desired sterility assurance level (Ref. 1). Once the dose is selected, USP General Chapter <1229.10> states that all materials exposed to radiation, especially the drug product and its primary container, should be evaluated for immediate and long-term effects, and ''[p]roduct stability, safety, and functionality should be confirmed over the product's intended use period'' (Ref. 3). Among the advantages of sterilizing drug products by irradiation is that due to radiation's high penetrability, drug products can be irradiated after they are placed in their final containers (Ref. 1). Known as terminal sterilization, this provides a greater degree of sterilization assurance than aseptic processing and, where feasible, its use is preferable to relying solely on aseptic processing to ensure sterility (Ref. 5). Other advantages to irradiation sterilization of drugs include low chemical reactivity; the very low rise in temperature associated with radiation, which allows for its use on heat-sensitive products; that irradiation sterilization has fewer process variables than other methods, which translates into fewer sterility rejections; and that radiation does not leave behind any sterilant residuals (Refs. 1 and 6).

C. The OTC Drug Monograph System and Current Good Manufacturing Practices

The OTC Drug Review was established to evaluate the safety and effectiveness of OTC drug products marketed in the United States before May 11, 1972. As set forth in 21 CFR 330.10, it is a multiphase public rulemaking process (each phase requiring a **Federal Register** publication) resulting in the establishment of monographs for OTC therapeutic drug classes. OTC drug monographs, which can be found in Title 21, chapter I, subchapter D of the Code of Federal Regulations, cover acceptable ingredients, doses, formulations, other conditions, and labeling for certain OTC drugs. A company can legally make and market an OTC product that meets each of the conditions contained in an applicable monograph and, in addition, each of the general conditions set forth in § 330.1. Among the general conditions that apply to all drug products marketed under the OTC Drug Review is the requirement set forth in § 330.1(a) that they be manufactured in compliance with current good manufacturing practices, as established by parts 210 and 211 of this chapter. The CGMP requirements in parts 210 and 211

[1] Available at: *https://www.loc.gov/item/fr020231/*. A month later, this provision was included at § 3.45 in the republication of chapter 21 of the Code of Federal Regulations in the **Federal Register**. See 20 FR 9525 at 9554 (December 20, 1955), available at: *http://cdn.loc.gov/service/ll/fedreg/fr020/fr020246/fr020246.pdf*. In 1975, FDA republished and re-codified the rule at 21 CFR 200.30. See 40 FR 13996 at 13997 (March 27, 1975), available at: *https://www.loc.gov/item/fr040060/*.

[2] ISO 11137–1 specifies standards for the development, validation, and routine control of a radiation sterilization process for medical devices, while ISO 11137–2 specifies dose establishment and dose audit methods and defines product family approaches for dose establishment and dose audits. Additional target sterilization doses are covered in ISO Technical Information Report (TIR) 13004. Neither ISO 11137–2 nor TIR 13004 is explicitly limited to medical devices. In addition, both ISO 11137–2 and ISO TIR 13004 reference ISO 11137–1 as ''indispensable for the application of this document.'' This implies that the concepts in ISO 11137–1 may be applied to sterilization of drug products.

encompass sterilization, including by irradiation.[3]

In 1955, when the determination with respect to drugs sterilized by irradiation (now reflected in § 310.502(a)(11)) was made, neither the OTC drug monograph system nor the CGMP requirements existed. The authorizing legislation that the CGMP regulations implement, section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)), was enacted in 1962 (*Drug Amendments of 1962,* October 10, 1962, Pub. L. 87–781, Title I, sec. 101), and the first CGMP regulations followed in 1963 (*Part 133—Drugs; Current Good Manufacturing Practice in Manufacture, Processing, Packing, or Holding,* 28 FR 6385 (June 20, 1963) available at: *https://www.loc.gov/item/fr028120/*). The regulations creating procedures for establishing OTC drug monographs were issued in 1972 (37 FR 9464 (May 11, 1972)) available at: *https://www.loc.gov/item/fr037092/*). Because of these subsequent statutes and regulations, § 310.502(a)(11) can be revoked and manufacturers will still be obligated to ensure that, if they use radiation: (1) The drug products that they purport to be sterile are in fact sterile and (2) their use of radiation does not have a detrimental effect on their drug products' identity, strength, quality, purity, or stability.

CGMP regulations require manufacturers to take steps to ensure that sterile drug products are free of objectionable microorganisms. (See, *e.g.,* 21 CFR 211.28(a), 211.42(b) and (c), 211.67(a), 211.84(c), 211.110(a), 211.113(b), 211.165(b), 211.167(a).) The CGMP regulations also include provisions that ensure that irradiation or any other sterilization processes do not have a detrimental effect on a drug product's identity, strength, quality, purity, or stability. (See, *e.g.,* 21 CFR 211.22, 211.25(b), 211.68, 211.100, 211.160(b), 211.165, 211.166.)

Numerous records relating to the manufacture of the drug product must be maintained and made available for inspection (21 CFR part 211, subpart J). FDA conducts inspections at manufacturing facilities, including irradiation facilities, to ensure that the CGMP regulations are followed. Inspection findings are reviewed and, when appropriate, action may be recommended against manufacturers observed to be out of compliance.

Choosing the sterilization process that is suitable for a particular drug product is the responsibility of the manufacturer and is an important part of pharmaceutical development. To guide them in choosing an appropriate method of sterilization and otherwise complying with the CGMP requirements, manufacturers can turn to voluntary consensus standards that are widely-known by industry and recognized by FDA for the development, validation, and routine control of the sterilization of drugs by irradiation. As noted previously in this document, ISO publishes standards that address the different doses of radiation that are appropriate depending on the type and amount of microbiological contamination and the necessary degree of sterility assurance (Ref. 3). These include the following:

- ISO 11137–1:2006: Sterilization of health care products—Radiation—Part 1: Requirements for development, validation and routine control of a sterilization process for medical devices;
- ISO 11137–2:2013: Sterilization of health care products—Radiation—Part 2: Establishing the sterilization dose;
- ISO 11137–3:2006: Sterilization of health care products—Radiation—Part 3: Guidance on dosimetric aspects; and
- ISO/TS 13004:2013: Sterilization of health care products—Substantiation of selected sterilization dose: Method VDmaxSD.
- The USP also provides guidance on irradiation sterilization, including in chapter <1229.10>, which specifically addresses the topic (Ref. 3).

D. Conclusion

We propose the repeal of § 310.502(a)(11) because the Agency no longer concludes that drugs sterilized by irradiation are necessarily new drugs. The technology of controlled nuclear radiation for sterilization of drugs is now well understood and sterilization is a manufacturing process that is adequately addressed by the regulations governing the OTC drug monograph system and CGMPs.

III. Legal Authority

FDA is issuing this proposed rule under the drugs and general administrative provisions of the FD&C Act (sections 201, 301, 501, 502, 503, 505, 510, 701, 702, and 704 (21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 371, 372, and 374)) and under section 361 of the Public Health Service Act (PHS Act) (42 U.S.C. 264). The FD&C Act gives us the authority to issue and enforce regulations designed to help ensure that drug products are safe, effective, and manufactured according to current good manufacturing practices, while section 361 of the PHS Act gives us the authority to issue and enforce regulations designed to prevent the introduction, transmission, or spread of communicable diseases.

IV. Proposed Effective Date

Any final rule that results from this proposed rule will be effective 30 days after the date of the final rule's publication in the **Federal Register**.

V. Economic Analysis of Impacts

We have examined the impacts of the proposed rule under E.O. 12866, E.O. 13563, E.O. 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). EOs 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). E.O. 13771 requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' We believe that this proposed rule is not a significant regulatory action as defined by E.O. 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because few entities will be affected and the net effect will be cost savings to affected firms, we propose to certify that the proposed rule, if finalized, will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after

[3] We note that sterilization is not generally a condition specifically covered by OTC monographs. Currently, the monograph for ophthalmic drug products at 21 CFR part 349 is the only monograph that incorporates a sterility condition. There are, however, OTC products covered by a monograph or tentative final monograph that are not required to be sterile, but which manufacturers may choose to sterilize. These may include consumer and healthcare antiseptics, such as consumer hand washes, body washes, and hand rubs, first aid antiseptics, health care personnel hand washes and hand rubs, surgical hand scrubs and rubs, and patient preoperative skin preparations. In 2013, FDA asked manufacturers to voluntarily revise the product labels for topical antiseptics to indicate whether the product is manufactured as a sterile or nonsterile product (Ref. 7).

adjustment for inflation is $150 million, using the most current (2017) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

Table 1 summarizes our estimate of the annualized costs and benefits of the proposed rule.

TABLE 1—SUMMARY OF BENEFITS, COSTS AND DISTRIBUTIONAL EFFECTS OF THE RULE

[$ million]

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized, Monetized $millions/year	$0.06	$0.05	$0.28	2016	7	10	Benefits are cost savings.
	0.05	0.04	0.24	2016	3	10	Benefits are cost savings.
Annualized Quantified				2016	7	10	
				2016	3	10	
Qualitative							
Costs:							
Annualized Monetized $millions/year	0.00	0.00	0.00	2016	7	10	Costs total less than $100.
	0.00	0.00	0.00	2016	3	10	Costs total less than $100.
Annualized Quantified				2016	7	10	
				2016	3	10	
Qualitative							
Transfers:							
Federal Annualized Monetized $millions/year	0.14	0.14	0.14	2016	7	10	User Fee.
	0.12	0.12	0.12	2016	3	10	User Fee.
	From:			To:			
Other Annualized Monetized $millions/year				2016	7	10	
				2016	3	10	
	From:			To:			
Effects:							
State, Local or Tribal Government: None Small Business: None Wages: None Growth: None							

Because the proposed rule will repeal an outdated regulation and generate net cost savings, we consider this action a deregulatory action under E.O. 13771.

Table 2 presents a summary of the E.O. 13771 impacts of the proposed rule over an infinite horizon. For this estimate, we assume that one sponsor will benefit from this deregulatory action every 10 years.

TABLE 2—E.O. 13771 SUMMARY

[In $ millions 2016 dollars, over an infinite horizon]

	Primary (7%)	Lower bound (7%)	Upper bound (7%)	Primary (3%)	Lower bound (3%)	Upper bound (3%)
Present Value of Costs	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Present Value of Cost Savings	0.97	0.83	4.37	1.84	1.58	8.30
Present Value of Net Costs	(0.97)	(0.83)	(4.37)	(1.84)	(1.58)	(8.30)
Annualized Costs	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Annualized Cost Savings	$0.07	$0.06	$0.31	$0.06	$0.05	$0.25
Annualized Net Costs	(0.07)	(0.06)	(0.31)	(0.06)	(0.05)	(0.25)

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the proposed rule. The full analysis of economic impacts is available in the docket for this proposed rule (Ref. 8) and at: *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

VI. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) and 25.31(a) 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.

VII. Paperwork Reduction Act of 1995

This proposed rule refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information resulting from compliance with CGMPs have been

approved under OMB control number 0910–0139.

VIII. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in E.O. 13132. We have determined that this proposed rule does not contain policies that 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the E.O. and, consequently, a federalism summary impact statement is not required.

IX. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in E.O. 13175. We have tentatively determined that the rule does not contain policies that would have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The Agency solicits comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

X. References

The following references are on display in the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Jacobs, G., ''Validation of the Radiation Sterilization of Pharmaceuticals.'' In: J. Agalloco and F. J. Carleton (eds.), *Validation of Pharmaceutical Processes* (3rd Ed.) Informa USA, New York, 2007.
2. Microbiology Sub-Committee, Radiation Sterilization Task Force, Parenteral Drug Association, Technical Report No. 11, ''Sterilization of Parenterals by Gamma Radiation,'' *Journal of Parenteral Science and Technology,* 42 (3S), 1988, available at: *https://store.pda.org/ProductCatalog/Product.aspx?ID=1170.*
3. United States Pharmacopeial Convention (USP 40), Radiation Sterilization <1229.10>, 2017.
4. United States Pharmacopeial Convention (USP 40), Sterilization of Compendial Articles <1229>, 2017.
5. FDA Guidance for Industry on ''Sterile Drug Products Produced by Aseptic Processing—Current Good Manufacturing Practice,'' September 2004; available at *https://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm070342.pdf.*
6. United States Pharmacopeial Convention (USP 40), Sterilization and Sterility Assurance of Compendial Articles <1211>, 2017.
7. FDA Drug Safety Communication, ''FDA Requests Label Changes and Single-Use Packaging for Some Over-the-Counter Topical Antiseptic Products to Decrease Risk of Infection,'' November 13, 2013; available at *https://www.fda.gov/Drugs/DrugSafety/ucm374711.htm.*
8. FDA Preliminary Regulatory Impact Analysis, Repeal of Regulation Requiring an Approved New Drug Application for Drugs Sterilized by Irradiation; *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 310 be amended as follows:

PART 310—NEW DRUGS

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 360hh–360ss, 361(a), 371, 374, 375, 379e, 379k–1; 42 U.S.C. 216, 241, 242(a), 262.

■ 2. In § 310.502, revise paragraph (a) introductory text and remove and reserve paragraph (a)(11) to read as follows:

§ 310.502 Certain drugs accorded new drug status through rulemaking procedures.

(a) The drugs listed in this paragraph have been determined by rulemaking procedures to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act. An approved new drug application under section 505 of the Federal Food, Drug, and Cosmetic Act and part 314 of this chapter is required for marketing the following drugs:

* * * * *

(11) [Reserved]

* * * * *

Dated: September 7, 2018.

Scott Gottlieb,

Commissioner of Food and Drugs.

[FR Doc. 2018–19845 Filed 9–11–18; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R10–RCRA–2018–0538; SW–FRL–9982–05—Region 10]

Hazardous Waste Management System; Proposed Exclusion for Identifying and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (also, ''the Agency'' or ''we'' in this preamble) is proposing to grant a petition submitted by Sandvik Special Metals (Sandvik), in Kennewick, Washington to exclude (or ''delist'') up to 1,500 cubic yards of F006 wastewater treatment sludge per year from the list of federal hazardous wastes.

The Agency is proposing to grant the petition based on an evaluation of waste-specific information provided by Sandvik. This proposed decision, if finalized, conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act.

We conclude that Sandvik's petitioned waste is nonhazardous with respect to the original federal listing criteria and that there are no other factors (including additional constituents) other than those for which the waste was listed that would warrant retaining the waste as a hazardous waste. Subject to state-only requirements within the state of Washington, or federally-authorized or state-only requirements in other states where the subject wastes may be disposed of, Sandvik's petitioned waste may be disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

DATES: Comments must be received on or before October 12, 2018. Requests for an informal hearing must reach the EPA by September 27, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–RCRA–2018–0538 by one of the following methods:

• *www.regulations.gov:* Follow the on-line instructions for submitting comments.

• *Mail:* To Dr. David Bartus, Office of Air and Waste, EPA, Region 10, 1200 6th Avenue, Suite 155, OAW–150, Seattle, Washington 98101.

• *Hand Delivery:* To Dr. David Bartus, Office of Air and Waste, EPA, Region 10, 1200 6th Avenue, Suite 155, OAW–150, Seattle, Washington 98101. Such deliveries are only accepted during normal hours of operation. Please contact David Bartus at (206) 553–2804.

Instructions: Direct your comments to Docket ID No. EPA–R10–RCRA–2018–0538. 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 *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* website 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 *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 physical media 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 avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Any person may request an informal hearing on this proposed decision by filing a request with Timothy Hamlin, Director, Office of Air and Waste, EPA, Region 10, 1200 6th Ave., Suite 155, OAW–150, Seattle, Washington 98101. The request must contain the information prescribed in 40 Code of Federal Regulations CFR 260.20(d).

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information may not be publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the RCRA Records Center, 16th floor, U.S. EPA, Region 10, 1200 6th Avenue, Suite 155, OAW–150, Seattle, Washington 98101. This facility is open from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. We recommend you telephone David Bartus at (206) 553–2804 before visiting the Region 10 office. The public may copy material from the regulatory docket at 15 cents per page.

FOR FURTHER INFORMATION, CONTACT: Dr. David Bartus, EPA, Region 10, 1200 6th Avenue, Suite 155, OAW–150, Seattle, Washington 98070; telephone number: (206) 553–2804; fax number (206) 553–8509; email address: *bartus.dave@epa.gov*.

As discussed in Section V below, the Washington State Department of Ecology is evaluating Sandvik's petition under state authority. Information on Ecology's action may be found at *https://fortress.wa.gov/ecy/publications/SummaryPages/1804023.html*.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

The EPA is proposing to grant the petition submitted by Sandvik Special Metals (Sandvik) located in Kennewick, Washington to exclude or delist an annual volume of up to 1,500 cubic yards of F006 wastewater treatment sludge from the lists of hazardous waste set forth in 40 Code of Federal Regulations CFR 261.31. Sandvik claims that the petitioned waste does not meet the criteria for which the EPA listed it, and that there are no additional constituents or factors which could cause the waste to be hazardous.

Based on our review described in section III, we agree with the petitioner that the waste is nonhazardous. We reviewed the description of the process which generates the waste and the analytical data submitted by Sandvik. We believe that the petitioned waste does not meet the criteria for which the waste was listed, and that there are no other factors which might cause the waste to be hazardous.

II. Background

A. What is a listed waste?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing § 3001 of Resource Conservation and Recovery Act (RCRA). The EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (3).

B. What is a delisting petition?

Individual waste streams may vary depending on raw materials, industrial processes, and other factors. Thus, while a waste described in the regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

A procedure to exclude or delist a waste is provided in 40 CFR 260.20 and 260.22 which allows a person or a facility to submit a petition to the EPA or to an authorized state demonstrating

that a specific waste from a particular generating facility is not hazardous.[1]

In a delisting petition, the petitioner must show that a waste does not meet any of the criteria for listed wastes in 40 CFR 261.11 and that the waste does not exhibit any of the hazardous waste characteristics of ignitability, reactivity, corrosivity, or toxicity. The petitioner must present sufficient information for us to decide whether any factors in addition to those for which the waste was listed warrant retaining it as a hazardous waste. (See § 260.22, 42 U.S.C. 6921(f) and the background documents for the listed wastes.)

If a delisting petition is granted, the generator remains obligated under RCRA to confirm that the waste remains nonhazardous according to the conditions of the delisting.

C. What factors must EPA consider in deciding whether to grant a delisting petition?

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See § 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). We evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (3).

Besides considering the criteria in 40 CFR 260.22(a), 261.11(a)(2) and (3), 42 U.S.C. 6921(f), and in the background documents for the listed wastes, the EPA must consider any factors (including additional constituents) other than those for which we listed the waste if these additional factors could cause the waste to be hazardous.

Our proposed decision to grant the petition to delist the waste from Sandvik's Kennewick, Washington facility is based on our evaluation of the waste for factors or criteria which could cause the waste to be hazardous. These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the constituents to migrate and to bioaccumulate; (5) the persistence in the environment of any constituents once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

The EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. Mixture and derived-from wastes are also eligible for exclusion but remain hazardous until excluded.

III. EPA's Evaluation of the Waste Information and Data

A. What waste did Sandvik petition the EPA to delist?

On April 27, 2018, Sandvik petitioned the EPA to exclude an annual volume of up to 1,500 cubic yards of F006 wastewater treatment sludges generated at its facility located in Kennewick, Washington from the list of hazardous wastes contained in 40 CFR 261.31. F006 is defined in § 261.31 as ''Wastewater treatment sludges from electroplating operations . . .'' Sandvik claims that the petitioned waste does not meet the criteria for which F006 was listed (*i.e.,* cadmium, hexavalent chromium, nickel and complexed cyanide) and that there are no other factors which would cause the waste to be hazardous.

B. How does Sandvik generate the waste?

Sandvik Special Metals fabricates specialty titanium and zirconium tubing for the aeronautical, medical and nuclear industries. The filter cake waste material that is the subject of this delisting action is the combined end waste from the wastewater treatment facility (WWTF) that manages F006 chemical etching wastes, and a separate coolant process waste stream associated with Sandvik's manufacturing process. A detailed description of the processes which contribute to the filter cake, including the wastewater treatment and the manufacturing processes, associated alloys and process materials, is provided below.

Titanium and zirconium alloys are the main raw materials for the manufacturing process, with titanium being used for most products and zirconium being used only on special orders for the nuclear industry. In recent years, zirconium accounted for less than one percent of the total production, however, zirconium has accounted for up to 10 to 20 percent of the production volume historically. The manufacturing processes meet strict industry standards for Sandvik customers and are consistent at the Kennewick facility.

The standard tube making process for titanium (Ti) and zirconium (Zr) alloyed tubing includes three main steps. See Figure 1 in Sandvik's delisting petition. The alloys used in the process arrive at the Kennewick facility in the form of large diameter rough tubing (either extrusions or Trex [which is an extrusion that has been reduced once]) from one of two suppliers, Sandvik SZ in Sweden or ATI in Oregon. In the first tube-making process, the extrusions or Trex go through multiple cold pilger steps to reduce the diameter size of the tubing into seamless hollow metal tubing. The cold pilgering process uses roll dies (presses) and a tapered mandrel (the rod that supports the inside of the tube during formation) to reduce the size of the tubing cross section. A fatty acid coolant/lubricant is used to manage heat generation during the process. The number of cold pilgering steps is dependent on the available starting materials and final tube size. After each cold pilger step, the interior of the tube is cleaned in a hot alkaline solution to remove the fatty acid coolant/lubricant used in the forming process, resulting in the generation of an alkaline rinsing solution that is discharged to the WWTF and a small amount of used fatty acid coolant/lubricant, which is pumped to an underground storage tank and then batch transferred to the WWTF.

The second step in the tube forming process is a high temperature anneal step performed to relieve stress on the metal that can make it brittle after cold forming. Annealing also improves the homogeneity of the metal and can improve the ductile and toughness properties. No waste is generated during the annealing process.

During the third step, after annealing, the hollows, or final tubes are rotary straightened and cleaned in the hot alkaline solution again to remove the straightening lubrication. The cleaned hollows are open dip etched in an acidic solution to remove a small amount of metal from both the outer diameter (OD) and inner diameter (ID) surfaces. The acidic waste and rinse water from the hollow etch process is discharged to the WWTF. This acid etch step is the basis for application of the F006 listing to Sandvik's WWTF sludge, as discussed in the following section.

If the next pass is to produce a smaller OD or thinner wall hollow, the above three-step process is repeated until the desired sizing is accomplished resulting in a final tube.

[1] Washington State has promulgated regulations at WAC 173–303–910(3) corresponding to the cited federal regulation. However, Washington State has not received final authorization to implement these regulations in lieu of the federal program. As such, they are effective concurrent with 40 CFR 260.20 and 260.22 on a state-only basis.

C. How is Sandvik's waste captured by the F006 listing definition?

The listing definition for F006 waste at 40 CFR 261.31 states that the source definition of F006 wastes include:

Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

The EPA promulgated an interpretive rule (51 FR 43350 (December 2, 1986)) clarifying the scope of the EPA Hazardous Waste No. F006 contained in the list of hazardous wastes from non-specific sources of Subpart D of Part 261. This interpretive rule established that:

The F006 listing is (and always has been) therefore, inclusive of wastewater treatment sludges from only the following processes: (1) Common and precious metals electroplating, except tin, zinc (segregated basis), aluminum, and zinc-aluminum plating on carbon steel; (2) anodizing, except sulfuric acid anodizing of aluminum; (3) chemical etching and milling, except when performed on aluminum; and (4) cleaning and stripping, except when associated with tin, zinc, and aluminum plating on carbon steel.

Because the Sandvik production process that results in generation of the candidate WWTF sludge includes chemical etching other than that performed on aluminum, Sandvik's WWTF sludge meets the definition of F006 listed waste.

D. How did Sandvik sample and analyze the petitioned waste?

Sandvik conducted a detailed chemical analysis of their WWTF sludge according to a written sampling and analysis plan (SAP), provided as Attachment 2 to the delisting petition. This SAP included the following key elements:

- A description of the manufacturing and wastewater treatment processes relevant to the petitioned waste;
- An initial identification of Constituents of Potential Concern (COPCs) potentially present in the petitioned waste based on manufacturing and wastewater treatment processes;
- Development of sampling strategies to address variations and periodic fluctuations in the manufacturing and wastewater treatment processes, including obtaining representative samples to account for variations of alloys used in the manufacturing process and addition of coolant/lubricant into the filter cake.
- The proposed methodology for evaluating the resulting data with respect to anticipated delisting decision criteria; and
- A Quality Assurance Project Plan (QAPP) documenting the required quality and quantity of the data necessary for decisions based on them to be within an acceptable degree of uncertainty.

Sandvik's SAP identified an initial list of COPCs based on a consideration of constituents included in the F006 hazardous waste listing and present in the manufacturing and wastewater treatment materials and processes. See Section 2 and Table 5 of Attachment 2 in Sandvik's delisting petition. Additionally, the list of COPCs included impurities and other constituents listed in the alloys and in the process and wastewater treatment chemical Safety Data Sheets (SDS).[2] Constituents were then evaluated based on historical detections in the filter cake waste and compared to constituents listed in the following RCRA regulations, as applicable to the Kennewick facility and this specific filter cake waste:

- Constituent for which F006 was listed (40 CFR part 261 Appendix VII; WAC 173–303–082) or listed as a Land Disposal Restriction (LDR) constituent subject to treatment for F006 or identified as a constituent for which an LDR Universal Treatment Standard has been established (40 CFR 268.40 and 268.48; WAC 173–303–140) with the exception of cyanide. Cyanide was not retained as a COPC because there is no documented use of cyanide at the Kennewick facility and it was not detected in historical filter cake samples.
- Constituent has been historically detected in filter cake and was present on the Toxicity Characteristics List (40 CFR 261.24; WAC 173–303–090 Part 8), Hazardous Constituents List (40 CFR part 261 Appendix VIII; WAC 173–303–9905), and/or Groundwater Monitoring List (40 CFR part 264 Appendix IX; WAC 173–303–110(7)).
- According to the alloy composition, constituent could potentially be present in the filter cake and is listed on the Toxicity Characteristics List (40 CFR 261.24; WAC 173–303–090(8)), Hazardous Constituents List (40 CFR part 261 Appendix VIII; WAC 173–303–9905), and/or the Groundwater Monitoring List (40 CFR part 264 Appendix IX; WAC 173–303–110 Part 7).

A constituent was not retained as a COPC if it was not:

- Listed on potentially relevant regulatory lists; or
- There was no documented Kennewick facility use of the constituent, or it was a minor constituent in wastewater treatment material, not detected in historical filter cake samples, or converted to another COPC in the wastewater treatment process (*i.e.,* hydrofluoric acid is present as fluoride in the filter cake).

Based on this analysis, Sandvik's SAP proposed the following list of COPCs: Arsenic; Barium; Cadmium; Chromium (including hexavalent chromium); Cobalt; Copper; Fluoride;[3] Lead; Nickel; Silver; Tin; Vanadium; and Zinc. Details of Sandvik's identification of COPCs can be found in Table 5 in Attachment 2 to the delisting petition.

The objectives of the waste characterization sampling conducted by Sandvik were as follows:

- To supplement the existing historical data set with total and TCLP data for the identified COPCs;
- To collect samples that are representative of process variations that include processing of two different alloy materials (titanium and zirconium) and the periodic addition of the waste coolant/lubricant to the filter cake waste;
- To assess acute toxicity effects of wastes in accordance with the Washington State Department of Ecology's 80–12, Part A protocol,[4] and
- To generate a representative data set that can be used in the Delisting Risk Assessment Software (DRAS) modeling.

To achieve these objectives, Sandvik collected six (6) representative samples over three (3) sampling events that included the following scope of work:

- Each event included the collection of one filter cake sample with the used

[2] SDS constituent reporting requirements are typically ingredients which have been determined to be health hazards, and which comprise 1% or greater of the composition, except chemicals identified as carcinogens which are listed if the concentrations are 0.1% or greater. In addition, chemicals <1% (<0.1% for carcinogens) are reported if they could be released from the product at a concentration that would exceed an established Occupational Safety and Health Administration (OHSA) exposure limit. SDSs are prepared in accordance with OHSA (29 CFR 1910.1200(g)) and the Global Harmonization System.

[3] Fluoride does not meet the criteria set forth in Section 3.1 but is included in the final list of COPCs as requested by the EPA during a 17 April 2017 teleconference.

[4] This sampling requirement is in place to satisfy state-only requirements of Ecology's dangerous waste program. This requirement is considered broader in scope than the federally authorized program.

coolant/lubricant waste stream and one filter cake sample without the used coolant/lubricant waste stream;

- Since titanium raw materials are present at higher weight composition percentages than zirconium, four filter cake samples (two with coolant and two without coolant) events were obtained when only titanium alloys were being run in the manufacturing process; and
- To account for the use of zirconium, two samples (one with coolant and one without coolant) were obtained while zirconium alloys were also being run in the manufacturing process in addition to titanium alloys.[5]

All samples were analyzed for total and TCLP COPCs, where applicable. If chromium was detected at a concentration above the laboratory practical quantitation limit (PQL), a sample from the same sampling event was analyzed for hexavalent chromium. If chromium was not detected above the PQL, no additional testing was performed. This approach to sampling for chromium was used for both total and TCLP sampling.

One sample with the coolant/lubricant and one sample without the coolant/lubricant was analyzed to assess acute toxicity via bioassay as part of the first titanium-only sampling events. This combination of the filter cake production characteristics is expected to be the most conservative choice for bioassay testing, given the higher number of impurities in the titanium alloy. Additional details of Sandvik's waste characterization sampling activities are provided in Attachment 2 to the delisting petition.

D. What were the results of Sandvik's analysis of its waste?

Sandvik provided results of their waste characterization activities in Attachment 3 to the delisting petition entitled ''Sampling Results and Data Evaluation Report.'' As part of its overall delisting petition submission, Sandvik submitted a signed statement certifying that information in the petition, including their submission of waste characterization data and description of the associated sampling and analysis activities, is true, accurate and complete, and the responsibilities of the signatory of the delisting petition. See 40 CFR 260.22(i)(12).

Sandvik conducted its first sampling event on July 31, 2017, followed by two additional sampling events on August 31 and September 25, 2017. Two representative samples of the WWTF filter cake were collected during each event, one with the used coolant/lubricant waste stream and one without, for a total of six filter cake samples. Of these six samples, four were collected when only titanium alloys were being run in the manufacturing process, and two when zirconium was also being run. Each sample was a composite sample collected from four separate locations within each filter cake collection bin used to collect the filter cake following the filter press. Sandvik's delisting petition states that according to facility representatives, the filter cake generation durations and resulting volumes within the filter press during each sampling event were typical for facility operations. Additional details of Sandvik's waste characterization sampling activities can be found in Section 3 of the SAP (Attachment 2 of the delisting petition).

Sandvik performed a quality assurance/quality control review of each laboratory report, with complete results of the data validation review detailed in Appendix C of the SAP. While this review identified one constituent (arsenic) from one sampling round where the data do not fully satisfy the data quality objectives set forth in Sandvik's quality control standards, Sandvik concludes that the data are nevertheless generally suitable for their intended decision-making function. This constituent and sampling round are discussed further below.

Based on the results of filter cake characterization sampling, Sandvik concluded that all constituents other than hexavalent chromium should be retained as constituents of concern for further evaluation. Sandvik's deletion of hexavalent chromium from the list of COPCs is based on hexavalent chromium not being detected in any of the filter cake total or TCLP analysis according to the sampling methodology described above.

Sandvik compared their 2017 waste characterization sampling results to historical total and TCLP results available for several of the COPCs. The range of recent COPC results was consistent with historical results except for fluoride. Historical total fluoride concentrations of 67,500 mg/kg and 42,000 mg/kg from 1991 and 1997, respectively, were several orders of magnitude higher than recent concentrations; the highest recent concentration was 907 mg/kg. Sandvik indicates that it has progressively reduced the amount of etching in its process at the Kennewick facility, which would result in a decline in hydrofluoric acid use and fluoride in the filter cake. In addition, the collection method of the historical samples as well as the production and wastewater treatment system operations at the time of historical sampling are unknown. As a result, the 2017 samples are considered to be more representative of typical conditions for fluoride for current and future operations at the Kennewick facility.

Overall, totals concentrations from the three 2017 sampling events were within the range of historical results. In addition to fluoride, as discussed in the previous paragraph, one 2017 maximum nickel sample (425 mg/kg) exceeded the historical maximum nickel sample of 392 mg/kg. The 2017 totals samples also exceeded historical maximum concentrations for arsenic, barium, chromium, and silver, but none of these constituents had a difference of more than one order of magnitude between the 2017 and historic samples. Because most historical concentrations are from 20 or more years ago and production and collection methods are unknown, the 2017 COPC results obtained from implementation of the SAP were considered more reliable and used for the subsequent data evaluation.

Sandvik also compared the 2017 waste characterization sampling result to the toxicity characteristic (TC) regulatory standard for those waste constituents for which regulatory standards have been established. Based on this comparison, Sandvik concluded that the candidate wastes do not exhibit the toxicity characteristic. Although Sandvik did not explicitly evaluate their candidate wastes for the characteristics of ignitability, reactivity or corrosivity, the EPA agrees that process knowledge provides an adequate demonstration that the wastes in question do not exhibit the enumerated characteristics.

E. How did the EPA evaluate the risk of delisting this waste?

For this delisting determination, we assumed that the waste would be disposed in a Subtitle D landfill and we considered transport of waste constituents through ground water, surface water and air. We evaluated Sandvik's analysis of petitioned waste using the Agency's Delisting Risk Assessment Software (DRAS) to predict the concentration of hazardous constituents that might be released from the petitioned waste and to determine if the waste would pose a threat to human health and the environment. The DRAS software and associated documentation can be found at *www.epa.gov/hw/*

[5] The zirconium product requirements are more sensitive to contamination. As such, the tanks and mills are flushed prior to zirconium production. The titanium product requirements are not as sensitive; therefore, following zirconium production, the same acids and coolant/lubricants are used during titanium production.

hazardous-waste-delisting-risk-assessment-software-dras.

To predict the potential for release to groundwater from landfilled wastes and subsequent routes of exposure to a receptor, the DRAS uses dilution attenuation factors derived from the EPA's Composite Model for leachate migration with Transformation Products. From a release to ground water, the DRAS considers routes of exposure to a human receptor of ingestion of contaminated groundwater, inhalation from groundwater while showering and dermal contact from groundwater while bathing.

From a release to surface water by erosion of waste from an open landfill into storm water run-off, DRAS evaluates the exposure to a human receptor by fish ingestion and ingestion of drinking water. From a release of waste particles and volatile emissions to air from the surface of an open landfill, DRAS considers routes of exposure of inhalation of volatile constituents, inhalation of particles, and air deposition of particles on residential soil and subsequent ingestion of the contaminated soil by a child. The technical support document and the user's guide to DRAS are included in the docket.

Sandvik documented the input parameters used in their DRAS analysis, as summarized below:

TABLE 1—SANDVIK DELISTING DRAS INPUT

DRAS input parameter	Value	Assumptions
Waste Management Unit Type	Landfill	Waste planned for disposal in the Finley Buttes Municipal Landfill, Boardman, Oregon.
Waste Volume—annual generation	1,500 cubic yards/year	Conservative estimation value based on facility-specific information.
Waste Management Unit Active Life	20 years	Selected based on the DRAS default value.
Target risk—carcinogenic risk level	1×10^{-5}	Based on risk ranges in the EPA's RCRA Delisting Technical Support Document (2008).
Target risk—health quotient	1.0	Based on risk ranges in the EPA's RCRA Delisting Technical Support Document (2008).

At a target cancer risk of 1×10^{-5} and a target hazard quotient of 1.0, the DRAS program determined maximum allowable concentrations for each constituent in both the waste and the leachate at an annual waste volume of 1,500 cubic yards. Sandvik used the maximum estimated annual waste volume and the maximum reported total and estimated leachate concentrations as inputs to estimate the constituent concentrations in the ground water, soil, surface water or air. The following table documents the constituent-specific maximum total and TCLP sample results used as input to the DRAS analysis, and the resulting modeling results from DRAS. The EPA notes that it has independently conducted its own DRAS modeling run, and has verified the modeling results documented by Sandvik in its delisting petition.

TABLE 2—SAMPLING DATA AND DRAS MODELING RESULTS

Constituent of concern	Maximum observed concentration [1]		Modeling results			
			Total concentrations		TCLP concentration	
	Total [1] (mg/kg)	TCLP (mg/L) [4]	Limiting concentration (mg/kg) [2]	Limiting pathway [3]	Limiting concentration (mg/L) [2]	Limiting pathway [3]
Arsenic	4.77	0.05 U	9,840	Fish Ingestion	*0.042*	*GW Ingestion.*
Barium	24.1	0.05 U	21,300,000	Fish Ingestion	176	MCL.
Cadmium	15.0	0.05 U	37,100	Fish Ingestion	0.451	MCL.
Chromium	44.3	0.05 U	77,500	Air Particulate Inhalation.	9.54	MCL.
Cobalt	291	0.255	103,000	Air Particulate Inhalation.	1.06	GW Ingestion.
Copper	26.2	0.057	3,790,000	Fish Ingestion	120	MCL.
Fluoride	907	114	1,490,000,000	Soil	194	GW Ingestion.
Lead	11.1	0.05 U	8,870,000	Air Particulate Inhalation.	2.95	MCL.
Nickel	425	0.466	3,870,000	Air Particulate Inhalation.	66.4	GW Ingestion.
Silver	5.76	0.05 U	3,830,000	Fish Ingestion	38.8	GW Ingestion.
Tin	268	0.05 U	14,900,000,000	Soil	192,000,000	GW Ingestion.
Vanadium	1,500	0.05 U	124,000,000	Soil	16.9	GW Ingestion.
Zinc	69.4	0.233	9,810,000	Fish ingestion	992	GW Ingestion.

[1] Maximum concentration obtained during implementation of the 2017 Sampling and Analysis Plan (Geosyntec, 2017).

[2] The Limiting Concentration is the lowest risk-based concentration developed in DRAS for the potential receptor pathways and specified target risk levels. See text in Section IV.C for the EPA's consideration of limiting concentrations exceeding 1,000,000 mg/kg for total concentrations or 1,000,000 mg/L for TCLP concentrations.

[3] The Limiting Pathway is the corresponding potential receptor pathway for the Limiting Concentration.

[4] For detected constituents, the maximum analytical result was used. For non-detect constituents (annotated with a ''U''), the practical quantitation limit (PQL) was used.

[5] **Note:** Italicized cells indicate exceedance of COPC Concentration Input over the Limiting Concentration in the DRAS modeling.

F. What did the EPA conclude about Sandvik's waste?

The maximum reported concentrations of the hazardous constituents found in this waste are presented in the table above. The table also presents the maximum allowable concentrations. Except for the groundwater pathway for arsenic, the concentrations of all constituents in both the waste and the leachate are below the allowable concentrations.

For arsenic, the maximum reported concentration was undetected at a value of 0.05 mg/L, a value slightly higher than the maximum allowable TCLP concentration of 0.042 mg/L. The EPA's review of the corresponding laboratory reports indicate that the laboratory reported sample results from the July 31, 2017 characterization sampling round as non-detect based on a practical quantitation limit of 0.05 mg/L. Subsequent laboratory reports for the August 31, 2017 and October 4, 2017 characterization rounds, however, reported TCLP arsenic results as non-detect at a level of 0.001 mg/L, based on a lower method detection limit rather a practical quantitation limit. Since the total arsenic results for all characterization samples are both low and consistent, ranging from 2.02 to 4.77 mg/kg, the EPA believes that the TCLP arsenic results for the July 31, 2017 results are not likely to be materially different than lower non-detect results for the August 31, 2017 and October 4, 2017 sample results. Also, based on the difference in arsenic concentrations from the totals analysis (detected at low levels) and the TCLP samples (non-detect), arsenic appears to be relatively immobile in the filter cake. Therefore, the EPA concludes that even though the TCLP arsenic data from the August 31, 2017, laboratory report does not explicitly document satisfaction of the 0.042 mg/L TCLP arsenic delisting criterion, the overall data set clearly supports a conclusion that the TCLP arsenic results do not exceed the maximum allowable concentration of 0.042 mg/L from any of the characterization sampling rounds, and that this arsenic data quality issue is not a sufficient basis to disqualify Sandvik's waste from being delisted. If the EPA approves Sandvik's delisting petition, Sandvik must ensure that any required periodic verification sampling and analysis meet appropriate data quality standards to address this issue.

We, therefore, conclude that Sandvik's wastewater treatment sludge is not a substantial or potential hazard to human health and the environment when disposed of in a Subtitle D landfill. Further, the data presented by Sandvik in their petition supports the EPA's conclusion that the petitioned waste does not exhibit any hazardous characteristic, and that there are no other factors that would warrant retaining the waste as hazardous. On this basis, we propose to grant the Sandvik's petition to delist this waste. If this exclusion is finalized, and subject to the conditions of the final delisting, Sandvik must dispose of this waste in a Subtitle D landfill permitted or licensed by a state and will remain obligated to verify that the waste continues to meet the allowable concentrations set forth here. Sandvik must also continue to demonstrate that the waste does not exhibit any hazardous characteristics pursuant to 40 CFR part 261 Subpart C.

IV. Conditions for Exclusion

A. When would the EPA finalize the proposed delisting exclusion?

HSWA specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not make a final decision or grant an exclusion until it has addressed all timely public comments on today's proposal, including any at public hearings.

Since this rule would reduce the existing requirements for persons generating hazardous wastes, the regulated community does not need a six-month period to come into compliance in accordance with § 3010 of RCRA as amended by HSWA.

B. How will Sandvik manage the waste if it is delisted?

If the petitioned waste is delisted, Sandvik must dispose of it in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste.

C. What are the maximum allowable concentrations of hazardous constituents in the waste?

Concentrations measured in the waste of the following constituents must not exceed the concentrations in Table 3 below. The EPA notes that for barium, chromium, and silver, the DRAS model output predicts a maximum concentration in an extract of the waste that exceeds the toxicity characteristic regulatory designation level (TC Limit) for that constituent. Since wastes that are a candidate for delisting cannot exhibit a characteristic, the fourth column in Table 3 caps the maximum TCLP concentration of the waste at the toxicity characteristic regulatory level for barium, chromium and silver. These capped levels for the maximum TCLP concentration are the enforceable decision criteria for demonstrating that the waste meets delisting criteria.

TABLE 3—VERIFICATION CONSTITUENTS AND COMPLIANCE CONCENTRATIONS

Constituent	Total concentration DRAS model (mg/kg)	TCLP concentration DRAS model (mg/l)	TCLP concentration DRAS model capped at TC limit (mg/l)
Arsenic	9,840	0.042	0.042
Barium	N/A	176	100
Cadmium	37,100	0.451	0.451
Chromium	77,500	9.54	5.00
Cobalt	103,000	1.06	1.06
Copper	N/A	120	120
Fluoride	N/A	194	194
Lead	N/A	2.95	2.95
Nickel	N/A	66.4	66.4
Silver	N/A	38.8	5.00
Vanadium	N/A	16.9	16.9
Zinc	N/A	992	992

The EPA notes that in multiple instances the maximum allowable total constituent concentrations provided by the DRAS model exceed 100% of the waste—these DRAS results are an artifact of the risk calculations that do not have physical meaning. In instances where DRAS predicts a maximum constituent greater than 100 percent of the waste (that is, greater than 1,000,000 mg/kg or mg/L, respectively, for total and TCLP concentrations), the EPA is not requiring Sandvik to perform sampling and analysis for that constituent and sampling type (total or TCLP). In these instances, the corresponding entry in Table 3 above is ''N/A.''

D. How frequently must Sandvik test the waste?

Sandvik must analyze a representative sample of the wastewater treatment sludges on an annual basis to demonstrate that the constituents of concern in the petitioned waste do not exceed the concentrations of concern in section IV.C above. Sandvik must use methods with sufficient analytical sensitivity and appropriate quality control procedures. SW–846 Method 1311 must be used for generation of the leachate extract used in the testing of the subject waste. SW–846 Method 1311 is incorporated by reference in 40 CFR 260.11.

A total analysis of the waste (accounting for any filterable liquids and the dilution factor inherent in the TCLP method) may be used to estimate the TCLP concentration as provided for in section 1.2 of Method 1311. The EPA is not requiring Sandvik to use Method 1330 for extraction of wastes, since Method 1330 is applicable to API separator sludges, rag oils, slop oil emulsions, and other oil wastes derived from petroleum refining, which are fundamentally different wastes than those proposed by Sandvik for delisting.

E. What data must Sandvik submit?

Sandvik must submit the data obtained through annual verification testing to U.S. EPA Region 10, Office of Air and Waste, 1200 6th Avenue, Suite 155, OAW–150, Seattle, Washington 98101 upon each anniversary of the effective date of this exclusion. Sandvik must submit sampling data from both titanium and zirconium manufacturing processes provided both of these materials have been in production and contributed to candidate wastes within the three (3) month period prior to each anniversary of the effective date of this delisting. If both materials are not in production with the specified three-month period, then only data from that material in production need be submitted.

Sandvik must compile, summarize, and maintain on-site for a minimum of five years, records of analytical data required by this rule, and operating conditions relevant to those data analytical data. Sandvik must make those records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

F. What happens if Sandvik fails to meet the conditions of the exclusion?

If Sandvik violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion.

If the verification testing of the waste does not demonstrate compliance with the delisting concentrations described in section IV.C above, or other data (including but not limited to leachate data or groundwater monitoring data from the final land disposal facility) relevant to the delisted waste indicates that any constituent is at a concentration in waste above specified delisting verification concentrations in Table 3, Sandvik must notify the Agency within 10 days of first possessing or being made aware of the data. The exclusion will be suspended and the waste managed as hazardous until Sandvik has received written approval from the EPA to continue the exclusion. Sandvik may provide sampling results which support the continuation of the delisting exclusion.

The EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978*) et seq.* to reopen a delisting decision if we receive new information indicating that the conditions of this exclusion have been violated, or are otherwise not being met.

G. What must Sandvik do if the process changes?

If Sandvik significantly changes the manufacturing or treatment process or the chemicals used in the manufacturing or treatment process, Sandvik may not handle the wastewater treatment sludge generated from the new process under this exclusion until it has demonstrated to the EPA that the waste meets the concentrations set forth in section IV.C and that no new hazardous constituents listed in Appendix VIII of 40 CFR part 261 have been introduced. Sandvik must manage wastes generated after the process change as hazardous waste until Sandvik has received written notice from the EPA that the demonstration has been accepted.

V. How would this action affect the states?

Because the EPA is proposing to issue this exclusion under the federal RCRA delisting regulations, only states subject to federal RCRA delisting provisions will be affected. This exclusion may not be effective in states which have received authorization from the EPA to make their own delisting decisions.

The EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than the EPA's, under § 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. We urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

The EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If Sandvik manages the waste in any state with delisting authorization, Sandvik must obtain delisting authorization or other determination from the receiving state before it can manage the waste as nonhazardous in that state.

While Washington State has received final authorization to implement most of its dangerous waste program regulations in lieu of the federal program, including the listing and identification of F006 wastes (See 51 FR 3782 (January 30, 1986), it has not been authorized to implement its delisting regulations program in lieu of the federal program. The EPA notes that Washington State has provisions in the Washington Administrative Code (WAC) 173–303–910(3) similar to the federal provisions upon which this delisting is based. These provisions are in effect as a matter of state law. Thus, Sandvik must seek approval from Washington State at the state level in addition to this proposed delisting.

VI. 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 proposed action is exempt from review by the Office of Management and Budget because it is a rule of particular applicability, not general applicability.

The proposed action approves a delisting petition under RCRA for the petitioned waste at a particular facility.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This proposed action is not an Executive Order 13771 regulatory action because actions such as approval of delisting petitions under RCRA are exempted under Executive Order 12866.

C. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it only applies to a particular facility.

D. Regulatory Flexibility Act

E. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provision of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

F. Unfunded Mandates Reform Act

This proposed action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538) and does not significantly or uniquely affect small governments. The action imposes no new enforceable duty on any state, local, or tribal governments or the private sector.

G. Executive Order 13132: Federalism

This proposed 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.

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

This proposed action does not have tribal implications as specified in Executive Order 13175. This proposed action applies only to a particular facility on non-tribal land. Thus, Executive Order 13175 does not apply to this action.

I. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This proposed 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 proposed action's health and risk assessments using the Agency's Delisting Risk Assessment Software (DRAS), which considers health and safety risks to children, are described in section III.E above. The technical support document and the user's guide for DRAS are included in the docket.

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

This proposed action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

K. National Technology Transfer and Advancement Act

This proposed action does not involve technical standards as described by the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note).

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

The EPA believes that this proposed action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples. The EPA has determined that this proposed action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The Agency's risk assessment, as described in section III.E above, did not identify risks from management of this material in an authorized, solid waste landfill (*e.g.* RCRA Subtitle D landfill, commercial/industrial solid waste landfill, etc.). Therefore, the EPA believes that any populations in proximity of the landfills used by this facility should not be adversely affected by common waste management practices for this delisted waste.

M. Congressional Review Act

This proposed action is exempt from the Congressional Review Act (5 U.S.C. 801 *et seq.*) because it is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: August 21, 2018.

Jan Hastings,

Deputy Director, Office of Air and Waste.

For the reasons set out in the preamble, the EPA proposes to amend 40 CFR part 261 as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 2. Amend Table 1 of Appendix IX to Part 261 by adding the following waste stream entry ''Sandvik Special Metals'' in alphabetical order to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * * *
Sandvik Special Metals.	Kennewick, Washington.	Wastewater treatment sludges, F006, generated at Sandvik Special Metals (Sandvik) facility in Kennewick, Washington at a maximum annual rate of 1,500 cubic yards per year. The sludge must be disposed of in a Subtitle D landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted wastewater treatment sludge. The exclusion becomes effective as of [the date of final publication]. 1. *Delisting Levels:* (A) The constituent concentrations in a representative sample of the waste must not exceed the following levels: Total concentrations (mg/kg): Arsenic—9,840; Cadmium—37,100; Chromium—77,500; Cobalt—103,000. TCLP Concentrations (mg/l in the waste extract): Arsenic—0.042; Barium—100; Cadmium—0.451; Chromium—5.00; Cobalt—1.06; Copper—120; Fluoride—194; Lead—2.95; Nickel—66.4; Silver—5.00; Vanadium—16.9; Zinc—992.

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		2. *Annual Verification Testing:* To verify that the waste does not exceed the delisting concentrations specified in Section 1.A, Sandvik must collect and analyze one representative waste sample with coolant on an annual basis no later than each anniversary of the effective date of this delisting using methods with appropriate detection concentrations and elements of quality control. If both titanium and zirconium products have been in production and contributed to candidate wastes within the three-month period prior to each anniversary of the effective date of this delisting, samples of waste from both manufacturing processes must be collected for that reporting cycle. Otherwise, sampling only of that material in production within the specified three-month period is required. Sampling data must be provided to the EPA no later 60 days following each anniversary of the effective date of this delisting, or such later date as the EPA may agree to in writing. Sandvik must conduct all verification sampling according to a written sampling plan and associated quality assurance project plan that ensures analytical data are suitable for their intended use, which must be made available to the EPA upon request. Sandvik's annual submission must also include a certification that all wastes satisfying the delisting concentrations in Condition 1.A have been disposed of in a Subtitle D landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted wastewater treatment sludge. 3. *Changes in Operating Conditions:* Sandvik must notify the EPA in writing if it significantly changes the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process. Sandvik must handle wastes generated after the process change as hazardous until it has demonstrated that the wastes continue to meet the delisting concentrations in section 1.C, demonstrated that no new hazardous constituents listed in 40 CFR part 261 Appendix VIII have been introduced into the manufacturing process or waste treatment process, and it has received written approval from the EPA that it may continue to manage the waste as non-hazardous. 4. *Data Submittals:* Sandvik must submit the data obtained through verification testing or as required by other conditions of this rule to the Director, Office of Air and Waste, U.S. EPA Region 10, 1200 6th Avenue Suite 155, OAW–150, Seattle, Washington, 98070 or his or her equivalent. The annual verification data and certification of proper disposal must be submitted within 60 days after each anniversary of the effective date of this delisting exclusion, or such later date as the EPA may agree to in writing. Sandvik must compile, summarize, and maintain on-site for a minimum of five years, records of analytical data required by this rule, and operating conditions relevant to those data. Sandvik must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). If Sandvik fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA may, at its discretion, consider such failure a sufficient basis to reopen the exclusion as described in paragraph 5. 5. *Reopener Language*—(A) If, any time after disposal of the delisted waste, Sandvik possesses or is otherwise made aware of any data relevant to the delisted waste indicating that any constituent is at a higher than the specified delisting concentration, then Sandvik must report such data, in writing, to the Director, Office of Air and Waste, EPA, Region 10, or his or her equivalent, within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, the EPA will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the EPA determines that the reported information does require Agency action, the EPA will notify Sandvik in writing of the actions it believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Sandvik with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. Sandvik shall have 30 days from the date of the EPA's notice to present the information. (D) If after 30 days Sandvik presents no further information or after a review of any submitted information, the EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the EPA's determination shall become effective immediately, unless the EPA provides otherwise.
*	*	* * * * * *

[FR Doc. 2018–19595 Filed 9–11–18; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 83, No. 177
Wednesday, September 12, 2018

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS SC–18–0056; SC18–981–4]

Notice of Request for Approval of New Information Collection for Almonds Grown in California (Marketing Order No. 981)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval for ballots and a petition form used to collect nominations of members and alternates to serve on the Board. Once approved, the forms would be merged with other forms the Board and AMS uses to collect information under Federal Marketing Order No. 981, Almonds Grown in California.

DATES: Comments on this notice must be received by November 13, 2018.

Additional Information: Contact Andrew Hatch, Supervisory Marketing Specialist, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; (202) 720–2491, Fax: (202) 720–8938, or Email: *andrew.hatch@ams.usda.gov.*

Small businesses may request information on this notice 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.*

Comments: Comments are welcome and should reference OMB No. 0581–NEW and the Marketing Order for Almonds Grown in California, Marketing Order No. 981, and the date and page number of this issue of the **Federal Register**. Comments may be submitted by mail to the Docket Clerk, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Room 1406–S, Washington, DC 20250–0237; Fax: (202) 720–8938; or submitted online at *http://www.regulations.gov.* All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours or they can be viewed at *www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Title: Almonds Grown in California, Marketing Order No. 981.

OMB Number: 0581–NEW.

Expiration Date of Approval: This is a NEW collection.

Type of Request: Approval of New Information Collection.

Abstract: Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), fresh fruits, vegetables and specialty crop industries can create marketing order programs that provide an opportunity for producers, in a specified production area, to work together to solve marketing problems. The Secretary of Agriculture is authorized to oversee the marketing order operations and to consider the issuance of regulations recommended by a committee of representatives from each commodity industry.

The Almond Marketing Order, as amended, (7 CFR part 981), hereinafter referred to as the ''Order'' regulates the handling of almonds grown in California. The Order authorizes research and promotion activities, as well as quality regulations, and provides for the establishment of the Almond Board of California (Board).

The Board locally administers the Order with USDA oversight. Board members and alternates are appointed by USDA from nominations submitted by industry members to the Board. The Board conducts the nomination process with a petition form completed by individual growers and handlers to nominate themselves or others. Industry members then complete ballots to vote on those individuals whose names would be submitted to USDA for consideration for appointment to the Board. Only authorized employees of the Board, and authorized representatives of the USDA, including AMS, Specialty Crops Program's regional and headquarters staff have access to information provided on the forms.

Requesting public comments on the ballots and petition form described below is part of the process to obtain approval of the forms by the Office of Management and Budget (OMB). These forms have been designated OMB No. 0581–NEW. The forms include Independent Grower Ballot (ABC–15), Independent Handler Ballot (ABC–16), Cooperative Grower Ballot (ABC–17), Cooperative Handler Ballot (ABC–18), and Grower Petition (ABC–19). Once approved by OMB, USDA will request permission to merge the ballots and petition form into OMB No. 0581–0178 Vegetable and Specialty Crops collection that includes other forms related to the Order.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5.03 minutes per response.

Respondents: Almond producers and handlers.

Estimated Number of Respondents: 677.

Estimated Number of Responses: 677.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 56.83 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 7, 2018.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2018–19827 Filed 9–11–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 7, 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; (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 October 12, 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 person are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Office of the Chief Financial Officer

Title: Request to Change FEHB Enrollment or to Receive Plan Brochures for Spouse Equity/Temporary Continuation of Coverage Enrollees/Direct Pay Annuitants (DPRS 2809).

OMB Control Number: 0505–0024.

Summary of Collection: Title 5, U.S. Code, Chapter 89, sections 8905 and 8905a specifies the opportunities and conditions under which a retiree, survivor annuitant, separated employee, former spouse or former dependent child of a retiree, employee, or separated employee is eligible to change enrollment in the Federal Employees Health Benefits (FEHB) Program. DPRS–2809 is completed by the enrollee to make an open season enrollment change.

Need and Use of the Information: The DPRS–2809 is administered by the U.S. Department of Agriculture's National Finance Center (NFC) for use by separated employees or former spouses and former dependent children of active or separated employees. NFC determines whether all conditions permitting change in enrollment are met and implements the enrollment change. NFC also informs the FEHB carriers of the action. If this information were not collected, NFC could not comply with the provisions of title 5, U.S. Code, Chapter 89.

Description of Respondents: Individuals.

Number of Respondents: 25,000.

Frequency of Responses: Reporting: Other (One time).

Total Burden Hours: 18,750.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–19820 Filed 9–11–18; 8:45 am]

BILLING CODE 3410–KS–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Disaster Assistance Grant Application Deadlines and Funding Levels

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funds availability.

SUMMARY: As part of the Bipartisan Budget Act of 2018, Public Law 115–123, dated February 9, 2018, the Rural Utilities Service's Water and Environmental Programs (WEP) received $165,475,000 in supplemental grant funding of which $163,475,000 is available for repairs to drinking water systems and sewer and solid waste disposal systems impacted by Hurricanes Harvey, Irma, and Maria. States impacted include: Florida, Georgia, South Carolina, Texas, and the territories of Puerto Rico and Virgin Islands.

DATES: Unless otherwise specified in this Notice, applications will be accepted on a continual basis until funds are exhausted.

ADDRESSES: Entities wishing to apply for assistance, or that are in need of further information, should contact the USDA Rural Development State Office in the State where the project is located. A list of the USDA Rural Development State Offices addresses and telephone numbers is as follows:

Note: Telephone numbers are not toll-free.

Florida/Virgin Islands

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400/TDD (352) 338–3499.

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034.

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697.

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712.

Puerto Rico

USDA Rural Development State Office, IBM Building, Suite 601, 654 Munos Rivera Avenue, San Juan, PR 00918–6106, (787) 766–5095/TDD (787) 766–5332.

FOR FURTHER INFORMATION CONTACT:

Main point of contact: Derek Jones, Community Programs Specialist, Water and Environmental Programs, Rural Utilities Service, Rural Development, U.S. Department of Agriculture.

Phone: (202) 720–9640.

Fax: (202) 690–0649.

Email: derek.jones@wdc.usda.gov

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with the Program, as covered in this Notice, have been approved by the Office of Management Budget (OMB) under OMB Control Number 0572–0121.

Overview

Federal Agency Name: Rural Utilities Service (''RUS,'' an Agency of USDA in the Rural Development mission area).

Solicitation Opportunity Title: Announcement of Disaster Assistance Grant Application Deadlines and Funding Levels.

Announcement Type: Notice of Funds Availability.

Catalog of Federal Domestic Assistance (CFDA) Number: The CFDA number for this Notice is 10.760.

Dates: Unless otherwise specified in this Notice, applications will be accepted on a continual basis until funds are exhausted.

A. Program Description

This program is designed to provide supplemental grant funding for repairs to drinking water systems and sewer and solid waste disposal systems impacted by Hurricanes Harvey, Irma, and Maria in the states of Florida, Georgia, South Carolina, Texas, and the territories of Puerto Rico and Virgin Islands.

Details on eligible applicants and projects may be found in the relevant regulations listed in Section B, Eligibility Information below.

The applicable Statutory or Regulatory authority for this action includes:

- Bipartisan Budget Act of 2018, Public Law 115–123, Rural Utilities Service Rural Water and Waste Disposal Program Account.
- 2 CFR parts 200 and 400, uniform Federal grant awards regulations.

B. Federal Award Description—Disaster Assistance Grants

The Bipartisan Budget Act of 2018, Public Law 115–123, dated February 9, 2018, enables USDA Rural Development to provide: WEP $165,475,000 in supplemental grant funding of which $163,475,000 is available for repairs to drinking water systems and sewer and solid waste disposal systems impacted by Hurricanes Harvey, Irma, and Maria in the states of Florida, Georgia, South Carolina, Texas, and the territories of Puerto Rico and Virgin Islands.

C. Eligibility Information

1. *Applicant eligibility.* An eligible Applicant must:

(i) Be either a Public Body, a Nonprofit Corporation, or an Indian tribe.

(ii) Be eligible to receive a Federal loan or grant under Federal law.

(iii) Certify in writing, and the Agency shall determine and document, that (1) the Applicant is unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms, or as applicable, (2) the applicant made repairs by utilizing their own resources or by obtaining commercial credit and as a result is experiencing financial hardship that is impacting its operations and its customers.

(iv) Have the legal authority necessary for owning, constructing, operating, and maintaining the facility or service to be repaired or replaced and for obtaining security for the proposed grant. The Applicant shall be responsible for operating, maintaining, and managing the facility, and providing for its continued availability and use at reasonable user rates and charges. The Applicant shall retain this responsibility even though the facility may be operated, maintained, or managed by a third party under contract or management agreement. Applicants must submit evidence of legal authority before grant approval/obligation

(v) Demonstrate that they possess the technical, managerial, and financial capability necessary to consistently comply with pertinent Federal and State laws and requirements.

(vi) Be current on the repayment of all debts at the time they are due.

2. *Eligible facilities.* An eligible facility must serve a rural area. The term rural or rural area means a city, town, or unincorporated area that has a population of no more than 50,000 in habitants. Projects funded by the Agency may be located in non-rural areas. However, grant funds may be used to repair only that portion of the facility serving and benefiting rural areas, regardless of project location, that has a population up to 50,000.

3. *State nonmetropolitan median household income (MHI) according to the American Community Survey (ACS) five-year data (2006–2010).* An income survey may also be conducted to determine rural area income if the ACS sample size is insufficient and/or does not accurately represent the city or town's median household income. If the MHI of the population being served is less than the poverty or 80% of State Non-metro median household grant, then the project may qualify for up to 100% grant. If MHI is between 80% SNMHI and 100%, then the project may qualify for up to 75% grant. If SNMHI is over 100%, then the project is limited to 45% grant. If the project does not qualify for 100% grant, then the system may supplement the funding from applicant contribution and/or other funding sources. Median household income is according to the American Community Survey (ACS) five-year data (2006–2010).

4. *Eligible grant purposes.* Grant funds may only be used to repair damages to drinking water systems or sewer and solid waste disposal systems caused by Hurricanes Harvey, Irma, or Maria. If repairs to a system are not economically feasible or cost-effective due to the extent of the damage caused by a hurricane, WEP will consider replacement (as opposed to repair) on a case-by-case basis.

For such repairs and replacements already made to restore service, grants may be awarded to reimburse applicants for expenses incurred by the applicant. These expenses must have been incurred within two years from the date of the covered hurricane. Reimbursement must be justified by a clear demonstration of financial hardship to the system or its customers due to the use of its own funds or commercial credit to make such repairs or replacement. There shall be no reimbursement for repairs or replacements made or financed through the use of other Federal funds such as Federal Emergency Management Agency, Environmental Protection Agency, or other Federal source of assistance used for repairs or replacement, or through insurance proceeds

D. Application and Submission Information

1. *Address to Request Application Package.* The packages will be submitted to the USDA Rural Development State Office in the State where the project is located as listed in the **ADDRESSES** section of this Notice. Applicants can also apply through RUS' website for online applications, RDApply. The RDApply website link is as follows: *https://rdapply.usda.gov.*

2. *Content and Form of Application Submission.* Applicants will be required to submit the following items to the processing office, upon notification from the processing office to proceed with further development of the full application. The forms below are available on the RD website: (*https://forms.sc.egov.usda.gov/eForms/welcomeAction.do?Home*):

i. Form RD 442–7, ''Operating Budget'' or similar form.

ii. Form RD 1910–11, ''Application Certification, Federal Collection Policies for Consumer or Commercial Debts;''

iii. Form RD 400–1, ''Equal Opportunity Agreement;''

iv. Form RD 400–4, ''Assurance Agreement;''

v. Form AD–1047, ''Certification Regarding Debarment, Suspension and other Responsibility Matters;''

vii. Form AD–1049, ''Certification regarding Drug-Free Workplace Requirements (Grants) Alternative I For Grantees Other Than Individuals;''

viii. Certifications for Contracts, Grants, and Loans (Regarding Lobbying); and

ix. Certification regarding prohibited tying arrangements. Applicants that provide electric service must provide the Agency a certification that they will not require users of a water or waste facility financed under this Notice to accept electric service as a condition of receiving water assistance.

3. *Dun and Bradstreet Universal Systems (DUNS) Number and System for Award Management (SAM).* Dun and Bradstreet Data Universal Numbering System (DUNS) and System for Awards Management (SAM) Grant applicants must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and register in the System for Award Management (SAM) prior to submitting an application pursuant to 2 CFR 25.200(b). In addition, an entity applicant must maintain registration in SAM at all times during which it has an active Federal award or an application or plan under consideration by the Agency. Similarly, all recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation in accordance to 2 CFR part 170. So long as an entity applicant does not have an exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b). An applicant, unless excepted under 2 CFR 25.110(b), (c), or (d), is required to:

i. Be registered in SAM before submitting its application;

ii. Provide a valid DUNS number in its application; and

iii. Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

The Federal awarding agency may not make a federal award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant. As required by the Office of Management and Budget (OMB), all grant applications must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free number at 1–866–705–5711 or via internet at *http://fedgov.dnb.com/webform.* Additional information concerning this requirement can be obtained on the *Grants.gov* website at *http://www.grants.gov.* Similarly, applicants may register for SAM at *https://www.sam.gov* or by calling 1–866–606–8220. The applicant must provide documentation that they are registered in SAM and their DUNS number. If the applicant does not provide documentation that they are registered in SAM and their DUNS number, the application will not be considered for funding.

You will need the following information when requesting a DUNS number:

i. Legal Name of the Applicant;

ii. Headquarters name and address of the Applicant;

iii. The names under which the Applicant is doing business as (dba) or other name by which the organization is commonly recognized;

iv. Physical address of the Applicant;

v. Mailing address (if separate from headquarters and/or physical address) of the Applicant;

vi. Telephone number;

vii. Contact name and title; and

viii. Number of employees at the physical location.

4. *Submission Dates and Times.* Unless otherwise specified in this Notice, applications will be accepted on a rolling basis until funds are exhausted.

5. *Intergovernmental Review.* The following program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials, pursuant to 2 CFR part 415, subpart C, as a covered program.

6. *Funding Restrictions.* Grant funds may not be used to finance:

i. Repairs or replacement of facilities not directly impacted by Hurricanes Harvey, Irma, or Maria;

ii. Facilities which are not modest in size, design, and cost;

iii. Grant finder's fees;

iv. Any portion of the cost of a facility which does not serve a rural area as defined in this Notice;

v. That portion of project costs normally provided by a business or industrial user, such as wastewater pretreatment;

vi. Rental for the use of equipment or machinery owned by the applicant; or

vii. Other purposes not directly related to operating and maintenance of the facility being repaired or replaced.

E. Application Review Information

Within 15 days of receiving your application, RUS will send you a letter of acknowledgment. Your application will be reviewed for completeness to determine if you included all of the items required. If your application is incomplete or ineligible, RUS will return it to you with an explanation. Applicants may resubmit applications deemed incomplete or ineligible after revising them in accordance with RUS explanation.

1. *Criteria.* In the event demand for funding is greater than the amount of funds available, a priority ranking scoring system will be used to determine which projects are funded. When ranking eligible applications for consideration for limited funds, Agency officials will consider the priority items met by each application and the degree to which those priorities are met. Points will be awarded as indicated below. This is a new grant program. Some guidelines historically utilized in other grant programs informed the development of the point system.

Priorities	Points
i. *Population:* The proposed project will serve an area with a rural population:	
a. Not in excess of 1,500	30
b. More than 1,500 and not in excess of 3,000	20
c. More than 3,000 and not in excess of 5,000	15
d. Over 5,000	0
ii. *Income:* The median household income of population to be served by the proposed project is:	
a. Not in excess of 70 percent of the statewide nonmetropolitan median household income	30
b. More than 70 percent and not in excess of 80 percent of the statewide nonmetropolitan median household income	20
c. More than 80 percent and not in excess of 90 percent of the statewide nonmetropolitan median household income	10

Priorities	Points
d. More than 90 percent of the statewide nonmetropolitan Median household income	0
iii. Health Priorities:	
a. Needed to alleviate an emergency situation, correct unanticipated diminution in quantity or deterioration in quality of a water supply, or to meet Safe Drinking Water Act requirements which pertain to a water system.	25
b. Required to correct inadequacies of a wastewater disposal system, or to meet health standards which pertain to a wastewater disposal system.	25
c. Required to meet administrative orders issued to Correct local, State or Federal solid waste violations	15
iv Other Priorities:	
a. Applicant is a public body or Indian Tribe	5
b. Amount of other than RUS funds committed to the project:	
A. 50% or more	15
B. 20% to 49%	10
C. 5%–19%	5
D. Less than 5%	0
c. The utility has not been able to secure the funds needed for repairs from its own resources or from commercial credit	15
d. The proposed project will serve an area that has an unreliable quality or supply of drinking water	10

The RUS Administrator may assign up to 15 additional points that will be considered in the total points. These points will be added to address items such as geographic distribution of funds, the highest priority projects within the jurisdiction, and emergency conditions caused by the hurricanes. The Administrator may delegate the authority to assign these points to National Office staff.

2. *Review and Selection Process.* All applications will be processed and scored in the State Office and then reviewed for funding priority at the National Office. RUS will rank all qualifying applications by their final score. Applications will be selected for funding, based on the highest scores. Each applicant will be notified in writing of the score its application receives and whether it was approved for funding.

F. Federal Award Administration Information

1. *Federal Review Notices.* RUS generally notifies by mail those applicants whose projects were approved for funding. However, the receipt of an approval letter does not serve to authorize the applicant to commence performance under the grant. RUS follows the approval letter with a grant agreement containing terms and conditions for the grant. Applicants selected for funding will complete and return grant agreement, which outlines the terms and conditions of the grant award and other forms as required.

2. *Administrative and National Policy.* The items listed in Section A of this notice, and Departmental and other regulations including 2 CFR parts 180, 182, 200, 400, 421 and any successor regulations implementing the appropriate administrative and national policy requirements of this grant program, which include but are not limited to:

i. SF–270, ''Request for Advance or Reimbursement,'' will be completed by the Non-Federal Entity and submitted to either the State or National office no more frequently than monthly.

ii. Upon receipt of a properly completed SF–270, the funds will be requested through the field office terminal system. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

iii. Non-Federal Entities may use women- and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members) for the deposit and disbursement of funds.

3. *Reporting.*

i. Any change in the scope of the project or any other significant change in the project must be reported to and approved by the approval official by written amendment to the grant agreement. Any change not approved may be cause for termination of the grant.

ii. Non-Federal Entities shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. The Non-Federal Entity will provide project reports to the Agency as follows:

iii. SF–425, ''Financial Status Report (short form),'' and a project performance activity report will be required of all Non-Federal Entities on a quarterly basis, due 30 days after the end of each quarter.

iv. A final project performance report will be required with the last SF–425 due 90 days after the end of the last quarter in which the project is completed.

v. Financial reporting. The Non-Federal Entity will provide an audit report or financial statements to the Agency as follows:

vi. Non-Federal Entities expending $750,000 or more Federal funds per fiscal year will submit an audit conducted in accordance with 2 CFR part 200. The audit will be submitted within nine months after the Non-Federal Entity's fiscal year. Additional audits may be required if the project period covers more than one fiscal year.

vii. Non-Federal Entities expending less than $750,000 will provide annual financial statements covering the grant period, consisting of the organization's statement of income and expense and balance sheet signed by an appropriate official of the organization. Financial statements will be submitted within 90 days after the Non-Federal Entity's fiscal year.

G. Federal Awarding Contacts

Main point of contact: Derek Jones, Community Programs Specialist, Water and Environmental Programs, Rural Utilities Service, Rural Development, U.S. Department of Agriculture.

Phone: (202) 720–9640.

Fax: (202) 690–0649.

Email: derek.jones@wdc.usda.gov.

H. Other Information

1. Civil Rights. Programs referenced in this Notice are subject to applicable Civil Rights Laws. These laws include the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended in 1988, and Section 504 of the Rehabilitation Act of 1973.

2. Non-Discrimination Statement. In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color,

national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program. Political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at: *http://www.ascr.usda.gov/complaint_filing_cust.html,* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of a complaint form, call, (866) 632–9992. Submit your completed form or letter to USDA by:

1. *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

2. *Fax:* (202) 690–7442; or

3. *Email at: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Dated: September 6, 2018.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2018–19784 Filed 9–11–18; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2059]

Reorganization and Expansion of Foreign-Trade Zone 135 Under Alternative Site Framework; Palm Beach, Florida

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Port of Palm Beach District, grantee of Foreign-Trade Zone 135, submitted an application to the Board (FTZ Docket B–12–2018, docketed February 9, 2018) for authority to reorganize and expand under the ASF with a service area of Palm Beach County, Martin County and St. Lucie County (with the exception of Sites 1 through 4 of FTZ 218, which are located in St. Lucie County), in and adjacent to the West Palm Beach Customs and Border Protection port of entry, and FTZ 135's existing Sites 1, 4, 5, 6 and 8 would be categorized as magnet sites and Sites 2, 3, 7, 9, 10, 11 and 12 would be categorized as usage-driven sites;

Whereas, notice inviting public comment was given in the **Federal Register** (83 FR 7451–7452, February 21, 2018) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 135 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, to an ASF sunset provision for magnet sites that would terminate authority for Sites 4, 5, 6 and 8 if not activated within five years from the month of approval, and to an ASF sunset provision for usage-driven sites that would terminate authority for Sites 2, 3, 7, 9, 10, 11 and 12 if no foreign-status merchandise is admitted for a *bona fide* customs purpose within three years from the month of approval.

Dated: September 6, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2018–19851 Filed 9–11–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2058]

Approval of Subzone Status; Driftwood LNG, LLC, Sulphur, Louisiana

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment. . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the Lake Charles Harbor & Terminal District, grantee of Foreign-Trade Zone 87, has made application to the Board for the establishment of a subzone at the facility of Driftwood LNG, LLC, located in Sulphur, Louisiana (FTZ Docket B–31–2018, docketed May 17, 2018);

Whereas, notice inviting public comment has been given in the **Federal Register** (83 FR 23633, May 22, 2018) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves subzone status at the facility of Driftwood LNG, LLC, located in Sulphur, Louisiana (Subzone 87G), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Dated: September 6, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance Alternate Chairman Foreign-Trade Zones Board.

[FR Doc. 2018–19850 Filed 9–11–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2060]

Reorganization of Foreign-Trade Zone 158 Under Alternative Site Framework; Vicksburg/Jackson, Mississippi

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Greater Mississippi Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 158, submitted an application to the Board (FTZ Docket B–22–2018, docketed April 10, 2018) for authority to reorganize under the ASF with a service area of Claiborne, Hinds, Madison, Marshall, Pontotoc, Rankin, Tate, Warren and Washington Counties, Mississippi and portions of Lee and Tishomingo Counties, Mississippi, in and adjacent to the Vicksburg and Greenville (Mississippi), Memphis (Tennessee) and Huntsville (Alabama) Customs and Border Protection ports of entry, and FTZ 158's existing Sites 2, 10, 11, 14, 15, 16, 17 and 18 would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (83 FR 17144, April 18, 2018) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 158 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to an ASF sunset provision for magnet sites that would terminate authority for Sites 10, 11, 14, 15, 16, 17 and 18 if not activated within five years from the month of approval.

Dated: September 6, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2018–19843 Filed 9–11–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2057]

Reorganization of Foreign-Trade Zone 105 Under Alternative Site Framework Providence, Rhode Island

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Rhode Island Commerce Corporation, grantee of Foreign-Trade Zone 105, submitted an application to the Board (FTZ Docket B–4–2018, docketed January 25, 2018) for authority to reorganize under the ASF with a service area of the Counties of Bristol, Kent, Newport, Providence and Washington, Rhode Island, in and adjacent to the Providence Customs and Border Protection port of entry, and FTZ 105's existing Sites 1, 2 and 3 would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (83 FR 4466, January 31, 2018) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 105 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to an ASF sunset provision for magnet sites that would terminate authority for Sites 2 and 3 if not activated within five years from the month of approval.

Dated: September 6, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2018–19846 Filed 9–11–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2061]

Reorganization of Foreign-Trade Zone 179 Under Alternative Site Framework, Madawaska, Maine

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Madawaska Foreign-Trade Zone Corporation, grantee of Foreign-Trade Zone 179, submitted an application to the Board (FTZ Docket B–5–2018, docketed January 25, 2018) for authority to reorganize under the ASF with a service area of the towns of Fort Kent, Frenchville, Grand Isle, Madawaska, St. Agatha and Van Buren, Maine, in and adjacent to the Madawaska Customs and Border Protection port of entry, and FTZ 179's existing Site 1 would be removed;

Whereas, notice inviting public comment was given in the **Federal Register** (83 FR 4466, January 31, 2018), and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 179 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and to the Board's standard 2,000-acre activation limit for the zone.

Dated: September 6, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2018–19844 Filed 9–11–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–855]

Polyethylene Terephthalate Resin From Canada: Notice of Rescission of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) is rescinding its administrative review of polyethylene terephthalate resin from Canada for the period or review (POR) May 1, 2017, through April 30, 2018.

DATES: Applicable September 12, 2018.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan, 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) 482–4081.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2018, Commerce published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on polyethylene terephthalate resin from Canada for the POR.[1] On May 31, 2018, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), Commerce received a timely request from Compagnie Selenis Canada (Selenis) to conduct an administrative review.[2]

Pursuant to this request and in accordance with 19 CFR 351.221(c)(1)(i), on July 12, 2018, Commerce published a notice of initiation of an administrative review of the antidumping duty order on polyethylene terephthalate resin from Canada.[3] On July 18, 2018, Commerce issued its antidumping duty questionnaire to Selenis. On August 3, 2018, Selenis withdrew its request for an administrative review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review if the party that requested the review withdraws its request within 90 days of the publication date of the notice of initiation of the requested review. Selenis withdrew its review request before the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of polyethylene terephthalate resin from Canada. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period May 1, 2017, through April 30, 2018, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 41 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice also serves as a final reminder to importers for whom this review is being rescinded of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is published in accordance with section 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: September 6, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2018–19831 Filed 9–11–18; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 83 FR 19047 (May 1, 2018).

[2] *See* Letter from Selenis, ''Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Resin from Canada: Request for Review,'' dated May 31, 2018.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Review,* 83 FR 32270 (July 12, 2018) (*Initiation Notice*).

[4] *See* Letter from Selenis, ''Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Resin from Canada: Withdrawal of Request for Review,'' dated August 3, 2018.

BUREAU OF CONSUMER FINANCIAL PROTECTION

Credit Union Advisory Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Credit Union Advisory Council (CUAC or Council) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Council.

DATES: The meeting date is Thursday, September 27, 2018, from approximately 9:30 a.m. to 4 p.m. eastern daylight time.

ADDRESSES: The meeting location is the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Crystal Dully, Outreach and Engagement Associate, Consumer Advisory Board and Councils Office, External Affairs, at 202–435–9588, *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the CUAC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau of Consumer Financial Protection by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director established the Credit Union Advisory Council under agency authority.

Section 3 of the CUAC Charter states: ''The purpose of the Advisory Council is to advise the Bureau in the exercise of its functions under the federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less.''

II. Agenda

The Credit Union Advisory Council will discuss policy issues related to financial technology.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CUAC members for consideration.

Individuals who wish to join the Credit Union Advisory Council must RSVP via this link *https://consumer-financial-protection-bureau.forms.fm/september-27-advisory-board-and-council-meeting* by noon, September 26, 2018. Members of the public must RSVP by the due date.

III. Availability

The Council's agenda will be made available to the public on Wednesday September 12, 2018, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Dated: September 6, 2018.

Kirsten Sutton,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2018–19788 Filed 9–11–18; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Community Bank Advisory Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Community Bank Advisory Council (CBAC or Council) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Council.

DATES: The meeting date is Thursday, September 27, 2018, from approximately 9:30 a.m. to 4:00 p.m. eastern daylight time.

ADDRESSES: The meeting location is the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Crystal Dully, Outreach and Engagement Associate, Consumer Advisory Board and Councils Office, External Affairs, at 202–435–9588, *CFPB_CABandCouncilsEvents@cfpb.gov*. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the CBAC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau of Consumer Financial Protection by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director established the Community Bank Advisory Council under agency authority.

Section 3 of the CBAC Charter states: ''The purpose of the Advisory Council is to advise the Bureau in the exercise of its functions under the federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less.''

II. Agenda

The Community Bank Advisory Council will discuss policy issues related to financial technology.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. CFPB will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CBAC members for consideration.

Individuals who wish to join the Community Bank Advisory Council must RSVP via this link *https://consumer-financial-protection-bureau.forms.fm/september-27-advisory-board-and-council-meeting* by noon, September 26, 2018. Members of the public must RSVP by the due date.

III. Availability

The Council's agenda will be made available to the public on Wednesday September 26, 2018, via *consumerfinance.gov*. Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov*.

Dated: September 6, 2018.

Kirsten Sutton,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2018–19787 Filed 9–11–18; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Consumer Advisory Board Subcommittee Meetings

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Consumer Advisory Board (CAB or Board) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Board.

DATES: The meeting date is Thursday, September 27, 2018, from approximately 9:30 a.m. to 4:00 p.m. eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Crystal Dully, Outreach and Engagement Associate, Advisory Board and Councils Office, External Affairs, at 202–435–9588, *CFPB_CABandCouncilsEvents@cfpb.gov*. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Charter of the Consumer Advisory Board states that:

> The purpose of the Board is outlined in section 1014(a) of the Dodd-Frank Act, which states that the Board shall ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.

To carry out the Board's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the Bureau. The Board will generally serve as a vehicle for market intelligence and expertise for the Bureau. Its objectives will include identifying and assessing the impact on consumers and other market participants of new, emerging, and changing products, practices, or services.

II. Agenda

The Consumer Advisory Board will discuss policy issues related to financial technology.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. CFPB will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CAB members for consideration.

Individuals who wish to join the Consumer Advisory Board must RSVP via this link *https://consumer-financial-protection-bureau.forms.fm/september-27-advisory-board-and-council-meeting* by noon, September 26, 2018. Members of the public must RSVP by the due date.

III. Availability

The Board's agenda will be made available to the public on Wednesday, September 26, 2018, via *consumerfinance.gov*. Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov*.

Dated: September 6, 2018.

Kirsten Sutton,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2018–19789 Filed 9–11–18; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0094]

Agency Information Collection Activities; Comment Request; Grantee Reporting Form—Rehabilitation Services Administration (RSA) Annual Payback Report

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 13, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0094. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9088, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Karen Holliday, 202–245–7318.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in

response to this notice will be considered public records.

Title of Collection: Grantee Reporting Form—Rehabilitation Services Administration (RSA) Annual Payback Report.

OMB Control Number: 1820–0617.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households; Private Sector.

Total Estimated Number of Annual Responses: 11,790.

Total Estimated Number of Annual Burden Hours: 4,858.

Abstract: Under Section 302 of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA), hereafter referred to as ''The Act,'' the RSA provides Long-Term Training grants to academic institutions to support scholarship assistance to scholars. Scholars who receive scholarships under this program are required to work within the public rehabilitation program, such as with a State vocational rehabilitation agency, or an agency or organization that has a service arrangement with a State vocational rehabilitation agency, in qualified employment fields, which include rehabilitation counseling, administration, supervision, teaching or research in vocational rehabilitation, supported employment, or independent living rehabilitation of individuals with disabilities, especially individuals with significant disabilities. The scholar is required to work two years in such settings for every year of full-time scholarship support. The service obligation for the scholar who matriculated part time, is based on the equivalent total of actual academic years of training received. The program regulations at 34 CFR 386.33–386.36 and 386.40–386.43 detail the payback provisions and the RSA scholars' requirements to comply with them.

Section 302 (b)(2)(C) of the Act requires that data on the employment of scholars are accurate, including tracking of scholars' employment status and location of former scholars supported under the RLTT grants in order to ensure that scholars are meeting the payback requirements.

In addition to meeting the requirement that all scholars be tracked, the data collected will provide performance data relevant to the rehabilitation fields and degrees pursued by RSA scholars, as well as the funds owed and the rehabilitation work completed by them. These data are used to assess program effectiveness and efficiency, and to meet the reporting requirements of the Government Performance and Results Act (GPRA).

RSA is requesting a revision of the currently approved collection for grantees (Institutions of Higher Education) to submit an Annual Payback Report through the online RSA Management Information System (MIS). To collect the needed data, RSA created the revised Payback Information Management System (PIMS). Through the PIMS grantees, scholars and employers report data electronically.

Dated: September 6, 2018.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–19745 Filed 9–11–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–82–6]

Application To Amend Presidential Permit; Vermont Electric Power Company, Inc., as Agent for the Joint Owners in the Highgate Interconnection Facilities

AGENCY: Office of Electricity, DOE.

ACTION: Notice of application.

SUMMARY: Vermont Electric Power Company, Inc. (''VELCO''), as operating-and-management agent for the Joint Owners of the Highgate Interconnection Facilities (the ''Highgate Joint Owners'') filed an application to amend PP–82, issued on May 14, 1985 and amended on March 1, 1994, September 3, 2003, February 7, 2005, May 3, 2016 and January 8, 2018. VELCO requested that DOE reflect changes in ownership of the Highgate Interconnection Facilities and transfer the ownership interests in the Highgate Interconnection Facilities from two of the Highgate Joint Owners to the third Highgate Joint Owner.

DATES: Comments or motions to intervene must be submitted on or before October 12, 2018.

ADDRESSES: Comments or motions to intervene should be addressed as follows: Office of Electricity (OE–20), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at 202–586–5260, or by email to *Christopher.Lawrence@hq.doe.gov;* Christopher Drake (Program Attorney) at 202–586–2919, or by email to *Christopher.Drake@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (E.O.) 10485, as amended by E.O. 12038.

On August 13, 2018, VELCO filed an application with DOE, as required by 10 CFR 205.322, requesting that DOE amend PP–82–5 to reflect a change in names and ownership interests and authorize, under Article 10 of PP–82–5, the transfer of the Highgate Interconnection Facilities so that Vermont Transco LLC (Transco) will acquire 100% of the ownership interest in the facility from the two other Highgate Joint Owners: the Town of Stowe Electric Department and the City of Burlington Electric Department. Transco would then become sole owner of the Highgate Interconnection Facilities.

The international transmission facilities authorized by Presidential Permit No. PP–82, as amended, include a back-to-back converter station in Highgate, Vermont, and a 345 kilovolt (kV) transmission line extending approximately 7.5 miles from the converter station to the United States-Canada border in Franklin, Vermont. VELCO does not propose to make any physical changes to the Highgate Interconnection Facilities, but rather asks the Department to amend the permit to reflect the change in ownership of the Highgate Transmission Facility.

Procedural Matters: Any person may comment on this application by filing such comment at the address provided above. Any person seeking to become a party to this proceeding must file a motion to intervene at the address provided above in accordance with Rule 214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure (18 CFR 385.214). Two copies of each comment or motion to intervene should be filed with DOE on or before the date listed above.

Additional copies of such motions to intervene also should be filed directly with Mr. Colin Owyang, Vice President, General Counsel & Corporate Secretary, Vermont Electric Power Company, Inc., 366 Pinnacle Ridge Road, Rutland, VT 05701, *cowyang@velco.com* AND Margaret H. Claybour, Esq., Van Ness Feldman, LLP, 1050 Thomas Jefferson Street NW, Suite 700, Washington, DC 20007–3877, *mhc@vnf.com.*

Before a Presidential permit may be granted or amended, DOE must determine that the proposed action will not adversely impact the reliability of

the U.S. electric power supply system. In addition, DOE will consider the environmental impacts of the proposed action (*i.e.,* granting the Presidential permit or amendment, with any conditions and limitations, or denying the permit) according to the standards of the National Environmental Policy Act of 1969, as amended. DOE also must obtain the favorable recommendation of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded electronically at *http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulatio-2.* Upon reaching the home page, select ''Pending Applications.''

Signed in Washington, DC, on August 31, 2018.

Christopher A. Lawrence,

Program and Management Analyst, Office of Electricity.

[FR Doc. 2018–19842 Filed 9–11–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board; Teleconference

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference call of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 20, 2018, from 3 p.m. to 4 p.m. (EDT). To receive the call-in number and passcode, please contact the Board's Designated Federal Officer at the address or phone number listed below.

FOR FURTHER INFORMATION CONTACT: Michael Li, Senior Policy Advisor, Office of Energy Efficiency and Renewable Energy, US Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585. Phone number 202–287–5718, and email: *michael.li@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Discuss logistics and recommendations from STEAB to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Michael Li at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Signed in Washington, DC, on September 6, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–19828 Filed 9–11–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Biological and Environmental Research Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Biological and Environmental Research Advisory Committee (BERAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, October 18, 2018; 8:30 a.m.—5:30 p.m. and Friday, October 19, 2018; 8:30 a.m.—12:30 p.m.

ADDRESSES: Hilton Washington DC/Rockville Hotel & Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Dr. Tristram West, Designated Federal Officer, BERAC, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–23/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585–1290. Phone 301–903–5155; fax (301) 903–5051 or email: *tristram.west@science.doe.gov.* The most current information concerning this meeting can be found on the website: *http://science.energy.gov/ber/berac/meetings/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda Topics

- News from the Office of Science
- News from the Office of Biological and Environmental Research (BER)
- News from the Biological Systems Science and Climate and Environmental Sciences Divisions
- Workshop briefings
- Subcommittee briefing
- Science talks
- New business
- Public comment

Public Participation: The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Tristram West at *tristram.west@science.doe.gov* (email) or 301–903–5051 (fax). You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will be limited to five minutes each.

Minutes: The minutes of this meeting will be available for public review and copying within 45 days at the BERAC website: *http://science.energy.gov/ber/berac/meetings/berac-minutes/.*

Signed in Washington, DC on September 6, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–19830 Filed 9–11–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Case No. CR–007]

Energy Conservation Program: Decision and Order Granting a Waiver to ITW Food Equipment Group, LLC From the Department of Energy Commercial Refrigeration Equipment Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of decision and order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of a Decision and Order (Case No. CR–007) that grants to ITW Food Equipment Group, LLC (ITW) a waiver from specified portions of the DOE test procedure for determining the energy consumption of commercial refrigerators, freezers, and refrigerator-freezers (collectively, ''commercial refrigeration equipment''). Under the Decision and Order, ITW is required to test and rate specified basic models of its commercial refrigeration equipment in accordance with a specified method.

DATES: The Decision and Order is effective on September 12, 2018. The Decision and Order will terminate in conjunction with any future updates to the test procedure for commercial refrigeration equipment located in 10 CFR part 431, subpart C, appendix B. At such time, ITW must use the relevant test procedure for this equipment for any testing to demonstrate compliance with standards, and any other representations of energy use.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *AS_Waiver_Requests@ee.doe.gov.*

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 287–6111. Email: *Jennifer.Tiedeman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 431.401(f)(2)), DOE gives notice of the issuance of its Decision and Order as set forth below. The Decision and Order grants ITW a waiver from the applicable test procedure in 10 CFR part 431, subpart C, appendix B for specified basic models of commercial refrigeration equipment, provided that ITW tests and rates such equipment using the alternate test procedure specified in the Decision and Order. ITW's representations concerning the energy consumption of the specified basic models must be based on testing consistent with the provisions and restrictions in the alternate test procedure set forth in the Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy consumption of this equipment. 42 U.S.C. 6314(d).

Consistent with 10 CFR 431.401(j), not later than November 13, 2018, any manufacturer currently distributing in commerce in the United States equipment employing a technology or characteristic that results in the same need for a waiver from the applicable test procedure must submit a petition for waiver. Manufacturers not currently distributing such equipment in commerce in the United States must petition for and be granted a waiver prior to the distribution in commerce of that equipment in the United States. Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 431.401.

Signed in Washington, DC, on September 6, 2018.

Annamaria Garcia,

Director of Weatherization and Intergovernmental Programs, Energy Efficiency and Renewable Energy.

Case #CR–007

Decision and Order

I. Background and Authority

The Energy Policy and Conservation Act of 1975 (EPCA),[1] Public Law 94–163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and industrial equipment. Title III, Part C [2] of EPCA established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency for certain types of industrial equipment. This equipment includes commercial refrigeration equipment, the focus of this document. (42 U.S.C. 6311(a)(1)(E))

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of the Act include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of covered equipment during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) The test procedure for commercial refrigeration equipment is contained in the Code of Federal Regulations (CFR) at 10 CFR part 431, subpart C, appendix B, ''*Amended Uniform Test Method for the Measurement of Energy Consumption of Commercial Refrigerators, Freezers, and Refrigerator-Freezers.*''

Under 10 CFR 431.401, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic models for which the waiver was requested contain a design characteristic that prevents testing of the basic models according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic models in a manner so unrepresentative of their true energy or water consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). DOE may grant the

[1] All references to EPCA in this document refer to the statute as amended through EPS Improvement Act of 2017, Public Law 115–115 (January 12, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated as Part A–1.

waiver, subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(2).

II. ITW's Petition for Waiver: Assertions and Determinations

By letter dated December 20, 2016 (and supplemented on May 3, 2017), ITW submitted a petition for waiver and application for interim waiver for certain basic models of commercial refrigeration equipment that are required to be tested according to DOE's test procedure at 10 CFR part 431, subpart C, appendix B. Specifically, ITW requested a waiver for certain Innopod temperature-controlled grocery and general merchandise system (Innopod) basic models of commercial refrigeration equipment. On July 19, 2017, DOE published a notice that announced receipt of ITW's petition for waiver (hereafter ''notice of petition for waiver''), and granted an interim waiver to ITW. 82 FR 33081.

DOE's current test procedure references Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006 and Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 1200 (I–P)–2010, which further references American National Standards Institute/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ANSI/ASHRAE) Standard 72 (incorporated by reference at 10 CFR 431.63(c) and (d)). ITW asserted that the current test procedures do not account for the unique operating characteristics of its Innopod basic models, including floating suction temperatures for individual compartments, different typical door-opening cycles, and a high-temperature ''ambient'' compartment. ITW asserted that its petition meets both conditions of 10 CFR 431.401(f)(2) for granting waivers, namely that (1) the basic models contain one or more design characteristics that prevent testing according to the prescribed test procedures; and (2) the prescribed test procedures evaluate the basic models in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. ITW submitted to DOE an alternate test procedure that it stated allows for testing its specified Innopod basic models.

ITW's petition recommended an alternate test using an ''inverse refrigeration load'' test, various calculations to account for refrigeration system and component energy consumption, and adjustments to the door opening requirements based on typical use in the field to accommodate for the basic models' multiple thermally separated, temperature controlled compartments supplied with refrigerant from a single condensing unit. ITW's recommended refrigeration system calculations rely on the current calculations and assumptions used for testing remote condensing commercial refrigeration equipment in accordance with the DOE test procedure.

As noted in the notice of petition for waiver, DOE granted ITW an interim waiver and required that ITW test and rate the specified basic models according to an alternate procedure. The alternate procedure granted by DOE was similar to that requested by ITW, but with minor modifications. Those modifications included clarifications of how ITW should determine the basic models and adjust certain aspects of the requested alternate test procedure regarding ambient test conditions, reference to the current version of the AHRI 1200 industry standard, and clarifications to certain calculations. 82 FR 33081, 33083–33084. DOE received no comments in response to the notice of petition for waiver.

DOE understands that absent a waiver, the basic models identified by ITW in its petition cannot be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. DOE has reviewed the recommended procedure suggested by ITW and concludes that it will allow for the accurate measurement of the energy use of the equipment, while alleviating the testing problems associated with ITW's implementation of DOE's applicable commercial refrigeration equipment test procedure for the specified Innopod basic models. However, as in the interim test procedure waiver, DOE has clarified how ITW should determine basic models, as discussed in this notice, and adjusted certain aspects of the requested alternate test procedure regarding ambient test conditions, referenced industry standards, and calculations.

In this Decision and Order, DOE requires that ITW test and rate specific basic models of commercial refrigeration equipment according to the alternate test procedure specified in this Decision and Order, which is identical to that provided by DOE in the interim waiver.

In its petition, ITW sought a test procedure waiver for certain basic models. This Decision and Order is applicable only to the basic models listed and does not extend to any other basic models. ITW may request that the scope of this waiver be extended to include additional basic models that employ the same technology as those listed in this waiver. 10 CFR 431.401(g). ITW may also submit another petition for waiver from the test procedure for additional basic models that employ a different technology and meet the criteria for test procedure waivers. 10 CFR 431.401(a)(1).

DOE notes that it may modify the waiver at any time upon DOE's determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, ITW may request that DOE rescind or modify the waiver if the company discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2). As set forth above, the test procedure specified in this Decision and Order is not the same as the test procedure offered by ITW. If ITW believes that the alternate test method it suggested provides representative results and is less burdensome than the test method required by this Decision and Order, ITW may submit a request for modification under 10 CFR 431.401(k)(2) that addresses the concerns that DOE has specified with that procedure. ITW may also submit another less burdensome alternative test procedure not expressly considered in this notice under the same provision.

III. Order

After careful consideration of all the material submitted by ITW in this matter, it is *ordered* that:

(1) ITW must, as of the date of publication of this Order in the **Federal Register**, test and rate the following ITW basic models as set forth in paragraph (2) below:

30–XX–X5–AAAAR, 30–XX–X5–AAARA, 30–XX–X5–AAARR, 30–XX–X5–AAAFA, 30–XX–X5–AAAFR, 30–XX–X5–AARAA, 30–XX–X5–AARAR, 30–XX–X5–AARRA, 30–XX–X5–AARRR, 30–XX–X5–AARFA, 30–XX–X5–AARFR, 30–XX–X5–AAFAA, 30–XX–X5–AAFAR, 30–XX–X5–AAFRA, 30–XX–X5–AAFRR, 30–XX–X5–AAFFA, 30–XX–X5–AAFFR, 30–XX–X5–ARAAA, 30–XX–X5–ARAAR, 30–XX–X5–ARARA, 30–XX–X5–ARARR, 30–XX–X5–ARAFA, 30–XX–X5–ARAFR, 30–XX–X5–ARRAA, 30–XX–X5–ARRAR, 30–XX–X5–ARRRA, 30–XX–X5–ARRRR, 30–XX–X5–ARRFA, 30–XX–X5–ARRFR, 30–XX–X5–ARFAA, 30–XX–X5–ARFAR, 30–XX–X5–ARFRA, 30–XX–X5–ARFRR, 30–XX–X5–ARFFA, 30–XX–X5–ARFFR, 30–XX–X5–AFAAA, 30–XX–X5–

AFAAR, 30–XX–X5–AFARA, 30–XX–X5–AFARR, 30–XX–X5–AFAFA, 30–XX–X5–AFAFR, 30–XX–X5–AFRAA, 30–XX–X5–AFRAR, 30–XX–X5–AFRRA, 30–XX–X5–AFRRR, 30–XX–X5–AFRFA, 30–XX–X5–AFRFR, 30–XX–X5–AFFAA, 30–XX–X5–AFFAR, 30–XX–X5–AFFRA, 30–XX–X5–AFFRR, 30–XX–X5–RAAAA, 30–XX–X5–RAAAR, 30–XX–X5–RAARA, 30–XX–X5–RAARR, 30–XX–X5–RAAFA, 30–XX–X5–RAAFR, 30–XX–X5–RARAA, 30–XX–X5–RARAR, 30–XX–X5–RARRA, 30–XX–X5–RARRR, 30–XX–X5–RARFA, 30–XX–X5–RARFR, 30–XX–X5–RAFAA, 30–XX–X5–RAFAR, 30–XX–X5–RAFRA, 30–XX–X5–RAFRR, 30–XX–X5–RAFFA, 30–XX–X5–RAFFR, 30–XX–X5–RRAAA, 30–XX–X5–RRAAR, 30–XX–X5–RRARA, 30–XX–X5–RRARR, 30–XX–X5–RRAFA, 30–XX–X5–RRAFR, 30–XX–X5–RRRAA, 30–XX–X5–RRRAR, 30–XX–X5–RRRRA, 30–XX–X5–RRRFA, 30–XX–X5–RRFAA, 30–XX–X5–RRFAR, 30–XX–X5–RRFRA, 30–XX–X5–RRFFA, 30–XX–X5–RFAAA, 30–XX–X5–RFAAR, 30–XX–X5–RFARA, 30–XX–X5–RFARR, 30–XX–X5–RFAFA, 30–XX–X5–RFAFR, 30–XX–X5–RFRAA, 30–XX–X5–RFRAR, 30–XX–X5–RFRRA, 30–XX–X5–RFRFA, 30–XX–X5–RFFAA, 30–XX–X5–RFFAR, 30–XX–X5–RFFRA, 30–XX–X5–FAAAA, 30–XX–X5–FAAAR, 30–XX–X5–FAARA, 30–XX–X5–FAARR, 30–XX–X5–FAAFA, 30–XX–X5–FAAFR, 30–XX–X5–FARAA, 30–XX–X5–FARAR, 30–XX–X5–FARRA, 30–XX–X5–FARRR, 30–XX–X5–FARFA, 30–XX–X5–FARFR, 30–XX–X5–FAFAA, 30–XX–X5–FAFAR, 30–XX–X5–FAFRA, 30–XX–X5–FAFRR, 30–XX–X5–FRAAA, 30–XX–X5–FRAAR, 30–XX–X5–FRARA, 30–XX–X5–FRARR, 30–XX–X5–FRAFA, 30–XX–X5–FRAFR, 30–XX–X5–FRRAA, 30–XX–X5–FRRAR, 30–XX–X5–FRRRA, 30–XX–X5–FRRFA, 30–XX–X5–FRFAA, 30–XX–X5–FRFAR, 30–XX–X5–FRFRA, 30–XX–X5–FFAAA, 30–XX–X5–FFAAR, 30–XX–X5–FFARA, 30–XX–X5–FFARR, 30–XX–X5–FFRAA, 30–XX–X5–FFRAR, 30–XX–X5–FFRRA, 30–XX–X4A–AAAR, 30–XX–X4A–AARA, 30–XX–X4A–AARR, 30–XX–X4A–ARAA, 30–XX–X4A–ARAR, 30–XX–X4A–ARRA, 30–XX–X4A–ARRR, 30–XX–X4A–AFAA, 30–XX–X4A–AFAR, 30–XX–X4A–AFRA, 30–XX–X4A–AFRR, 30–XX–X4A–RAAA, 30–XX–X4A–RAAR, 30–XX–X4A–RARA, 30–XX–X4A–RARR, 30–XX–X4A–RRAA, 30–XX–X4A–RRAR, 30–XX–X4A–RRRA, 30–XX–X4A–RFAA, 30–XX–X4A–RFAR, 30–XX–X4A–RFRA, 30–XX–X4A–FAAA, 30–XX–X4A–FAAR, 30–XX–X4A–FARA, 30–XX–X4A–FARR, 30–XX–X4A–FRAA, 30–XX–X4A–FRAR, 30–XX–X4A–FRRA, 30–XX–X4A–FFAA, 30–XX–X4A–FFAR, 30–XX–X4A–FFRA, 30–XX–X4B–AAAR, 30–XX–X4B–AARA, 30–XX–X4B–AARR, 30–XX–X4B–AAFA, 30–XX–X4B–AAFR, 30–XX–X4B–ARAA, 30–XX–X4B–ARAR, 30–XX–X4B–ARRA, 30–XX–X4B–ARRR, 30–XX–X4B–ARFA, 30–XX–X4B–ARFR, 30–XX–X4B–AFAA, 30–XX–X4B–AFAR, 30–XX–X4B–AFRA, 30–XX–X4B–AFRR, 30–XX–X4B–AFFA, 30–XX–X4B–AFFR, 30–XX–X4B–RAAA, 30–XX–X4B–RAAR, 30–XX–X4B–RARA, 30–XX–X4B–RARR, 30–XX–X4B–RAFA, 30–XX–X4B–RAFR, 30–XX–X4B–RRAA, 30–XX–X4B–RRAR, 30–XX–X4B–RRRA, 30–XX–X4B–RRFA, 30–XX–X4B–RFAA, 30–XX–X4B–RFAR, 30–XX–X4B–RFRA, 30–XX–X4B–RFFA, 30–XX–XX–3–AAR, 30–XX–XX–3–ARA, 30–XX–XX–3–ARR, 30–XX–XX–3–RAA, 30–XX–XX–3–RAR, and 30–XX–XX–3–RRA.

(2) The applicable method of test for the ITW basic models listed in paragraph (1) is the test procedure for commercial refrigeration equipment prescribed by DOE at 10 CFR part 431, subpart C, appendix B, with the following modifications:

For the purpose of testing and rating, the Ambient (75 °F) compartment is treated as a Medium (Refrigerator at 75 °F) compartment. All volume and energy consumption calculations will be included within the Medium (Refrigerator 38 °F) category and summed with other Medium (Refrigerator 38 °F) compartment(s) calculations. Compartments that are convertible between ambient and refrigerator temperature ranges shall be tested at the refrigerator temperature (38 °F). Compartments that are convertible between refrigerator and freezer (0 °F) temperature ranges shall be tested at both temperatures.

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Test Condition/s or Calculation/s	Alternate Innopod Test Procedure
Test Method	"Inverse Refrigeration Load" test Allows energy (Heat) loss at a rate and delta-T equivalent to energy gains of a standard refrigerated cabinet.
Ambient	Dry Bulb: 75.2 °F ±1.8 °F Wet Bulb: 64.4 °F±1.8 °F
Integrated Average Temperature (IAT) Simulated Product vs. Test Ambient Delta-T	Refrigerator: (75.2 °F + 75.2 °F – 38 °F) = 112.4 °F ±2 °F Freezer: (75.2 °F + 75.2 °F – 0 °F) = 150.4 °F ±2 °F Ambient: (75.2 °F + 75.2 °F – 75 °F) = 75.4 °F ±2 °F *To ensure compartment temperature stability, the average of all temperature measurements at the end of the test period must be no lower than the average of all temperature measurements at the start of the test period. Inside / Outside / Delta-T Refrigerator: 112.4 °F / 75.2 °F / 37.2 °F Freezer: 150.4 °F / 75.2 °F / 75.2 °F Ambient: 75.04 °F / 75.2 °F / 0.4 °F Heat – LOSS = Heat – GAIN as prescribed in the test procedure
Door-Opening Requirement	Door openings shall start 3 hours after concluding stabilization period. Open each door for 8 seconds, every 2 hours, for 10 consecutive hours. (6 door cycles) (3 "load" and "unload" cycles) > Stock (load) + Retrieve (un-load) = Cycle (turn)
Calculation of Refrigeration Load	Total energy added divided by the total test time. "Inverse Refrigeration Load" $Q = \frac{\text{Win (watt-hour)} \times 3.412 \text{ (BTU/watt-hour)}}{\text{t (Hr.)}} = \text{(BTU/Hr.)}$ Where: Win = energy input measured over the test period for all energized components (heaters, controls, and fans) located in the refrigerated compartments. Anti-sweat heaters shall be de-energized for the test. t = test duration (24 hours) Provides the "energy removed" by infiltration.
Adjusted Dew Point & EER AHRI 1200-2010 Table 1, EER	Dew Point (D.P.): Derived from standard industry design practices, "as the customary saturated vapor temperature of the refrigerant as it leaves the cabinet through the suction line." The Energy Efficiency Ratio is then taken from this value using Table 1. EER A.D.P.: Med. Temp. = (D.P.: +15 °F) – 2 °F = +13 °F EER = 11.22 Btu/Wh A.D.P.: Low Temp. = (D.P.: -20 °F) – 3 °F = -23 °F EER = 6.60 Btu/Wh
Calculated Daily Energy Consumption AHRI 1200-2010	Part 1: REVISED, Calculation of CEC $CEC = [(Q \times t) + ML + (FEC + AEC + DEC) \times 3.412] / (1000 \times EER)$ >"Q" does NOT include waste heat from auxiliary components and moisture infiltration (must be added separately). Where: ML: Moisture load impacts (see below) FEC: Evaporator Fan/s [measured fan power × runtime per day] (Wh/day) AEC: Anti-Condensate Heater/s [measured heater power × runtime per day] (Wh/day) DEC: Defrost Heater/s [measured heater power × runtime per day] (Wh/day) Moisture load impact calculations: Total impact: Number of door openings times (Enthalpy Adjustment + Moisture/frost Accumulation): $ML = N_d \times (A_e + A_m)$ Where N_d = number of door openings during test Enthalpy Adjustment: $A_e = [(H_a - H_c) - (H_t - H_a)] \times m_a$ Where: H_a = ambient air enthalpy H_c = compartment air enthalpy based on air conditions during cold operation: 0 °F dry bulb/-20 °F dew pt. for freezer compartment; 38 °F dry bulb/20 °F dew pt. for refrigerator compartment; 75 °F dry bulb/20 °F dew pt. for ambient compartment. H_t = compartment air enthalpy during heat leak test based on dew point being equal to ambient air dew point m_a = mass of compartment air exchanged (30% of total compartment volume) based density of air during cold operation.

	Moisture/frost Accumulation: $A_m = C_{p,liner} \times W_{liner} \times \Delta T_{liner}$ Where: $C_{p,liner}$ = specific heat of liner material W_{liner} = weight of all liner parts ΔT_{liner} = maximum temperature rise of all liner parts (4.5 °F, 2.5 °F, and 1 °F for freezer, refrigerator, and ambient compartments, respectively) Part 2: Current, Calculation of CDEC CDEC = CEC + FEC + AEC + DEC + (any additional component energy consumption)

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(3) Representations. ITW may make representations about the energy use of the specified basic models of its commercial refrigeration equipment for compliance, marketing, or other purposes only to the extent that such equipment has been tested in accordance with the provisions above and such representations fairly disclose the results of such testing in accordance with 10 CFR part 429, subpart B.

(4) This waiver shall remain in effect consistent with the provisions of 10 CFR 431.401.

(5) This waiver is issued on the condition that the statements, representations, and documentation provided by the petitioner are valid. If ITW makes any modifications to the controls or configurations of these basic models, the waiver will no longer be valid and ITW will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. Likewise, ITW may request that DOE rescind or modify the waiver if ITW discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons.

(6) Granting of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Signed in Washington, DC, on September 6, 2018.

Annamaria Garcia,

Director of Weatherization and Intergovernmental Programs Energy Efficiency and Renewable Energy.

[FR Doc. 2018–19852 Filed 9–11–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Electricity Advisory Committee

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Electricity Advisory Committee. The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, October 17, 2018, 12:00 p.m.—6:00 p.m. EST; Thursday, October 18, 2018, 8:00 a.m.—12:15 p.m. EST.

ADDRESSES: The meeting will be held at the National Rural Electric Cooperative Association, 4301 Wilson Blvd., Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Lawrence Mansueti, Office of Electricity, U.S. Department of Energy, Forrestal Building, Room 8G–017, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (202) 586–2588 or Email: *lawrence.mansueti@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Electricity Advisory Committee (EAC) was re-established in July 2010, in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. 2, to provide advice to the U.S. Department of Energy (DOE) in implementing the Energy Policy Act of 2005, executing the Energy Independence and Security Act of 2007, and modernizing the nation's electricity delivery infrastructure. The EAC is composed of individuals of diverse backgrounds and selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to electricity.

Tentative Agenda: The meeting of the EAC is expected to include panels or presentations on institutional perspectives on grid resilience, an update related to FERC, case studies in operations and scale relating to emerging technologies addressing megawatt-scale storage, and the grid modernization MYPP peer review. Additionally, the meeting is expected to include an update on the programs and initiatives of the DOE's Office of Electricity and an update on the activities of the Smart Grid Subcommittee and the Energy Storage Subcommittee.

Tentative Agenda: October 17, 2018

12:00 p.m.–1:00 p.m. Registration
1:00 p.m.–1:15 p.m. Welcome, Introductions, Developments since the July 2018 Meeting
1:15 p.m.–1:30 p.m. Update on the DOE Office of Electricity (OE) Programs and Initiatives
1:30 p.m.–2:30 p.m. FERC Update
2:30 p.m.–2:45 p.m. Break
2:45 p.m.–3:15 p.m. Presentation: Institutional Perspectives on Grid Resilience
3:15 p.m.–5:15 p.m. Panel Session: Institutional Perspectives on Grid Resilience
5:15 p.m.–5:30 p.m. Break
5:30 p.m.–5:55 p.m. Ethics Briefing
5:55 p.m.–6:00 p.m. Wrap-up and Adjourn Day 1

Tentative Agenda: October 18, 2018

8:00 a.m.–10:30 a.m. Presentation and Panel: Approaching Megawatt-Scale Storage Through Emerging Technologies: Case Studies in Operations and Scale
10:30 a.m.–10:45 a.m. Break
10:45 a.m.–11:15 a.m. Presentation on Grid Modernization MYPP Peer Review
11:15 a.m.–11:35 a.m. Smart Grid Subcommittee Update
11:35 a.m.–12:00 p.m. Energy Storage Subcommittee Update
12:00 p.m.–12:10 p.m. Public Comments
12:10 p.m.–12:15 p.m. Wrap-up and Adjourn

The meeting agenda may change to accommodate EAC business. For EAC agenda updates, see the EAC website at: *http://energy.gov/oe/services/electricity-advisory-committee-eac.*

Public Participation: The EAC welcomes the attendance of the public at its meetings. Individuals who wish to offer public comments at the EAC meeting may do so on Thursday, October 18, 2018, but must register at the registration table in advance. Approximately 10 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not

expected to exceed three minutes. Anyone who is not able to attend the meeting, or for whom the allotted public comments time is insufficient to address pertinent issues with the EAC, is invited to send a written statement to Mr. Lawrence Mansueti.

You may submit comments, identified by: ''Electricity Advisory Committee Open Meeting,'' through any of the following methods:

• *Mail/Hand Delivery/Courier:* Lawrence Mansueti, Office of Electricity, U.S. Department of Energy, Forrestal Building, Room 8G– 017, 1000 Independence Avenue SW, Washington, DC 20585.

• *Email: Lawrence.mansueti@hq.doe.gov.* Include ''Electricity Advisory Committee Open Meeting'' in the subject line of the message.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. *Instructions:* All submissions received must include the agency name and identifier. All comments received will be posted without change to *http://energy.gov/oe/services/electricity-advisory-committee-eac,* including any personal information provided.

• *Docket:* For access to the docket, to read background documents or comments received, go to *http://energy.gov/oe/services/electricity-advisory-committee-eac.*

The following electronic file formats are acceptable: Microsoft Word (.doc), Corel Word Perfect (.wpd), Adobe Acrobat (.pdf), Rich Text Format (.rtf), plain text (.txt), Microsoft Excel (.xls), and Microsoft PowerPoint (.ppt). If you submit information that you believe to be exempt by law from public disclosure, you must submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. You must also explain the reasons why you believe the deleted information is exempt from disclosure.

DOE is responsible for the final determination concerning disclosure or nondisclosure of the information and for treating it in accordance with the DOE's Freedom of Information regulations (10 CFR 1004.11).

Note: Delivery of the U.S. Postal Service mail to DOE may be delayed by several weeks due to security screening. DOE, therefore, encourages those wishing to comment to submit comments electronically by email. If comments are submitted by regular mail, the Department requests that they be accompanied by a CD or diskette containing electronic files of the submission.

Minutes: The minutes of the EAC meeting will be posted on the EAC web page at *http://energy.gov/oe/services/electricity-advisory-committee-eac.* They can also be obtained by contacting Mr. Lawrence Mansueti at the address above.

Signed in Washington, DC on September 6, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–19829 Filed 9–11–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–101–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Revised Schedule for Environmental Review of the Northeast Supply Enhancement Project

This notice identifies the Federal Energy Regulatory Commission (FERC or Commission) staff's revised schedule for the completion of the final environmental impact statement (EIS) for Transcontinental Gas Pipe Line Company, LLC's (Transco) Northeast Supply Enhancement Project. The first notice of schedule, issued on January 3, 2018, identified September 17, 2018 as the final EIS issuance date. Staff has revised the schedule for issuance of the final EIS based on the current status of Transco's General Conformity review and feasible mitigation options. The forecasted schedule for the final EIS is also based upon Transco providing complete and timely responses to any future data requests. In addition, the schedule assumes that the cooperating agencies will provide input on their areas of responsibility on a timely basis.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS—January 25, 2019

90-day Federal Authorization Decision Deadline—April 25, 2019

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP17–101–000), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: September 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19815 Filed 9–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13318–003]

Swan Lake North Hydro LLC; Notice of Anticipated Schedule of Final Order for Swan Lake North Pumped Storage Hydroelectric Project

On October 28, 2015, Swan Lake North Hydro LLC filed an application requesting authorization to construct and operate the Swan Lake North Pumped Storage Hydroelectric Project. The project would be located 11 miles northeast of Klamath Falls, in Klamath County, Oregon.

In accordance with Title 41 of the Fixing America's Surface Transportation Act, enacted on December 4, 2015, agencies are to publish completion dates for all federal environmental reviews and authorizations. This notice identifies the Commission's anticipated schedule for issuance of the final order for the Project, which is based on the anticipated date of issuance of the final Environmental Impact Statement. Accordingly, we currently anticipate issuing a final order for the Project no later than:

Issuance of Final Order—April 30, 2019

If a schedule change becomes necessary for the final order, an additional notice will be provided so that interested parties and government

agencies are kept informed of the Project's progress.

Dated: September 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19813 Filed 9–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–197–000]

City of Oakland, California v. Pacific Gas and Electric Company; Notice of Complaint

Take notice that on September 5, 2018, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e, and Rules 206 and 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and 385.207, City of Oakland, California (Complainant) filed a formal complaint against Pacific Gas and Electric Company (Respondent) alleging that the Respondent's provision of power and transmission service to the Complainant failed to comply with the requirements of the Federal Power Act, as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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 Complainant.

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 p.m. Eastern Time on September 25, 2018.

Dated: September 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19809 Filed 9–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14884–000]

Midwest Energy Recycling, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 17, 2018, Midwest Energy Recycling, LLC 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 Yellow Medicine County Pumped Storage Project to be located near the Minnesota River and the City of Granite Falls, in Yellow Medicine County, Minnesota. 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 all new facilities: (1) A circular 100-acre rockfill embankment (upper reservoir) having a total storage capacity of 3,300 acre-feet with a maximum pond elevation level of 1089 feet mean sea level (msl); (2) a 2,400-foot by 1,425-foot rectangular lower reservoir with a total storage capacity of 3,300 acre-feet and water surface elevation between minus (−) 1,320 and minus 1,420 feet msl; (3) a 100-foot outside diameter, 18-foot inside diameter ''morning glory'' in configuration reinforced concrete intake located in the upper reservoir; (4) a vertical 2,500-foot-long, 18-foot-diameter steel penstock connected to the intake at the upper reservoir and ending in a bifurcation before the powerhouse located at the lower reservoir; (5) a 200-foot-long, 70-foot-wide, 130-foot-high reinforced concrete powerhouse containing two 333-megawatt (MW) reversible pump turbine units with a total plant rating of 666 MW; (6) a 240-foot-long, 50-foot-wide, 40-foot-high transformer gallery; (7); a 200 to 1,000-foot-long, 345-kilovolt transmission line extending from the transformer gallery to an existing substation (the point of interconnection); and (8) appurtenant facilities. The estimated annual generation of the Yellow Medicine County Pumped Storage Project would be 1,450 gigawatt-hours.

Applicant Contact: Mr. Douglas A. Spaulding, P.E., Nelson Energy, 8441 Wayzata Boulevard, Suite 101 Golden Valley, MN 55426; phone: (952) 544–8133.

FERC Contact: Sergiu Serban; phone: (202) 502–6211.

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–14884–000.

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–14884) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19814 Filed 9–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–533–000]

Texas Eastern Transmission, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Line 1–N Abandonment Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line 1–N Abandonment Project involving construction and operation of facilities by Texas Eastern Transmission, LP (Texas Eastern) in Harrison and Marion Counties, Texas. The Commission will use this EA in its decision-making process to determine whether to authorize the project.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of an authorization. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5 p.m. Eastern Time on October 6, 2018.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider and address all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on July 24, 2018, you will need to file those comments in Docket No. CP18–533–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

Texas Eastern provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP18–533–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Texas Eastern proposes to abandon a portion of its lateral Line 1–N and related facilities, in Harrison and Marion Counties, Texas. Specifically, Texas Eastern is requesting approval to abandon in place and by removal a total of approximately 30 miles of 8-inch, 10-inch, and 12-inch-diameter lateral pipeline; abandon by removal all of the facilities at Metering and Regulating (M&R) Station 70191; and abandon by removal all aboveground appurtenances on each of the 8-inch, 10-inch and 12-inch-diameter pipeline segments.

According to Texas Eastern, the project would eliminate the need for operating and maintenance expenditures on facilities that have not been used to provide service for over a year and are not necessary to meet Texas Eastern's firm service obligations. The project would not impact the daily design capacity of, or the operating conditions on, Texas Eastern's system, and it would not impact service for Texas Eastern's existing shippers.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

The project would temporarily affect approximately 6 acres of land within the existing right-of-way. Following abandonment, Texas Eastern would revegetate temporary work areas in accordance with its Erosion and Sedimentation Control Plan. Texas Eastern would retain and continue to maintain the pipeline right-of-way following abandonment activities.

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in the public record through eLibrary.[2] Commission staff will consider and address all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] Commission staff will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; Native American Tribes; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that information related to this environmental review is sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

As stated above, the EA will be available in the public record through the Commission's eLibrary, under the Docket Number CP18–533–000.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP18–533). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: September 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19806 Filed 9–11–18; 8:45 am]

BILLING CODE 6717–01–P

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14872–000]

Peterson Machinery Sales; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 19, 2018, Peterson Machinery Sales filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Hubbardston Hydroelectric Project (project) to be located on the Fish Creek, near Hubbardston, in Ionia County, Michigan. 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 be located at the site of an existing, non-operational hydroelectric project previously operated by Hope Renewable Energy, LLC without a Commission license. The proposed run-of-river project will involve rehabilitation and upgrade of the following existing facilities: (1) A 60-acre, 600-acre-foot reservoir with normal surface elevation of 850 feet mean sea level; (2) a 350-foot-long, 25 to 30-foot-high combination dam and spillway incorporating a 80-foot-long, 12-foot-wide intake channel; (3) a 30-foot-long, 20-foot-wide, 25-foot-high powerhouse containing two Francis turbines and

associated generators with a combined installed capacity of 400 kilowatts; (4) a 600-foot-long tailrace; and (5) appurtenant facilities. The estimated average annual generation of the project would be 3,500 megawatt-hours that would be conveyed from the powerhouse to the grid via a transmission line owned by Consumers Energy.

Applicant Contact: Charles R. Peterson, 804 Gila Bend Highway, Casa Grande, Arizona 85122, phone (231) 649–8706.

FERC Contact: Sergiu Serban, (202) 502–6211.

Deadline for filing comments, 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–14872–000.

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/elibary.asp.* Enter the docket number (P–14872) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19812 Filed 9–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[EG18–95–000, EG18–96–000, EG18–97–000, EG18–98–000, EG18–99–000, EG18–100–000, EG18–101–000, EG18–102–000, FC18–6–000, FC18–7–000]

Langdon Renewables, LLC, Rush Springs Energy Storage, LLC, Origis Energy, Palmer's Creek Wind Farm, LLC, Meadowlark Wind I LLC, Foard City Wind, LLC, Torrecillas Wind Energy, LLC, Holloman Lessee LLC, Solfuture Gestion, S.L.U., Glicinia Instalaciones Fotovoltaicas, S.L.U.; Notice of Effectiveness of Exempt Wholesale Generator and Foreign Utility Company Status

Take notice that during the month of August 2018, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a)(2018).

Dated: September 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19808 Filed 9–11–18; 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: EC18–151–000.

Applicants: Breckinridge Wind Project, LLC, Carousel Wind Farm, LLC, Cottonwood Wind Project, LLC, Golden Hills North Wind, LLC, Golden Hills Interconnection, LLC, Kingman Wind Energy I, LLC, Kingman Wind Energy II, LLC, Mountain View Solar, LLC, NextEra Energy Bluff Point, LLC, Ninnescah Wind Energy, LLC, Rush Springs Wind Energy, LLC, NEP US SellCo, LLC, NEP Renewables Holdings, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Breckinridge Wind Project, LLC, et al.

Filed Date: 9/5/18.

Accession Number: 20180905–5102.

Comments Due: 5 p.m. ET 9/26/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–2379–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: 3rd Rev ISA SA No. 3837; 2nd Rev CSA SA No. 3838; Queue #X4–048/Y2–089/AA1–077 to be effective 8/6/2018.

Filed Date: 9/5/18.

Accession Number: 20180905–5101.

Comments Due: 5 p.m. ET 9/26/18.

Docket Numbers: ER18–2380–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2018–09–05 Dispatch Operating Target Clarification Amendment to be effective 11/6/2018.

Filed Date: 9/6/18.

Accession Number: 20180906–5000.

Comments Due: 5 p.m. ET 9/27/18.

Docket Numbers: ER18–2381–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Annual Calculation of the Cost of New Entry value (''CONE'') for each Local Resource Zone (''LRZ'') in the MISO Region of Midcontinent Independent System Operator, Inc.

Filed Date: 9/5/18.

Accession Number: 20180905–5136.

Comments Due: 5 p.m. ET 9/26/18.

Docket Numbers: ER18–2382–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Attachment AP to Remove References to SPP as Regional Entity to be effective 9/1/2018.

Filed Date: 9/5/18.

Accession Number: 20180905–5137.

Comments Due: 5 p.m. ET 9/26/18.

Docket Numbers: ER18–2383–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Bylaws and Membership Agreement Revisions to Remove References to SPP RE to be effective 9/1/2018.

Filed Date: 9/5/18.

Accession Number: 20180905–5147.

Comments Due: 5 p.m. ET 9/26/18.

Docket Numbers: ER18–2384–000.

Applicants: Ameren Illinois Company.

Description: Notice of Cancellation of Rate Schedule No. 43 of Ameren Illinois Company.

Filed Date: 9/5/18.

Accession Number: 20180905–5148.

Comments Due: 5 p.m. ET 9/26/18.

Docket Numbers: ER18–2385–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 607R33 Westar Energy, Inc. NITSA NOA to be effective 9/27/2018.

Filed Date: 9/6/18.

Accession Number: 20180906–5059.

Comments Due: 5 p.m. ET 9/27/18.

Docket Numbers: ER18–2386–000.

Applicants: NRG REMA LLC.

Description: Compliance filing: Notice of Succession for Reactive Service Rate Schedule to be effective 8/21/2018.

Filed Date: 9/6/18.

Accession Number: 20180906–5060.

Comments Due: 5 p.m. ET 9/27/18.

Docket Numbers: ER18–2387–000.

Applicants: GenOn Mid-Atlantic, LLC.

Description: Compliance filing: Notice of Succession for Reactive Service Rate Schedules to be effective 8/21/2018.

Filed Date: 9/6/18.

Accession Number: 20180906–5061.

Comments Due: 5 p.m. ET 9/27/18.

Docket Numbers: ER18–2388–000.

Applicants: GenOn Energy Management, LLC.

Description: Tariff Cancellation: Notice of Cancellation to be effective 8/21/2018.

Filed Date: 9/6/18.

Accession Number: 20180906–5062.

Comments Due: 5 p.m. ET 9/27/18.

Docket Numbers: ER18–2389–000.

Applicants: GenOn Energy Management, LLC.

Description: Tariff Cancellation: Notices of Cancellation to be effective 8/21/2018.

Filed Date: 9/6/18.

Accession Number: 20180906–5063.

Comments Due: 5 p.m. ET 9/27/18.

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: September 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19805 Filed 9–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2361–000]

Enel Green Power Hilltopper Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Enel Green Power Hilltopper Wind, 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 September 26, 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: September 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19810 Filed 9–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–542–000]

KO Transmission Company; Notice of Amendment

Take notice that on August 24, 2018, KO Transmission Company (KOT), 139 East 4th Street, Cincinnati, Ohio, filed an application under section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations requesting authorization to amend its Certificate of Public Convenience and Necessity issued on April 22, 1998, in Docket No. CP97–720–000 [1] in order to properly reflect the capacity acquired in that proceeding. KOT further requests authorization to amend its certificated capacity north of the Foster Station to reflect current operating capacity, all as more fully set forth in the request which is on file with the Commission and opens to public inspection. The filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the proposed amendment should be directed to Lance Stotts, Administrator, KO Transmission Company, 4720 Piedmont Row Drive, Room 864, Charlotte, North Carolina 28210; telephone (704)731–4360; email *Lance.Stotts2@duke-energy.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 analysis (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

[1] KO Transmission Company, 83 FERC ¶ 62,066 (1998).

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 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 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters 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 commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters 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 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5 p.m., September 27, 2018.

Dated: September 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19807 Filed 9–11–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0576; FRL–9982–39]

Pesticide Product Registration; Receipt of Applications for New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before October 12, 2018.

ADDRESSES: Submit your comments, identified by the Docket Identification (ID) Number and the File Symbol or EPA Registration Number of interest as shown in the body of this document, by one of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov;* or Michael Goodis, Registration Division (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to 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 comment that includes information claimed as CBI, a

copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

III. New Uses

1. *EPA Registration Numbers:* 264–1143 and 264–1141. *Docket ID number:* EPA–HQ–OPP–2013–0226. *Applicant:* Bayer CropScience LP, P.O. Box 12014, 2 TW Alexander Dr., Research Triangle Park, NC 27709. *Active ingredient:* Flupyradifurone. *Product type:* Insecticide. *Proposed use:* tobacco. *Contact:* RD.

2. *File Symbol:* 92331–E. *Docket ID number:* EPA–HQ–OPP–2018–0521. *Applicant:* Eden Research plc, 6 Priory Ct., Priory Court Business Park, Poulton, Cirencester, GL7 5JB, United Kingdom (c/o SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192). *Active ingredient:* Thymol. *Product type:* Fungicide and nematocide. *Proposed use:* For manufacturing or formulating of products to be used on grapes (table, wine, and raisin), fruiting vegetables, and cucurbits. *Contact:* BPPD.

3. *File Symbol:* 92331–G. *Docket ID number:* EPA–HQ–OPP–2018–0519. *Applicant:* Eden Research plc, 6 Priory Ct., Priory Court Business Park, Poulton, Cirencester, GL7 5JB, United Kingdom (c/o SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192). *Active ingredient:* Eugenol. *Product type:* Fungicide. *Proposed use:* For manufacturing or formulating of products to be used on grapes (table, wine, and raisin). *Contact:* BPPD.

4. *File Symbol:* 92331–R. *Docket ID numbers:* EPA–HQ–OPP–2018–0519 and EPA–HQ–OPP–2018–0521. *Applicant:* Eden Research plc, 6 Priory Ct., Priory Court Business Park, Poulton, Cirencester, GL7 5JB, United Kingdom (c/o SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192). *Active ingredients:* Thymol, eugenol, and geraniol. *Product type:* Fungicide. *Proposed use:* Grapes (table, wine, and raisin). *Contact:* BPPD.

5. *File Symbol:* 92331–U. *Docket ID number:* EPA–HQ–OPP–2018–0521. *Applicant:* Eden Research plc, 6 Priory Ct., Priory Court Business Park, Poulton, Cirencester, GL7 5JB, United Kingdom (c/o SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192). *Active ingredients:* Thymol and geraniol. *Product type:* Nematocide. *Proposed use:* Fruiting vegetables and cucurbits. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 14, 2018.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2018–19869 Filed 9–11–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2018–0097; FRL–9983–06]

Certain New Chemicals or Significant New Uses; Statements of Findings for April to July 2018

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(g) of the Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of TSCA section 5(a) notices when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA section 5. This document presents statements of findings made by EPA on TSCA section 5(a) notices during the period from April 1, 2018 to July 31, 2018.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Greg Schweer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8469; email address: *schweer.greg@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave. Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the PMNs addressed in this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0097, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of notices submitted under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the period from April 1, 2018 to July 31, 2018.

III. What is the Agency's authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a TSCA section 5(a) notice and make one of the following specific findings:

- The chemical substance or significant new use presents an unreasonable risk of injury to health or the environment;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance or significant new use;
- The information available to EPA is insufficient to permit a reasoned

evaluation of the health and environmental effects and the chemical substance or significant new use may present an unreasonable risk of injury to health or the environment;

- The chemical substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance; or
- The chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Unreasonable risk findings must be made without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant under the conditions of use. The term ''conditions of use'' is defined in TSCA section 3 to mean ''the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.''

EPA is required under TSCA section 5(g) to publish in the **Federal Register** a statement of its findings after its review of a TSCA section 5(a) notice when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

IV. Statements of Administrator Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

- EPA case number assigned to the TSCA section 5(a) notice.
- Chemical identity (generic name, if the specific name is claimed as CBI).
- Website link to EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C).

EPA Case Number: J–18–0002–0003; *Chemical identity: Saccharomyces cerevisiae* modified (generic name); *website link: https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-90.*

EPA Case Number: P–18–0142; *Chemical identity:* Alkanoic acid, alkyl-, alkyl ester, polymer with substituted alkenoates, alkenoic acid, alkyl peroxoate-initiated; polymer exemption flag (generic name); *website link: https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-91.*

EPA Case Number: P–16–0510; *Chemical identity:* Oxirane, 2-methyl-, polymer with oxirane, bis[2-[(1-oxo-2-propen-1-yl)amino]propyl] ether (CASRN: 1792208–65–1); *website link: https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-92.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: September 4, 2018.

Greg Schweer,

Chief, New Chemicals Management Branch, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2018–19873 Filed 9–11–18; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Regular Meeting; Farm Credit System Insurance Corporation Board

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATES: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 19, 2018, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056, *aultmand@fca.gov.*

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit System Insurance Corporation Board, at (703) 883–4009. The matters to be considered at the meeting are:

Closed Session

- Confidential Report on System Performance

Open Session

A. Approval of Minutes

- June 14, 2018 (Open and Closed)

B. Business Reports

- Quarterly Financial Reports
- Report on Insured and Other Obligations
- Quarterly Report on Annual Performance Plan

C. New Business

- Annual Performance Plan FY 2020–2021
- Proposed 2020 and 2021 Budgets
- Insurance Fund Progress Review and Setting of Premium Range Guidance for 2019

Dated: September 7, 2018

Dale Aultman,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2018–19849 Filed 9–11–18; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of temporary approval of revisions to the mandatory Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128) by the Board of Governors of the Federal Reserve System (Board) pursuant to the authority delegated to the Board by the Office of Management and Budget (OMB), per OMB Regulations on Controlling Paperwork Burdens on the Public. The temporary approval is valid until March 31, 2019.

DATES: The revisions are applicable as of June 30, 2018.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to temporarily approve a revision to a collection of information without providing opportunity for public comment if the Board determines that a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation.

The Board's delegated authority requires that the Board, after temporarily approving a collection, publish a notice soliciting public comment. The Board will publish a notice in the future inviting comment on these actions.

Final approval under OMB delegated authority of the temporary revision of the following reports:

Report title: Consolidated Financial Statements for Holding Companies.

Agency form number: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9ES, and FR Y–9CS.

OMB control number: 7100–0128.

Effective Date: June 30, 2018.

Frequency: Quarterly and semiannually.

Respondents: Bank holding companies, savings and loan holding companies, securities holding companies, and U.S. intermediate holding companies (collectively, holding companies (HCs)).

Estimated number of respondents: FR Y–9C (non-advanced approaches holding companies): 638; FR Y–9C (advanced approaches holding companies): 18; FR Y–9LP: 775; FR Y–9SP: 3,837 FR Y–9ES: 82; FR Y–9CS: 236.

Estimated average hours per response: FR Y–9C (non-advanced approaches holding companies): 46.29 hours; FR Y–9C (advanced approaches holding companies HCs): 47.54 hours; FR Y–9LP: 5.27 hours; FR Y–9SP: 5.40 hours; FR Y–9ES: 0.50 hours; FR Y–9CS: 0.50 hours.

Estimated annual burden hours: FR Y–9C (non-advanced approaches holding companies): 118,132 hours; FR Y–9C (advanced approaches holding companies): 3,423 hours; FR Y–9LP: 16,337 hours; FR Y–9SP: 41,440 hours; FR Y–9ES: 41 hours; FR Y–9CS: 472 hours.

General description of report: The FR Y–9 family of reporting forms continues to be the primary source of financial data on HCs that examiners rely on between on-site inspections. Financial data from these reporting forms is used to detect emerging financial problems, review performance, conduct pre-inspection analysis, monitor and evaluate capital adequacy, evaluate HC mergers and acquisitions, and analyze an HC's overall financial condition to ensure the safety and soundness of its operations. The FR Y–9C, FR Y–9LP, and FR Y–9SP serve as standardized financial statements for the consolidated holding company. The Board requires HCs to provide standardized financial statements to fulfill the Board's statutory obligation to supervise these organizations. The FR Y–9ES is a financial statement for HCs that are Employee Stock Ownership Plans. The Board uses the FR Y–9CS (a free-form supplement) to collect additional information deemed to be critical and needed in an expedited manner. HCs file the FRY–9C on a quarterly basis, the FR Y–9LP quarterly, the FR Y–9SP semiannually, the FR Y–9ES annually, and the FR Y–9CS on a schedule that is determined when this supplement is used.

Legal Authorization and confidentiality: The FR Y–9 family of reports is authorized by section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)), section 10 of Home Owners' Loan Act (12 U.S.C. 1467a(b)) and section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (12 U.S.C. 1850a(c)(1)), and section 165 of the Dodd-Frank Act (12 U.S.C. 5365). The obligation of covered institutions to report this information is mandatory.

With respect to FR Y–9LP, FR Y–9SP, FR Y–ES, and FR Y–9CS, the information collected would generally not be accorded confidential treatment. If confidential treatment is requested by a respondent, the Board will review the request to determine if confidential treatment is appropriate.

With respect to FR Y–9C, Schedule HI's item 7(g) ''FDIC deposit insurance assessments,'' Schedule HC–P's item 7(a) ''Representation and warranty reserves for 1–4 family residential mortgage loans sold to U.S. government agencies and government sponsored agencies,'' and Schedule HC–P's item 7(b) ''Representation and warranty reserves for 1–4 family residential mortgage loans sold to other parties'' are considered confidential. Such treatment is appropriate because the data is not publicly available and the public release of this data is likely to impair the Board's ability to collect necessary information in the future and could cause substantial harm to the competitive position of the respondent. Thus, this information may be kept confidential under exemptions (b)(4) of the Freedom of Information Act, which exempts from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'' (5 U.S.C. 552(b)(4)), and (b)(8) of the Freedom of Information Act, which exempts from disclosure information related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions (5 U.S.C. 552(b)(8)).

Current Actions: The Economic Growth, Regulatory Relief, and Consumer Protection Action (EGRRCPA), enacted on May 24, 2018, amended various provisions of banking law to eliminate or reduce statutory and regulatory requirements on certain banking organizations. EGRRCPA, among other things, provides that state member banks and other depository institutions may only be required to assign a heightened risk weight to a ''high volatility commercial real estate'' (HVCRE) exposure if such exposure is

an ''HVCRE ADC Loan,'' as defined in section 214 of EGRRCPA. Section 202 of EGRRCPA also amended the statutory definition of ''brokered deposits.'' The current instructions for reporting HVCRE and brokered deposits in the FR Y–9C are inconsistent with these provisions of EGRRCPA.

In order to avoid the regulatory burden associated with different definitions for HVCRE exposures and brokered deposits within a single organization, the Board has amended the FR Y–9C instructions to permit bank holding companies, savings and loan holding companies, and intermediate holding companies of foreign banks to report HVCRE and brokered deposits on the FR Y–9C report in a manner consistent with their subsidiary depository institution(s).

In order for the FR Y–9C to reflect sections 202 and 214 of EGRRCPA, which became effective immediately when EGRRCPA was signed on May 24, 2018, the Board cannot comply with the normal clearance process and still receive the June 30, 2018, financial data in a timely manner. Therefore, the Board has determined that the revisions to the FR Y–9C described above must be instituted quickly and public participation in the approval process would substantially interfere with the Board's ability to perform its statutory obligations arising from EGRRCPA.

Board of Governors of the Federal Reserve System, September 6, 2018.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2018–19676 Filed 9–11–18; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 8, 2018.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Veritex Holdings, Inc., Dallas, Texas*; to acquire Green Bancorp, Inc., and thereby indirectly acquire Green Bank, National Association, both of Houston, Texas.

Board of Governors of the Federal Reserve System, September 7, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–19826 Filed 9–11–18; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of temporary approval of revisions to the mandatory Complex Institution Liquidity Monitoring Report (FR 2052a; OMB No. 7100–0361) by the Board of Governors of the Federal Reserve System (Board) pursuant to the authority delegated to the Board by the Office of Management and Budget (OMB), per OMB Regulations on Controlling Paperwork Burdens on the Public. The temporary approval is valid until March 31, 2019.

DATES: The revisions are applicable as of June 30, 2018.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to temporarily approve a revision to a collection of information without providing opportunity for public comment if the Board determines that a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation.

The Board's delegated authority requires that the Board, after temporarily approving a collection, publish a notice soliciting public comment. The Board will publish a notice in the future inviting comment on these actions.

Final approval under OMB delegated authority of the temporary revision of the following report:

Report title: Complex Institution Liquidity Monitoring Report.

Agency form number: FR 2052a.

OMB control number: 7100–0361.

Effective Date: June 30, 2018.

Frequency: Monthly, and each business day (daily).

Respondents: U.S. bank holding companies (BHCs), U.S. savings and loan holding companies (SLHCs), and foreign banking organizations (FBOs) with U.S. assets.

Estimated number of respondents: Monthly, 40; Daily, 12.

Estimated average hours per response: Monthly, 120; Daily, 220.

Estimated annual burden hours: 717,600.

General description of report: The FR 2052a is used to monitor the overall liquidity profile of institutions supervised by the Board. These data provide detailed information on the liquidity risks within different business lines (*e.g.,* financing of securities positions, prime brokerage activities). In particular, these data serve as part of the Board's supervisory surveillance program in its liquidity risk management area and provide timely information on firm-specific liquidity risks during periods of stress. Analyses of systemic and idiosyncratic liquidity risk issues are then used to inform the Board's supervisory processes, including the preparation of analytical

reports that detail funding vulnerabilities.

Legal authorization and confidentiality: The Board's Legal Division has determined that the FR 2052a is authorized pursuant to section 5 of the Bank Holding Company Act (12 U.S.C. 1844), section 8 of the International Banking Act (12 U.S.C. 3106), and section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (12 U.S.C. 5365) and are mandatory. Section 5(c) of the Bank Holding Company Act authorizes the Board to require BHCs to submit reports to the Board regarding their financial condition. Section 8(a) of the International Banking Act subjects FBOs to the provisions of the Bank Holding Company Act. Section 165 of the Dodd-Frank Act requires the Board to establish prudential standards for certain BHCs and FBOs, which include liquidity requirements.

Financial institution information required by the FR 2052a is collected as part of the Board's supervisory process. Therefore, such information is entitled to confidential treatment under Exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, the institution information provided by each respondent would not be otherwise available to the public and its disclosure could cause substantial competitive harm. Accordingly, it is entitled to confidential treatment under the authority of exemption 4 of the FOIA (5 U.S.C. 552(b)(4)), which protects from disclosure trade secrets and commercial or financial information.

Current Actions: The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), enacted on May 24, 2018, amended various provisions of banking law to eliminate or reduce statutory and regulatory requirements on certain banking organizations. Section 403 of EGRRCPA provides that the federal banking agencies shall treat certain municipal obligations as ''high quality liquid assets'' (HQLA) for purposes of their liquidity regulations, and must amend those regulations to reflect this new treatment within 90 days of the enactment of EGRRCPA. The federal banking agencies, on August 22, 2018, issued an interim final rule [1] amending their liquidity regulations (the ''Liquidity IFR'). The current FR 2052a instructions are inconsistent with the provisions of EGRRCPA. The Board has revised the FR 2052a to provide that respondents are permitted to report investment grade municipal obligations as HQLA, consistent with EGRRCPA and the Liquidity IFR. In order for the FR 2052a to reflect section 403 of EGRRCPA, which became effective immediately when EGRRCPA was signed on May 24, 2018, the Board cannot comply with the normal clearance process and still receive the June 30, 2018, financial data in a timely manner. Therefore, the Board has determined that the revision to the FR 2052a described above must be instituted quickly and public participation in the approval process would substantially interfere with the Board's ability to perform its statutory obligations arising from EGRRCPA.

Board of Governors of the Federal Reserve System, September 6, 2018.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2018–19675 Filed 9–11–18; 8:45 am]

BILLING CODE 6210–01–P

[1] Press Release, Board of Governors of the Federal Reserve System, Agencies issue final rule regarding the treatment of certain municipal securities as high-quality liquid assets (August 22, 2018), available at *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20180822a.htm.*

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Board Meeting; 77 K St. NE, Washington, DC; 10th Floor; September 17, 2018; 8:30 a.m.

Open Session

1. Approval of the Minutes of the August 27, 2018 Board Meeting
2. Monthly Reports
   (a) Participant Activity
   (b) Investment Policy
   (c) Legislative Report
3. FY 19 Budget Review and Approval
4. Vendor Risk Management Update
5. Capital Market and L Fund Update
6. IT Update

Closed Session

Information covered under 5 U.S.C. 552b(c)(4) and (c)(9)(B).

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: September 7, 2018.

Dharmesh Vashee,

Deputy General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2018–19833 Filed 9–11–18; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0908]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Clinical Trial Sponsors: Establishment and Operation of Clinical Trial Data Monitoring Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 12, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0581. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Clinical Trial Sponsors: Establishment and Operation of Clinical Trial Data Monitoring Committees

OMB Control Number 0910–0581—Extension

Sponsors are required to monitor studies evaluating new drugs, biologics, and devices (21 CFR 312.50 and 312.56 for drugs and biologics, and 21 CFR 812.40 and 812.46 for devices). Various individuals and groups play different roles in clinical trial monitoring. One

such group is a data monitoring committee (DMC), appointed by a sponsor to evaluate the accumulating outcome data in some trials. A clinical trial DMC is a group of individuals with pertinent expertise that reviews on a regular basis accumulating data from one or more ongoing clinical trials. The DMC advises the sponsor regarding the continuing safety of current trial subjects and those yet to be recruited to the trial, as well as the continuing validity and scientific merit of the trial.

The guidance document referenced in this document is intended to assist sponsors of clinical trials in determining when a DMC is needed for monitoring a study and how such committees should operate. The guidance addresses the roles, responsibilities, and operating procedures of DMCs and describes certain reporting and recordkeeping responsibilities, including the following: (1) Sponsor reporting to FDA on DMC recommendations related to safety; (2) standard operating procedures (SOPs) for DMCs; (3) DMC meeting records; (4) sponsor notification to the DMC regarding waivers; and (5) DMC reports based on meeting minutes to the sponsor.

1. Sponsor Reporting to FDA on DMC Recommendations Related to Safety

The requirement of the sponsor to report DMC recommendations related to serious adverse events in an expedited manner in clinical trials of new drugs (§ 312.32(c) (21 CFR 312.32(c))) would not apply when the DMC recommendation is related to an excess of events not classifiable as serious. Nevertheless, the Agency recommends in the guidance that sponsors inform FDA about all recommendations related to the safety of the investigational product whether or not the adverse event in question meets the definition of ''serious.''

2. SOPs for DMCs

In the guidance, FDA recommends that sponsors establish procedures to do the following things:

- Assess potential conflicts of interest of proposed DMC members;
- Ensure that those with serious conflicts of interest are not included in the DMC;
- Provide disclosure to all DMC members of any potential conflicts that are not thought to impede objectivity and, thus, would not preclude service on the DMC;
- Identify and disclose any concurrent service of any DMC member on other DMCs of the same, related, or competing products;
- Ensure separation, and designate a different statistician to advise on the management of the trial, if the primary trial statistician takes on the responsibility for interim analysis and reporting to the DMC; and
- Minimize the risks of bias that are associated with an arrangement under which the primary trial statistician takes on the responsibility for interim analysis and reporting to the DMC, if it appears infeasible or highly impractical for any other statistician to take over responsibilities related to trial management.

3. DMC Meeting Records

The Agency recommends in the guidance that the DMC or the group preparing the interim reports to the DMC maintain all meeting records. This information should be submitted to FDA with the clinical study report (21 CFR 314.50(d)(5)(ii)).

4. Sponsor Notification to the DMC Regarding Waivers

The sponsor must report to FDA certain serious and unexpected adverse events in drugs and biologics trials (§ 312.32) and unanticipated adverse device effects in the case of device trials (21 CFR 812.150(b)(1)). The Agency recommends in the guidance that sponsors notify DMCs about any waivers granted by FDA for expedited reporting of certain serious events.

5. DMC Reports of Meeting Minutes to the Sponsor

The Agency recommends in the guidance that DMCs should issue a written report to the sponsor based on the DMC meeting minutes. Reports to the sponsor should include only those data generally available to the sponsor. The sponsor may convey the relevant information in this report to other interested parties, such as study investigators. Meeting minutes or other information that include discussion of confidential data would not be provided to the sponsor.

Description of the Respondents: The submission and data collection recommendations described in this document affect sponsors of clinical trials and DMCs.

Burden Estimate: Table 1 of this document provides the burden estimate of the annual reporting burden for the information to be submitted in accordance with the guidance. Table 2 of this document provides the burden estimate of the annual recordkeeping burden for the information to be maintained in accordance with the guidance. Table 3 of this document provides the burden estimate of the annual third-party disclosure burden for the information to be submitted in accordance with the guidance.

Reporting, Recordkeeping, and Third-Party Disclosure Burdens: Based on information from FDA review divisions, FDA estimates there are approximately 740 clinical trials with DMCs regulated by the Center for Biologics Evaluation and Research, the Center for Drug Evaluation and Research, and the Center for Devices and Radiological Health. FDA estimates that the average length of a clinical trial is 2 years, resulting in an annual estimate of 370 clinical trials. Because FDA has no information on which to project a change in the use of DMCs, FDA estimates that the number of clinical trials with DMCs will not change significantly. For purposes of this information collection, FDA estimates that each sponsor is responsible for approximately 10 trials, resulting in an estimated 37 sponsors that are affected by the guidance annually.

Based on information provided to FDA by sponsors that have typically used DMCs for the kinds of studies for which this guidance recommends them, FDA estimates that the majority of sponsors have already prepared SOPs for DMCs, and only a minimum amount of time is necessary to revise or update them for use for other clinical studies. FDA receives very few requests for waivers regarding expedited reporting of certain serious events; therefore, FDA has estimated one respondent per year to account for the rare instance a request may be made. Based on FDA's experience with clinical trials using DMCs, FDA estimates that the sponsor on average would issue two interim reports per clinical trial to the DMC. FDA estimates that the DMCs would hold two meetings per year per clinical trial resulting in the issuance of two DMC reports of meeting minutes to the sponsor. One set of both of the meeting records should be maintained per clinical trial.

The ''Average Burden per Response'' and ''Average Burden per Recordkeeping'' are based on FDA's experience with comparable recordkeeping and reporting provisions applicable to FDA regulated industry. The ''Average Burden per Response'' includes the time the respondent would spend reviewing, gathering, and preparing the information to be submitted to the DMC, FDA, or the sponsor. The ''Average Burden per Recordkeeping'' includes the time to record, gather, and maintain the information.

The information collection provisions in the guidance for 21 CFR 312.30,

312.32, 312.38, 312.55, and 312.56 have been approved under OMB control number 0910–0014; 21 CFR 314.50 has been approved under OMB control number 0910–0001; and 21 CFR 812.35 and 812.150 have been approved under OMB control number 0910–0078.

In the **Federal Register** of May 31, 2018 (83 FR 25015), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Section of guidance/reporting activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
5. Sponsor reporting to FDA on DMC recommendations related to safety.	37	1	37	0.50 (30 minutes) ..	18.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Section of guidance/recordkeeping activity	Number of recordkeepers	Number of records per recordkeeper	Total annual responses	Average burden per recordkeeping	Total hours
4.1. and 6.4 SOPs for DMCs	37	1	37	8	296
4.4.3.2. DMC meeting records	370	1	370	2	740
Total					1,036

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Section of guidance/disclosure activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
4.4.1.2. Sponsor notification to the DMC regarding waivers.	1	1	1	0.25 (15 minutes) ...	0.25
4.4.3.2. DMC reports of meeting minutes to the sponsor.	370	2	740	1	740
Total					740.25

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: September 6, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–19799 Filed 9–11–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1960]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; MedWatch: The Food and Drug Administration Medical Products Reporting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 12, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0291 and title ''MedWatch: The Food and Drug Administration Medical Products Reporting Program.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

MedWatch: The FDA Medical Products Reporting Program

OMB Control Number 0910–0291—Revision

This information collection supports FDA's MedWatch safety information and adverse event reporting program. Members of the public use FDA's MedWatch system to report adverse events, product problems, errors with the use of a human medical product, or when evidence of therapeutic failure is suspected or identified in clinical use.

To ensure the marketing of safe and effective products, it is critical that postmarketing adverse outcomes and product problems are reported for all FDA-regulated human healthcare products, including drugs (prescription and nonprescription), biologics, medical devices, dietary supplements, and other special nutritional products (*e.g.* infant formula and medical foods), and cosmetics. To facilitate reporting on human medical products (except vaccines) during their postapproval and marketed lifetimes, we have developed three forms (collectively known as the MedWatch forms). Form FDA 3500 is intended to be used for voluntary (*i.e.,* not mandated by law or regulation) reporting by healthcare professionals; Form FDA 3500A is used for mandatory reporting (*i.e.,* required by law or regulation); and Form FDA 3500B is written in plain language and is intended to be used for voluntary reporting (*i.e.,* not mandated by law or regulation) by consumers (*i.e.,* patients and their caregivers). Information collected by the forms is used to assess and evaluate risks associated with FDA-regulated products, enabling us to take appropriate action to reduce, mitigate, or eliminate the public's exposure to the risk through regulatory and public health interventions.

I. Background

A. Authorizing Statutes and Codified Regulations

The Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353b, 355, 360i, 360*l,* and 393) and the Public Health Service Act (42 U.S.C. 262) require FDA to collect mandatory adverse event reports from regulated industry on medical products once they have been approved for marketing, enabling the Agency to monitor the safety of drugs, biologics, medical devices, and dietary supplements. Postmarket reporting for medical foods, infant formula, cosmetics, and tobacco products is done voluntarily.

Requirements regarding mandatory reporting of adverse events or product problems are codified at parts 310, 314, 600, and 803 (21 CFR parts 310, 314, 600, and 803), specifically §§ 310.305, 314.80, 314.98, 600.80, 803.30, 803.50, 803.53, 803.56, and specified in sections 503B, 760, and 761 of the FD&C Act (21 U.S.C. 353b, 379aa, and 379aa–1). Mandatory reporting of adverse reactions for human cells, tissues, and cellular- and tissue-based products (HCT/Ps) is codified at § 1271.350 (21 CFR 1271.350).

B. Voluntary Reporting: Form FDA 3500

Voluntary reporting of adverse events is completed using Form FDA 3500 and may be used by healthcare professionals to submit all reports not mandated by Federal law or regulation. Individual health professionals are not required by law or regulation to submit reports to the Agency or the manufacturer with the exception of Childhood Vaccine Injury Act of 1986 (42 U.S.C. 300aa–1). Reports for vaccines are not submitted via MedWatch or MedWatch forms, but are submitted to the Vaccines Adverse Event Reporting System, which is jointly administered by FDA and the Centers for Disease Control and Prevention and approved under OMB control number 0910–0308.

Hospitals are not required by Federal law or regulation to submit reports associated with drug products, biological products, or special nutritional products. However, hospitals and other user facilities are required by Federal law to report medical device-related deaths and serious injuries. Under Federal law and regulation, section 761(b)(1) of the FD&C Act, a dietary supplement manufacturer, packer, or distributor whose name appears on the label of a dietary supplement marketed in the United States is required to submit to FDA any serious adverse event report it receives regarding use of the dietary supplement in the United States. However, FDA bears the burden to gather and review evidence that a dietary supplement may be adulterated under section 402 of the FD&C Act (21 U.S.C. 342) after that product is marketed. Therefore, the Agency depends on the voluntary reporting by health professionals, and especially by consumers, of suspected serious adverse events and product quality problems associated with the use of dietary supplements. All dietary supplement reports were previously received by the Agency on paper versions of Form FDA 3500 (or Form FDA 3500B) (by mail or Fax). Currently, electronic reports may be sent to the Agency via an online submission route called the Safety Reporting Portal (*https://www.safetyreporting.hhs.gov/* approved under OMB control number 0910–0645). In that case, Form FDA 3500 (or Form FDA 3500B) is not used.

Form FDA 3500 may be used to report to the Agency serious adverse events, product problems, and product use errors and therapeutic failures. The form is provided in both paper and electronic formats. Reporters may mail or Fax paper forms to the Agency (a fillable PDF version of the form is available at *https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM163919.pdf*) or reporters may electronically submit a report via the MedWatch Online Voluntary Reporting Form (*https://www.accessdata.fda.gov/scripts/medwatch/*). Reporting is supported for drugs, non-vaccine biologicals, medical devices, special nutritional products, cosmetics, and non-prescription (over-the-counter (OTC)) human drug products marketed without an approved application. The paper form may also be used to submit reports about tobacco products and dietary supplements. Electronic reports for tobacco products and dietary supplements may be submitted to the Agency via an online submission route called the Safety Reporting Portal (*https://www.safetyreporting.hhs.gov/*).

C. Mandatory Reporting: Form FDA 3500A

1. Drug and Biological Products

In sections 505(b) and (j), 503B, and 704 (21 U.S.C. 355(b) and (j), 353B, and 374) of the FD&C Act, Congress has required that important safety information relating to all human drug products be made available to FDA so that it can take appropriate action to protect the public health when necessary. Section 702 of the FD&C Act (21 U.S.C. 372) authorizes investigational powers to FDA for enforcement of the FD&C Act. These statutory requirements regarding mandatory reporting have been codified by FDA under parts 310 and 314 (drugs) and 600 (biological products). Mandatory reporting of adverse reactions for HCT/Ps has been codified in § 1271.350.

2. OTC Monograph Drug Products and Dietary Supplements

Section 760 of the FD&C Act provides for mandatory safety reporting for non-prescription human drug products marketed without an approved application as described in the Dietary Supplement and Nonprescription Drug Consumer Protection Act (Pub. L. 109–462), which became law on December 22, 2006. The law requires manufacturers, packers, and distributors of nonprescription, OTC human drug products marketed without an approved application (OTC monograph drug products) to submit reports of adverse experiences from domestic sources. The law also requires reports of serious adverse events to be submitted to FDA by manufacturers of dietary supplements.

3. Postmarketing Safety Reports—Changes in Format Starting in June 2018

Current requirements specify that postmarketing adverse experience reports must be submitted on paper on Form FDA 3500A (or the CIOMS) (Council for International Organizations of Medical Sciences) I form for serious, unexpected adverse experiences from a foreign source). For the last several years the Agency has accepted electronic submissions in lieu of the paper Form FDA 3500A on the condition they are submitted in a manner that the Agency can process, review, and archive. On June 10, 2014, the Agency issued a final rule entitled ''Postmarketing Safety Reports for Human Drug and Biological Products; Electronic Submission Requirements'' (79 FR 33072) that requires electronic submission of all mandatory postmarketing safety reports, including individual case safety reports. Entities with mandatory reporting obligations under parts 310 and 314 (drugs) and 600 (biological products) and specified under section 760 of the FD&C Act must implement this rule within 1 year of the issuance date (by June 10, 2015). For more information see: *https://www.gpo.gov/fdsys/pkg/FR-2014-06-10/pdf/2014-13480.pdf*.

4. Medical Device Products

Section 519 of the FD&C Act (21 U.S.C. 360i) requires manufacturers and importers of devices intended for human use to establish and maintain records, make reports, and provide information, as the Secretary of Health and Human Services may, by regulation, reasonably be required to provide assurance that such devices are not adulterated or misbranded and to otherwise assure its safety and effectiveness. The Safe Medical Devices Act of 1990 (Pub. L. 101–629), signed into law on November 28, 1990, amends section 519 of the FD&C Act. The amendment requires that user facilities such as hospitals, nursing homes, ambulatory surgical facilities, and outpatient treatment facilities report deaths related to medical devices to FDA and to the manufacturer, if known. Serious illnesses and injuries are to be reported to the manufacturer or to FDA if the manufacturer is not known. These statutory requirements regarding mandatory reporting have been codified by FDA under part 803. Part 803 mandates the use of Form FDA 3500A for reporting to FDA on medical devices. The Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Pub. L. 107–250), signed into law October 26, 2002, amended section 519 of the FD&C Act. The MDUFMA amendment (section 303) required FDA to revise the MedWatch forms to facilitate the reporting of information relating to reprocessed single-use devices, including the name of the reprocessor and whether the device has been reused.

D. Voluntary Reporting by Consumers: Form FDA 3500B

Form FDA 3500B was developed for voluntary reporting by consumers (*i.e.* patients and their caregivers) to submit reports not mandated by Federal law or regulation. Individual patients or their caregivers are not required by law or regulation to submit reports to the Agency or the manufacturer.

FDA supports and encourages direct reporting to the Agency by consumers and healthcare professionals of suspected serious adverse outcomes and other product problems associated with human medical products, (*https://www.fda.gov/Safety/ReportaProblem/default.htm*). FDA has further encouraged voluntary reporting by requiring inclusion of the MedWatch toll-free phone number or the MedWatch internet address on all outpatient drug prescriptions dispensed, as mandated by section 17 of the Best Pharmaceuticals for Children Act (Pub. L. 107–109).

On March 25, 2008, section 906 of the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85) amended section 502(n) of the FD&C Act (21 U.S.C. 352(n)) and mandated that published direct-to-consumer advertisements for prescription drugs include the following statement printed in conspicuous text (this includes vaccine products): ''You are encouraged to report negative side effects of prescription drugs to the FDA. Visit *https://www.fda.gov/safety/medwatch,* or call 1–800–FDA–1088.''

Most private vendors of consumer medication information, the drug product-specific instructions dispensed to consumers at outpatient pharmacies, remind patients to report ''side effects'' to FDA and provide contact information to permit reporting via the MedWatch process. For this reporting FDA has created Form FDA 3500B, a modified version of Form FDA 3500 tailored for consumers and written in plain language (in conformance with the Plain Writing Act of 2010 (Pub. L. 111–274), *https://www.gpo.gov/fdsys/pkg/PLAW-111publ274/pdf/PLAW-111publ274.pdf*).

Form FDA 3500B evolved from several iterations of draft versions, with input from human factors experts, from other regulatory agencies, and with extensive input from consumer advocacy groups and the general public. Form FDA 3500B may be used to report to the Agency adverse events, product problems, and product use errors. The form is provided in both paper and electronic formats. Reporters may mail or Fax paper forms to the Agency (a fillable PDF version of the form is available at *https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM349464.pdf*) or electronically submit a report via the MedWatch Online Voluntary Reporting Form (*https://www.accessdata.fda.gov/scripts/medwatch/,* approved under OMB control number 0910–0645). Reporting is supported for drugs, non-vaccine biologicals, medical devices, special nutritional products, cosmetics, and non-prescription OTC human drug products marketed without an approved application. The paper form may also be used to submit reports about tobacco products and dietary supplements. Electronic reports for tobacco products and dietary supplements may be submitted to the Agency via an online submission route called the Safety Reporting Portal (*https://www.safetyreporting.hhs.gov/,* approved under OMB control number 0910–0645).

II. Proposed Modification to Existing Forms FDA 3500, 3500A, and 3500B

A. General Changes

The proposed modifications to Form FDA 3500 and Form FDA 3500A reflect changes that will bring the form into conformity, since the previous OMB authorization in 2015, with current regulations, rules, and guidances and fall into three categories: (1) Regulatory driven revisions, (2) work improvements for the Center, and (3) report processing improvements. We also welcome comments about translation of Form FDA 3500B (consumer) into Spanish and other languages. Lastly, formatting modifications are being proposed to several fields to enhance the quality, utility, and clarity of the information.

B. Changes Proposed for Form FDA 3500

In section A, we are revising the heading of A3 to ''Current Gender'' followed by check boxes next to the following options ''Female'', ''Male'', ''Intersex'', ''Transgender'', ''Prefer not to disclose.''

In section B, we are revising B1 to ''Type of Report (check all that apply)''. In section B2, we are removing ''(Devices)'' from the last option. We are also splitting section B6 into two

questions: ''B6.a. Relevant Test (please included dates)'' and ''B6.b. Relevant Laboratory Data (please included dates).''

In section C, we are adding question C2 ''Do you have a picture of the product?''

In section D1, we are adding the question ''Does this report involve cosmetics, dietary supplements or food?'' followed by a checkbox for ''Yes.'' In section D4, we are adding the question ''Is therapy still on-going?'' This question is important for pharmacovigilance and the current form does not allow the reporter to be specific. The current form does not allow the reporter to be specific. It is proposed to combine boxes D6 and D7 and change the title to ''Product Type'' (check all that apply).

In section E, we are adding question E9 ''Was this device serviced by a third-party servicer?'' followed by a checkbox for ''Yes'' and a checkbox for ''No.''

C. Changes Proposed for Form FDA 3500A

In section A, we are revising the heading of A3 to ''Current Gender'' followed by check boxes next to the options ''Female'', ''Male'', ''Intersex'', ''Transgender'', ''Prefer not to disclose''.

In section B, we are revising the heading for BI to now read ''Type of Report (check all that apply)''. In section B2, we are removing ''(Devices)'' from the last option. Section B6 is being split into two questions: ''B6.a. Relevant Test (please include dates)'' and ''B6.b. Relevant Laboratory Data (please include dates),''

In section C, we are combining boxes C6 and C7 and changing the title to ''Product Type'' (check all that apply).

In section D, we are adding a new question ''Was this device serviced by a third party?'' followed by a checkbox for ''Yes'' and a checkbox for ''No.''

In section F, we are changing the revising the heading of F10 to ''Adverse Event Problem'' and splitting the ''Patient Code'' box into two fields entitled ''Patient Outcome Code'' and ''Patient Severity Code.'' We are also splitting the ''Device Code'' field into two fields entitled ''Device Code'' and ''Component Code.''

In section G, question G1 will now include ''or Compounding Outsourcing Facility'' after (and Manufacturing Site for Devices.)'' In section G5, we are adding two new options entitled ''PreANDA'' and ''Compounded Product'' followed by a check box for ''Yes,'' and making consistent changes within section G6 by replacing ''If IND,'' to ''Give Protocol #.''

In section H1, we are adding a check box to indicate whether a summary report is included followed by a field in which to indicate ''Number of Events Summarized'' and an open field in which to add text. We are renaming section H6 to ''Adverse Event Problem'' and splitting ''Patient Code'' into two fields entitled ''Patient Outcome Code'' and ''Patient Severity Code.'' We are also splitting ''Device Code'' into two fields entitled ''Device Code'' and ''Component Code.'' In section H6, we are renaming the headings as follows: (1) ''Method'' to ''Type of Investigation'' (2) ''Results'' to ''Investigation Findings'' and (3) ''Conclusions'' to ''Investigation Conclusion.'' Finally, H10 is becoming a field entitled ''Additional Manufacturer Narrative,'' and we are adding field H11 entitled ''Corrected Data.''

D. Changes Proposed for Form FDA 3500B

On page 1, we are removing the text ''nutrition products, such as vitamins and minerals, herbal remedies, infant formulas, and medical foods.'' We are also going to number each of the questions included.

In section A, for the question ''Did any of the following happen?'' we are removing ''Devices)'' from the last option. We are also revising the question ''List any relevant tests or laboratory data if you know them. (Include dates)'' as two separate questions: ''List any relevant tests (Include dates)''; and ''List any relevant laboratory data (Include dates)'' with corresponding date fields for ''relevant tests'' and ''laboratory data.''

In section B, we are asking whether respondents have a picture of the product. Also in section B, we are adding the questions ''Does this report involve cosmetics, dietary supplements, or food?'' and ''Is therapy still on-going?'' These questions pertain to pharmacovigilance and the current form does not allow for such specificity. We are also adding the question, ''Was the product compounded by a pharmacy or an outsourcing facility?'' Following the question, ''Is the Product Compounded?'' we are adding a check box for ''Yes'' and a checkbox for ''No.'' We are also adding checkboxes within the field ''Product Type (check all that apply)'' to correspond with selections for ''Over-the-Counter, Generic and Biosimilar.'' Finally, we are revising ''Name of the . . .'' to ''Name(s) of the . . .'' for clarity.

In section C, we are separating ''Other identifying information'' into two fields; hoping this improves reporting. New fields will be entitled (1) ''Model number'' (2) ''Catalog number'' (3) ''Lot number'' (4) Serial number'' (5) ''UDI Number and (6) ''Expiration Date.''

In section D we are changing the terminology from ''Sex'' to ''Current Gender'' followed by corresponding check boxes next to the options ''Female'', ''Male'', ''Intersex'', ''Transgender'', ''Prefer not to disclose''.

In section E, we are revising the question ''If you do NOT want your identity disclosed to the manufacturer, place an 'X' in this box:'' to read ''If you do NOT want your identity disclosed to the manufacturer/compounder, place an 'X' in this box:''

III. Public Comment

In the **Federal Register** of March 16, 2018 (83 FR 11756), we published a 60-day notice requesting public comment on the proposed collection of information. A number of comments were received and are discussed in the following paragraphs.

General comments included suggestions that the MedWatch program be better advertised to physicians and other medical healthcare professionals as well as patients. Also, that the forms use terminology more familiar to healthcare providers and consumers. For example, using 'Medication error' or 'Medication error/product use error' instead of 'Product use error' to ensure respondents are aware that MedWatch forms can be used to report medication errors. Other comments suggested revisions that might improve or otherwise clarify instructions. Finally, some comments pertained to the advantages of electronic reporting.

More specific comments included a suggestion to add a question to section A of Form FDA 3500 related to pregnancy. While we agree that documenting pregnancy status is important, we do not plan on adding an additional checkbox for pregnancy at this time. Previously (in 2005), we proposed adding checkboxes for both ''Product Used During Pregnancy'' and ''Product Used During Breast Feeding.'' However we received comments expressing concern that these new data fields introduced divergence from International Council on Harmonisation standards and appeared to duplicate information usually provided in the narrative section and in coded adverse event terms. At the same time, we ask readers to note that pregnancy status can be captured in field B7 under ''other relevant history.''

Another comment suggested adding ''Physician Assistant'' to the drop down ''Occupation'' menu in section G of Form FDA 3500. We appreciate this

suggestion and will implement the revision.

We also received comment that some users have experienced ''timing out'' while completing Form FDA 3500B online and requested that any time limit for completing online forms be extended. We were not aware of this issue and will investigate to see whether it relates to the online functionality of the form. If so, we will make the necessary adjustments.

While we are especially appreciative of the comments received in response to our notice, we continue to welcome feedback at all times regarding ways we might improve the MedWatch Program and the associated forms. In addition to the revisions discussed previously, on our own initiative we are now including burden associated with written submissions under § 329.100(c)(2) (21 CFR 329.100(c)(2)) that request a temporary waiver from the electronic reporting requirements associated with postmarket adverse drug events under section 760 of the FD&C Act. While we expect few such waiver requests, we retain a placeholder for one respondent annually, and we estimate it takes 1 hour to complete the request.

We therefore estimate the burden for the information collection as follows.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA center or 21 CFR section and/or FDA form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Center for Biologics Evaluation and Research/Center for Drug Evaluation and Research:					
Form 3500	14,727	1	14,727	0.66 (40 minutes)	9,720
Form 3500A (§§ 310.305, 314.80, 314.98, 600.80, and 1271.350).	599	98	58,702	1.21	71,029
Form 3500A (§ 310.305 outsourcing facilities)	50	2	100	1.21	121
Center for Devices and Radiological Health:					
Form 3500	5,233	1	5,233	0.66 (40 minutes)	3,454
Form 3500A (part 803)	2,277	296	673,992	1.21	815,530
Center for Food Safety and Applied Nutrition:					
Form 3500	1,793	1	1,793	0.66 (40 minutes)	1,183
Form 3500A	1,659	1	1,659	1.21	2,007
Center for Tobacco Products:					
Form 3500	39	1	39	0.66 (40 minutes)	26
All Centers:					
Form 3500B	13,750	1	13, 750	0.46 (28 minutes)	6,325
Written requests for temporary waiver under § 329.100(c)(2):	1	1	1	1	1
Total					909,396

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

While we retain the currently approved estimate for the information collection, as noted previously we have added burden associated with written submissions under § 329.100.

Dated: September 4, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–19742 Filed 9–11–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3010]

Evidence-Based Treatment Decision in Transplantation: Patient Individualized Treatment; Choosing the Right Regimen for the Right Patient; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public workshop entitled ''Evidence-Based Treatment Decision in Transplantation: Patient Individualized Treatment; Choosing the Right Regimen for the Right Patient.'' This public workshop is intended to discuss potential candidate biomarkers to determine organ transplant patients' immunologic risk for organ rejection or tolerance. The public workshop will include discussion of the biomarker qualification process and how it could be used to develop biomarkers for use in clinical trials in transplantation, to develop new drugs to address unmet needs, and in clinical practice to guide patient treatment selection. Speakers will be patients who will provide perspective on the challenges of living with a transplant, managing immunosuppression and perspectives on tolerability, adherence, and risk that may inform patient-reported outcome (PRO) and patient-focused drug development.

DATES: The public workshop will be held on September 27, 2018, from 8:30 a.m. to 6 p.m. and September 28, 2018, from 8 a.m. to 12:30 p.m. Submit either electronic or written comments on this public workshop by November 19, 2018. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503, sections B and C), Silver Spring, MD 20993. Entrance for the public workshop 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 November 19, 2018. The

https://www.regulations.gov electronic filing system will accept comments until midnight Eastern Time at the end of November 19, 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–3010 for ''Evidence-Based Treatment Decision in Transplantation: Patient Individualized Treatment; Choosing the Right Regimen for the Right Patient.'' 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: Derek Alberding or Ramou Pratt, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 240–402–0963, *derek.alberding@fda.hhs.gov*, or 301–796–3928, *ramou.pratt@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing a public workshop entitled ''Evidence-Based Treatment Decision in Transplantation: Patient Individualized Treatment; Choosing the Right Regimen for the Right Patient.'' This public workshop is intended for academic experts, industry, healthcare providers, patients, other U.S. Government Agencies, and other stakeholders.

II. Topics for Discussion at the Public Workshop

Presentations and discussions will cover identifying potential candidate biomarkers that could:

- Be considered for the biomarker qualification process
- be used in identifying patients at high immunologic risk or low immunologic risk
- be used in clinical trials to develop drugs to address unmet individual needs in transplantation
- be used to make appropriate immunosuppressive regimen treatment decisions

In addition, patient speakers will provide perspectives on:

- Challenges of living with a transplant,
- managing immunosuppression, and
- tolerability, adherence, and risk of therapy.

The goal of these presentations is to inform PRO and patient-focused drug development.

III. Participating in the Public Workshop

Registration: Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public workshop must register by September 14, 2018, midnight Eastern Time. To register, please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone to *TransplantationWorkshop2018@fda.hhs.gov.*

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 workshop will be provided beginning at 7:30 a.m. We will let registrants know if registration closes before the day of the public workshop.

If you need special accommodations due to a disability, please contact Derek Alberding or Ramou Pratt (see **FOR FURTHER INFORMATION CONTACT**) no later than September 13, 2018.

Requests for Oral Presentations: During online registration you may indicate if you wish to present during a public comment session and which topic(s) you wish to address. We will do our best to accommodate requests to make public comments. Individuals and

organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the focused sessions. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants by September 14, 2018. All requests to make oral presentations must be received by September 10, 2018. If selected for presentation, any presentation materials must be emailed to *TransplantationWorkshop2018@fda.hhs.gov* (see **FOR FURTHER INFORMATION CONTACT**) no later than September 19, 2018. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Streaming Webcast of the Public Workshop: This public workshop will also be webcast at *https://collaboration.fda.gov/ebtd092018/.*

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 workshop 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/Drugs/NewsEvents/ucm605761.htm.*

Dated: September 6, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–19816 Filed 9–11–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3308]

Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Oncologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on October 10, 2018, from 8 a.m. to 1 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2018–N–3308. The docket will close on October 9, 2018. Submit either electronic or written comments on this public meeting by October 9, 2018. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 9, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of October 9, 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.

Comments received on or before October 1, 2018, will be provided to the committee. Comments received after that date will be taken into consideration by FDA.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* 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–3308 for ''Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; 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.'' FDA 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 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 the 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: Lauren D. Tesh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *ODAC@fda.hhs.gov;* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss biologics license application 761088 for CT–P10, a proposed biosimilar to Genentech, Inc.'s RITUXAN (rituximab), submitted by Celltrion, Inc. The proposed indications (uses) for this product are for the treatment of adult patients with (1) relapsed or refractory, low-grade or follicular, CD20-positive, B-cell Non-Hodgkin's Lymphoma (NHL) as a single agent; (2) previously untreated follicular, CD20-positive, B-cell NHL in combination with first-line chemotherapy and, in patients achieving a complete or partial response to CT–P10 in combination with chemotherapy, as single-agent maintenance therapy; and (3) non-progressing (including stable disease), low-grade, CD20-positive, B-cell NHL as a single agent after first-line cyclophosphamide, vincristine, and prednisone.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before October 1, 2018, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 24, 2018. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 25, 2018.

Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Lauren D. Tesh (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 6, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–19741 Filed 9–11–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–4853]

Receipt of Notice That a Patent Infringement Complaint Was Filed Against a Biosimilar Applicant

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing notice that an applicant for a proposed biosimilar product notified FDA that a patent infringement action was filed in connection with the applicant's biologics license application (BLA). Under the Public Health Service Act (PHS Act), an applicant for a proposed biosimilar product or interchangeable product must notify FDA within 30 days after the applicant was served with a complaint in a patent infringement action described under the PHS Act. FDA is required to publish notice of the complaint in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angela Hoague, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6257, Silver Spring, MD 20993–0002, 301–348–3915, *angela.hoague@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: The Biologics Price Competition and Innovation Act of 2009 (BPCI Act) was enacted as part of the Patient Protection and Affordable Care Act (Pub. L. 111–148) on March 23, 2010. The BPCI Act amended the PHS Act and created an abbreviated licensure pathway for biological products shown to be biosimilar to, or interchangeable with, an FDA-licensed biological reference

product. Section 351(k) of the PHS Act (42 U.S.C. 262(k)), added by the BPCI Act, describes the requirements for a BLA for a proposed biosimilar product or a proposed interchangeable product (351(k) BLA). Section 351(l) of the PHS Act, also added by the BPCI Act, describes certain procedures for exchanging patent information and resolving patent disputes between a 351(k) BLA applicant and the holder of the BLA reference product. If a 351(k) applicant is served with a complaint for a patent infringement described in section 351(l)(6) of the PHS Act, the applicant is required to provide the FDA with notice and a copy of the complaint within 30 days of service. FDA is required to publish notice of a complaint received under section 351(l)(6)(C) of the PHS Act in the **Federal Register**.

FDA received notice of the following complaint under section 351(l)(6)(C) of the PHS Act: *Genentech, Inc.* and *City of Hope* v. *Amgen Inc.,* 1:18–cv–00924–GMS (D. Del., filed July 2, 2018).

FDA has only a ministerial role in publishing notice of a complaint received under section 351(l)(6)(C) of the PHS Act, and does not perform a substantive review of the complaint.

Dated: September 6, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–19811 Filed 9–11–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0429]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance on Meetings With Industry and Investigators on the Research and Development of Tobacco Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on ''Guidance on Meetings with Industry and Investigators on the Research and Development of Tobacco Products.''

DATES: Submit either electronic or written comments on the collection of information by November 13, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 13, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of November 13, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2012–D–0429 for ''Guidance on Meetings with Industry and Investigators on the Research and Development of Tobacco Products.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations,

Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance on Meetings With Industry and Investigators on the Research and Development of Tobacco Products

OMB Control Number 0910–0731—Extension

The Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31) offers tobacco product manufacturers several pathways to obtain an order from FDA to authorize the marketing of a new tobacco product before it may be introduced or delivered into interstate commerce. To provide assistance with these pathways to market products, FDA will meet with tobacco product manufacturers, importers, researchers, and investigators (or their representatives) when appropriate. This guidance is intended to assist persons who seek meetings with FDA relating to their research to inform the regulation of tobacco products, or to support the development or marketing of tobacco products. The original guidance issued in 2012 was revised for updating and clarity in July 2016.

In the guidance, the Agency discusses, among other things:

- What information FDA recommends persons include in a meeting request;
- How and when to submit a request; and
- What information FDA recommends persons submit prior to a meeting.

This guidance describes two collections of information: (1) The submission of a meeting request containing certain information and (2) the submission of an information package in advance of the meeting. The purpose of this proposed information collection is to allow FDA to conduct meetings with tobacco manufacturers, importers, researchers, and investigators in an effective and efficient manner. FDA issued this guidance and the revisions consistent with FDA's good guidance practices regulations (21 CFR 10.115).

Meeting Requests: The guidance sets forth FDA's recommendations for materials to be included in a request for a meeting with FDA to discuss the research and development of tobacco products. In the guidance, FDA recommends that the following information be included in the meeting request:

1. Product name and FDA-assigned Submission Tracking Number (if applicable);
2. Product category (*e.g.,* cigarettes, smokeless tobacco) (if applicable);
3. Product use (indicate for consumer use or for further manufacturing);
4. Contact information for the authorized point of contact for the company requesting the meeting;
5. The topic of the meeting being requested (*e.g.,* a new tobacco product application, an application for permission to market a modified risk tobacco product, or investigational use of a new tobacco product);
6. A brief statement of the purpose of the meeting, which could include a discussion of the types of studies or data to be discussed at the meeting, the general nature of the primary questions to be asked, and where the meeting fits in the overall product development plans;
7. A preliminary list of the specific objectives/outcomes expected from the meeting;
8. A preliminary proposed agenda, including an estimate of the time needed and a designated speaker for each agenda item;
9. A preliminary list of specific questions, grouped by discipline (*e.g.,* chemistry, clinical, nonclinical);
10. A list of all individuals who will attend the meeting on behalf of the tobacco product manufacturer, importer, researcher, or investigator, including titles and responsibilities;
11. The date on which the meeting information package will be received by FDA; and
12. Suggested format of the meeting (*e.g.,* conference call, in-person meeting at FDA offices, video conference, or written response) and suggested dates and times for the meeting. Meetings are usually scheduled for 1 hour.

This information will be used by the Agency to: (1) Determine the utility of the meeting, (2) identify Agency staff necessary to discuss proposed agenda items, and (3) schedule the meeting.

Meeting Information Packages: An individual submitting a meeting information package to FDA in advance of a meeting should provide summary information relevant to the product and supplementary information pertaining to any issue raised by the individual or FDA to be discussed at the meeting. As stated in the guidance, FDA recommends that meeting information packages generally include updates of information that was submitted with the meeting request and, as applicable:

1. Product composition and design data summary;
2. Manufacturing and process control data summary;
3. Nonclinical data summary;
4. Clinical data summary;
5. Behavioral and product use data summary;
6. User and nonuser perception data summary; and
7. Investigational plans for studies and surveillance of the tobacco product, including a summary of proposed study protocols containing the following information (as applicable):

a. Study objective(s);
b. Study hypotheses;
c. Study design;
d. Study population (inclusion/exclusion criteria, comparison group(s));
e. Human subject protection information, including Institutional Review Board information;
f. Primary and secondary endpoints (definition and success criteria);
g. Sample size calculation;
h. Data collection procedures;
i. Duration of follow up and baseline and follow up assessments, and
j. Data analysis plan(s).

The purpose of the information package is to provide Agency staff the opportunity to adequately prepare for the meeting, including the review of relevant data concerning the product. In the Agency's experience, reviewing such information is critical to achieving a productive meeting. If the information package was previously submitted in the meeting request, it should be revised, as applicable, so that the information reflects the most current and accurate information available.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Meeting Requests					
Combining and Sending Meeting Request Letters for Manufacturers, Importers, and Researchers	83	1	83	10	830
Meeting Information Packages					
Combining and Submitting Meeting Information Packages for Manufacturers, Importers, and Researchers	83	1	83	18	1,494
Total					2,324

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimate of the number of respondents for meeting requests in table 1 is based on the number of meeting requests received and projected over the next 3 years. FDA estimates that 83 preapplication meetings will be requested.

The hours per response for combining and sending meeting request letters are estimated at 10 hours each, and the total burden hours for meeting requests are expected to be 830 hours. Based on FDA's experience, the Agency expects it will take respondents this amount of time to prepare, gather, copy, and submit brief statements about the product and a description of the purpose and details of the meeting.

FDA's estimates that 83 respondents will compile meeting information packages and submit to FDA at 18 hours per response. Based on FDA's experience, the Agency expects that it will take respondents 1,494 hours (83 respondents × 18 hours) to gather, copy, and submit brief statements about the product, a description of the details of the anticipated meeting, and data and information that generally would already have been generated for the planned research and/or product development.

The total number of burden hours for this collection of information is estimated to be 2,324 hours (830 hours to prepare and submit meeting requests and 1,494 hours to prepare and submit information packages).

Our estimated burden for the information collection reflects an overall increase of 16 respondents and 448 hours. We attribute this adjustment to an increase in the number of industry meetings as the premarket tobacco application compliance deadlines will come due in the next 3 years.

Dated: September 4, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–19743 Filed 9–11–18; 8:45 am]

BILLING CODE 4164–01–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: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Management of Patients in Community-based Settings Study Section.

Date: September 27–28, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Warwick Denver, 1776 Grant Street, Denver, CO 80203.

Contact Person: Martha L Hare, Ph.D., RN, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7770, Bethesda, MD 20892, (301) 451–8504, *harem@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Hypertension and Microcirculation.

Date: October 2, 2018.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Katherine M. Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0912, *Katherine_Malinda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Dental, Microbiology and Oral Biology.

Date: October 3, 2018.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Baljit S Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–17–094: Maximizing Investigators' Research Award (R35).

Date: October 10–11, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 6, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–19796 Filed 9–11–18; 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: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: October 4–5, 2018.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Zoe, Fisherman's Wharf, 425 North Point Street, San Francisco, CA 94133.

Contact Person: Unja Hayes, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–6830, *unja.hayes@nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Prokaryotic Cell and Molecular Biology Study Section.

Date: October 4–5, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Kinzie Hotel, 20 West Kinzie Street, Chicago, IL 60654.

Contact Person: Luis Dettin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, Bethesda, MD 20892, 301–451–1327, *dettinle@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Motor Function, Speech and Rehabilitation Study Section.

Date: October 4, 2018.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Georgetown, 2350 M Street NW, Washington, DC 20037.

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Atherosclerosis and Inflammation of the Cardiovascular System Study Section.

Date: October 11–12, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, *komissar@mail.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Development, Risk and Prevention Study Section.

Date: October 11–12, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW, Washington, DC 20037.

Contact Person: Anna L. Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.

Date: October 11–12, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Deborah Hodge, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4207 MSC 7812, Bethesda, MD 20892, 301–435–1238, *hodged@mail.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Behavioral Medicine, Interventions and Outcomes Study Section.

Date: October 11–12, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Lee S. Mann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3224, MSC 7808, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Hepatobiliary Pathophysiology Study Section.

Date: October 11–12, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jianxin Hu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2156, Bethesda, MD 20892, 301–827–4417, *jianxinh@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neural Oxidative Metabolism and Death Study Section.

Date: October 11–12, 2018.

Time: 8:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Innate Immunity and Inflammation Study Section.

Date: October 11–12, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Grand at Wild Horse Pass, 5594 W Wild Horse Pass Boulevard, Phoenix, AZ 85226.

Contact Person: Tina McIntyre, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Xenobiotic and Nutrient Disposition and Action Study Section.

Date: October 11, 2018.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Martha Garcia, Ph.D., Scientific Reviewer Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, Bethesda, MD 20892, 301–435–1243, *garciamc@nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Pathogenic Eukaryotes Study Section.

Date: October 11–12, 2018.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Tera Bounds, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, 301–435–2306, *boundst@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 6, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–19793 Filed 9–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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: National Institute of Child Health and Human Development Initial Review Group; Reproduction, Andrology, and Gynecology Subcommittee.

Date: October 5, 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 Ave., Bethesda, MD 20814.

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Administrator Division of Scientific Review National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Bethesda, MD 20892, (301) 435–2717, *leszczyd@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Developmental Biology Subcommittee.

Date: October 11, 2018.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion 4300 Military Road NW, Washington, DC 20015.

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS 6710B Rockledge Drive, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Function, Integration, and Rehabilitation Sciences Subcommittee.

Date: October 12, 2018.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 4300 Military Rd. NW, Washington, DC 20015.

Contact Person: Joanna Kubler-Kielb, Ph.D., Scientific Review Officer Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development 6710B Rockledge Drive, Bethesda, MD 20892, 301–435–6916, *kielbj@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Pediatrics Subcommittee.

Date: October 12, 2018.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rita Anand, Ph.D., Scientific Review Officer Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Health, Behavior, and Context Subcommittee.

Date: October 15, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kimberly L. Houston, MD, Scientific Review Officer, Eunice Kennedy Shriver National Institute of Children Health and Human Development, 6710B Rockledge Drive, Room 2127B Bethesda, MD 20892, 301–827–4902, *kimberly.houston@nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: October 26, 2018.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814,

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer National Institutes of Health NICHD, SRB, 6710B Rockledge Drive Bethesda, MD 20892, 301–435–6902, *peter.zelazowski@nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Biobehavioral and Behavioral Sciences Subcommittee.

Date: October 29, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Minki Chatterji, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute, of Child Health and Human Development, NIH, DHHS 6710B Rockledge Drive, Rm. 2121D, Bethesda, MD 20892–7501, 301–827–5435, *minki.chatterji@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 6, 2018.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–19795 Filed 9–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: October 16–18, 2018.

Time: 5:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Barbara A. Woynarowska, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7007, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Digestive Diseases and Nutrition C Subcommittee.

Date: October 17–19, 2018.

Time: 6:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7017, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: October 24–26, 2018.

Time: 5:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

Contact Person: John F. Connaughton, Ph.D., Chief, Scientific Review Branch, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7007, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 6, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–19794 Filed 9–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4383–DR; Docket ID FEMA–2018–0001]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–4383–DR), dated August 10, 2018, and related determinations.

DATES: The declaration was issued August 10, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 10, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Wisconsin resulting from severe storms, straight-line winds, and flooding during the period of June 15 to June 19, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, David G. Samaniego, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Wisconsin have been designated as adversely affected by this major disaster:

Ashland, Bayfield, Burnett, Clark, Douglas, and Iron Counties for Public Assistance.

All areas within the State of Wisconsin are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–19783 Filed 9–11–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3399–EM; Docket ID FEMA–2018–0001]

Hawaii; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for State of Hawaii (FEMA–3399–EM), dated August 22, 2018, and related determinations.

DATES: This change occurred on August 24, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency

Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Willie G. Nunn, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of William Roche as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–19779 Filed 9–11–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6050–N–02]

Relief From HUD Requirements Available During Calendar Year (CY) 2018 to Public Housing Agencies To Assist With Recovery and Relief Efforts on Behalf of Families Affected by Presidentially-Declared Major Disasters

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This Notice advises the public that HUD, in order to more effectively and expeditiously respond to Presidentially-declared Major Disaster Declarations (MDD), is establishing for CY 2018 an expedited process for the review of requests for relief from HUD regulatory and/or administrative requirements (''HUD requirements'') for public housing agencies (PHAs) that are located in counties that are included in MDDs. PHAs located in areas covered by MDDs issued for which a related disaster occurs during 2018 may request waivers of HUD requirements and receive expedited review of such requests utilizing the flexibilities and expedited waiver process set out by this Notice.

DATES: *Applicable:* September 12, 2018.

FOR FURTHER INFORMATION CONTACT: Shelia Bethea, Office of Field Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4112, Washington, DC 20410–5000, telephone number 202–402–8120. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background Information

On several occasions in recent years, after Presidential disaster declarations, HUD has published notices to announce waivers and flexibilities available to PHAs, Tribes, and Tribally Designated Housing Entities located in areas covered by MDDs.[1] In the interest of expediting HUD's ability to provide administrative relief to PHAs in MDD declaration areas, based on HUD's past experience, HUD is publishing this Notice on waivers and flexibilities that will be made available to PHAs on an expedited basis following MDDs. The Notice is organized as follows:

- Section II describes the flexibilities that are currently available to MDD PHAs under statutes and/or regulations. MDD PHAs may avail themselves of these flexibilities, following the process described in Section IV of the Notice.
- Section III describes certain HUD requirements that, if waived, may facilitate an MDD PHA's ability to participate in relief and recovery efforts. An MDD PHA may request a waiver of a HUD requirement not listed in Section IV and receive expedited review of the request if the MDD PHA demonstrates that the waiver is needed to assist in its relief and recovery efforts. An MDD PHA may not adopt any requested waiver prior to receiving HUD approval.
- Section V States that a Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

Waiver requests approved by HUD pursuant to this Notice will be published in the **Federal Register** and will identify the MDD PHAs receiving such approvals. The process that HUD will use in assessing applications for waivers and flexibilities is covered below:

This Notice applies only during CY 2018.

II. Flexibilities That Are Available to MDD PHAs During CY 2018

HUD is exercising discretionary authority consistent with 24 CFR 5.110 to provide relief from the requirements described in this section. Upon notification to HUD and appropriate documentation of good cause, or upon HUD approval, as noted below, relief will be granted to MDD PHAs. Relief from the requirements must benefit families affected by the disasters, for example by enabling MDD PHA staff to focus on relief and recovery efforts. Unless otherwise stated, the deadline for requesting waivers is 4 months after the initial MDD.

A. 24 CFR 905.306 (Extension of deadline for obligation and expenditure of Capital Funds). Section 9(j)(1) of the United States Housing Act of 1937 (1937 Act) requires PHAs to *obligate* Capital Funds not later than 24 months after the date on which the funds became available, or the date on which the PHA accumulates adequate funds to undertake modernization, substantial rehabilitation, or new construction of units, plus the period of any extension approved under section 9(j)(2) of the Act. Section 9(j)(5)(A) of the 1937 Act requires a PHA to *expend* Capital Funds not later than 4 years after the date on which the funds become available for obligation, plus the period of any extension approved under section 9(j)(2). Section 9(j)(2) of the 1937 Act authorizes the Secretary to extend the time period for the obligation of Capital Funds for such period as the Secretary

[1] See, Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs to Assist with Recovery and Relief in Hurricane Katrina Disaster Areas, 70 FR 57716 (October 3, 2005); Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs to Assist with Recovery and Relief in Hurricane Rita Disaster Areas; and Additional Administrative Relief for Hurricane Katrina, 70 FR 66222 (November 1, 2005); Extension of Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs to Assist With Recovery and Relief in Hurricanes Katrina, Rita, and Wilma Disaster Areas, 71 FR 78022 (December 27, 2006); Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs to Assist with Recovery and Relief in Hurricane Wilma Disaster Areas, 71 FR 12988 (March 13, 2006); Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs to Assist with Recovery and Relief in Superstorm Sandy Disaster Areas, 77 FR 71439 (November 30, 2012); and Relief From HUD Requirements Available to PHAs to Assist With Recovery and Relief Efforts on Behalf of Families Affected by Hurricanes Harvey, Irma, Maria and Future Natural Disasters Where Major Disaster Declarations Might be Issued in 2017, 82 FR 46821 (October 6, 2017).

determines necessary if the Secretary determines that the failure of the PHA to obligate assistance in a timely manner is attributable to an event beyond the control of the PHA. The authority for extension of the section 9(j) obligation and extension deadlines for an event beyond the control of the PHA made in this Notice is also found in the implementing regulation at 24 CFR 905.306 (d)(5).

B. 24 CFR 984.105(d) (Family Self-Sufficiency minimum program size). 24 CFR 984.105(d) defines the circumstances under which a PHA may, upon HUD approval, operate a program that is smaller than the required program size. HUD has determined, based on its past experience with MDDs, that a major disaster may hinder a PHA's ability to operate a program that meets minimum program size requirements. As a result, upon the submission to HUD of a certification (as defined in 24 CFR 984.103) that the MDD PHA is unable to operate a program that meets minimum program size requirements due to the major disaster, HUD will grant an exemption from the minimum program size requirement for a period of 24 months from the effective date of this Notice.

C. 24 CFR 990.145(b) (Public housing dwelling units with approved vacancies). Section 990.145 lists the categories of vacant public housing units that are eligible to receive operating subsidy and are therefore considered to be ''approved vacancies.'' Under Section 990.145(b), a PHA shall receive operating subsidy for units that are vacant due to a declared disaster, subject to prior HUD approval, on a project-by-project basis. If an MDD PHA has a unit that has been vacated due to a Presidentially-declared disaster, then the MDD PHA, with HUD approval, may treat the unit as an ''approved vacancy.'' Upon the request of an MDD PHA and HUD approval, on a case-by-case basis, such units may be considered approved vacancies for a period not to exceed 12 months from the date of HUD approval.

III. HUD Requirements That May Be Waived

For an MDD PHA, HUD will review requests for waivers of HUD requirements on an expedited basis. This section lists requirements for waivers, requests for which HUD anticipates receiving. An MDD PHA may also request a waiver of a HUD requirement not listed in this section and receive expedited review of the request if the MDD PHA documents that the waiver is needed for relief and recovery purposes. This documentation need not be in writing if HUD determines that providing written documentation is impracticable.

PHAs must note that commonly sought waivers such as waiving inspection or income verification requirements entirely cannot be granted. PHAs should go through the hierarchy of verifying income as found in PIH 2017–12 if sources of income are difficult to find. Similarly, while the requirement for HQS inspections cannot be waived, HUD can consider variations to the acceptability criteria to HQS in case of disaster (under the authority of 982.401(a)(4)).

HUD expects that any waiver granted pursuant to this Notice will benefit families affected by disasters by, for example, enabling MDD PHA staff to focus on relief and recovery efforts.

An MDD PHA seeking a waiver of a HUD requirement listed below or of any other HUD requirement needed to assist the MDD PHA in its relief and recovery efforts must submit a waiver request pursuant to the process that will be provided in a further Notice. HUD will not approve an MDD PHA's or other recipient's request to waive a fair housing, civil rights, labor standards, or environmental requirement. The request must be submitted to HUD not later 4 months following the date of the relevant disaster declaration.

A. 24 CFR 5.801(c) and 5.801(d)(1) (Uniform financial reporting standards; Filing of financial reports; Reporting compliance dates). Section 5.801 establishes uniform financial reporting standards (UFRS) for PHAs (and other entities). Section 5.801(c) requires that PHAs submit financial information in accordance with 24 CFR 5.801(b) annually, not later than 60 days after the end of the fiscal year of the reporting period. Section 5.801(d)(1) requires that PHAs submit their unaudited financial statements not later than 60 calendar days after the end of their fiscal year and that PHAs submit their audited financial statements not later than 9 months after the end of their fiscal year. HUD is willing to consider requests to extend these reporting deadlines.

For MDD PHAs with a deadline to submit only audited financial information in accordance with 24 CFR 5.801(b) and (d) within 6 months after the date of the disaster related to the MDD, HUD is willing to consider a request to waive the due date. For MDD PHAs with a deadline to submit unaudited financial information in accordance with 24 CFR 5.801(b) and (d) within 4 months before and up to 6 months after the date of the disaster related to the MDD, HUD is willing to consider a request to waiver the due date. For these PHAs, HUD also is willing to consider a request to waive the due date of the audited financial information. For situations beyond a PHA's control, HUD is willing to consider requests from the MDD PHAs with financial submission due dates that fall outside these dates.

The deadline for submission of financial information in accordance with 24 CFR 5.801(b) and the deadline for submission of unaudited financial statement may be extended to 180 calendar days, and the deadline for submission of audited financial statements may be extended to 13 months.

B. 24 CFR 902 (Public Housing Assessment System). Part 902 sets out the indicators by which HUD measures the performance of a PHA. The indicators measure a PHA's physical condition, financial condition, management operations, and Capital Fund obligation and occupancy.

For MDD PHAs with FYE dates within 4 months before and up to 10 months after the date of the disaster related to the MDD, HUD is willing to consider a request to waive the physical inspection and scoring of public housing projects, as required under 24 CFR 902. For situations beyond the PHA's control, HUD is willing to consider requests from MDD PHAs with a FYE date that falls outside these dates.

C. 24 CFR 905.322(b) (Fiscal closeout). Section 905.322(b) establishes deadlines for the submission of an Actual Development Cost Certificate (ADCC) and an Actual Modernization Cost Certificate (AMCC). Specifically, the ADCC must be submitted 12 months from the date of completion/termination of a modernization activity, and the AMCC must be submitted not later than 12 months from the activity's expenditure deadline. Upon request from an MDD PHA, HUD may extend these deadlines by 12 months.

D. 24 CFR 905.314(b)–(c) (Cost and other limitations; Maximum project cost; Total Development Cost (TDC) limit). 42 U.S.C. 1437d(b) requires HUD to calculate total development costs, which may not be exceeded ''unless the Secretary provides otherwise, and in any case may not exceed 110 per centum of such amount unless the Secretary for good cause determines otherwise.'' Section 905.314(b)–(c) establishes the calculation of maximum project cost and the calculation of total development cost. To facilitate the use of Capital Funds for repairs and construction for needed housing in the disaster areas, HUD is willing to consider waiving the TDC and housing cost cap limits for all work funded by the Capital Grant (Capital Grant Funds

with undisbursed balances and HOPE VI funds) until the next issuance of TDC levels. MDD PHAs that request to waive this provision and receive approval to do so must strive to keep housing costs reasonable given local market conditions, based upon the provisions outlined in 2 CFR part 200.

E. 24 CFR 905.314(j) (Cost and other limitations; Types of labor). This section establishes that non–high performer PHAs may use force account labor for modernization activities only when the use of force account labor for such activities has been included in a Board-approved Capital Fund Program 5-Year Action Plan. HUD may waive this requirement to allow for the use of force account labor for modernization activities even if this activity has not been included in the non–high performer MDD PHA's 5-Year Action Plan. Should HUD waive this requirement, the waiver will be in effect for a period not to exceed 12 months from the date of HUD approval.

F. 24 CFR 905.400(i)(5) (Capital Fund Formula; Limitation of Replacement Housing Funds to New Development). Section 905.400 describes the Capital Fund formula. Section 905.400(i)(5) limits the use of replacement housing funds to the development of new public housing. To help address housing needs because of the displacement caused by a disaster, HUD is willing to consider waiving 905.400(i)(5) to allow all Capital Fund Replacement Housing Factor Grants with undisbursed balances to be used for public housing modernization. Should HUD waive this requirement, the waiver will be in effect for funds obligated within 12 months from the date of HUD approval.

G. 24 CFR 960.202(c)(1) (Tenant selection policies) and 982.54(a) (Administrative plan). Section 960.202(c)(1) provides that public housing tenant selection policies must be duly adopted and implemented. Section 982.54(a) provides that a PHA's Section 8 administrative plan must be formally adopted by the PHA Board of Commissioners or other authorized PHA officials. For temporary revisions to an MDD PHA's public housing tenant selection policies or Section 8 administrative plan that an MDD PHA wishes to put into place to address circumstances unique to relief and recovery efforts, HUD is willing to consider requests to waive the requirements for formal approval. Any waiver request must include documentation that an MDD PHA's Board of Commissioners or an authorized MDD PHA official supports the waiver request and must identify the temporary revisions, which shall be effective for a period not to exceed 12 months from the date of HUD's approval. Additionally, any waiver request would be limited to revisions that do not constitute a significant amendment or modification to the PHA plan; pursuant to Section 5A(g) of the 1937 Act, HUD cannot waive the approval by the board or other authorized PHA officials if the proposed revision would constitute a significant amendment or modification to the PHA plan. Finally, HUD cannot waive any terms within a PHA's own plan or state law requiring the approval of the board or authorized PHA officials.

H. 24 CFR 982.206(a)(2) (Waiting List; Opening and closing; Public notice). This section describes where a PHA must provide public notice when it opens its waiting list for tenant-based assistance. HUD is willing to consider a request from an MDD PHA that wishes, in lieu of the requirement to provide notice in a local newspaper of general circulation, to provide public notice via its Website, at any of its offices, and/or in a voice-mail message, for any opening of the waiting list for tenant-based assistance that occurs within a period not to exceed 12 months from the date of HUD approval. MDD PHAs, that request a waiver of this requirement and receive HUD approval, must comply with applicable fair housing and other civil rights requirements when they provide public notice. For example, an MDD PHA that chooses to provide public notice at its offices must consider the impact on persons with disabilities, who may have difficulty visiting the office in person. Similarly, an MDD PHA that chooses to provide public notice via voice-mail message must consider how it will reach persons with hearing impairments and persons with limited English proficiency. HUD maintains the requirement that an MDD PHA must also provide the public notice in minority media. Any notice must comply with HUD's fair housing requirements.

I. 24 CFR 982.503(c) (HUD approval of exception payment standard amount). 24 CFR 982.503(c) authorizes HUD to approve an exception payment standard amount that is higher than 110 percent of the published fair market rent (FMR). Typically, a PHA must provide data about the local market to substantiate the need for an exception payment standard. In a natural disaster situation, however, the typical data sources fail to capture conditions on the ground. In these cases, HUD considers the most recently available data on the rental market, prior to the disaster, then estimates the number of households seeking housing units in the wake of the disaster to arrive at an emergency exception payment standard amount. In the event of a disaster, HUD will consider, based on this data, whether exception payment standard amounts up to 150 percent of the FMR have a good cause justification even in the absence of supporting data. If so, an MDD PHA may request this payment standard. Upon approval by HUD, an exception payment standard adopted pursuant to this Notice may be adopted for any Housing Assistance Payments (HAP) contract entered as of the effective date of this Notice. HUD intends for these exception payment standards to remain in effect until HUD implements changes to the FMRs in the affected areas. MDD PHAs are reminded that increased per-family costs resulting from the use of exception payment standards may result in a reduction in the number of families assisted or may require other cost-saving measures for an MDD PHA to stay within its funding limitations.

J. 24 CFR 982.401(d) (Housing quality standards; Space and security). This section establishes a standard for adequate space for an Housing Choice Voucher-assisted family. Specifically, it requires that each dwelling unit have at least 1 bedroom or living/sleeping room for each 2 persons. HUD is willing to consider a request from an MDD PHA that wishes to waive this requirement to house families displaced due to the severe storms and flooding. Should the waiver be granted, it will be in effect only for HAPs entered into during the 12-month period following the date of HUD approval, and then only with the written consent of the family. For any family occupying a unit pursuant to this waiver, the waiver will be in effect for the initial lease term.

K. 24 CFR 982.633(a) (Occupancy of home). This section establishes the requirement that PHAs may make HAP for homeownership assistance only while a family resides in their home and must stop HAP no later than the month after a family moves out. HUD is willing to consider a request from an MDD PHA wishing to waive this requirement to allow families displaced from their homes located in areas affected by MDD(s) to comply with mortgage terms or make necessary repairs. A PHA requesting a waiver of this type must show good cause by demonstrating that the family is not already receiving assistance from another source. Note: An MDD PHA that wishes in addition to request a waiver of the requirement at § 982.312 that a family be terminated from the program if they have been absent from their home for 180

consecutive calendar days must do so separately.

L. 24 CFR 984.303(d) (Contract of participation; contract extension). Part 984 establishes the requirements for the Section 8 and Public Housing Family Self-Sufficiency (FSS) Program. Section 984.303(d) authorizes a PHA to extend a family's contract of participation for a period not to exceed 2 years, upon a finding of good cause, for any family that requests such an extension in writing. HUD is willing to consider a request from an MDD PHA that wishes to extend family contracts for up to 3 years, if such extensions are merited based on circumstances deriving from MDDs. Any waiver granted pursuant to this request will be in effect for requests made to the MDD PHA during a period not to exceed 12 months from the date of HUD approval.

M. 24 CFR part 985 (Section 8 Management Assessment Program (SEMAP)). Part 985 sets out the requirements by which Section 8 tenant-based assistance programs are assessed. For an MDD PHA that has a SEMAP score due during CY 2018, HUD is willing to consider a request to carry forward the last SEMAP score received by the PHA.

N. Notice PIH 2012–10, Section 8(c) (Verification of the Social Security Number (SSN)). PHAs are required to transmit form HUD–50058 not later than 30 calendar days following receipt of an applicant's or participant's SSN documentation. HUD is willing to consider a request to extend this requirement to 90 calendar days, for a period not to exceed 12 months from the date of HUD approval.

O. Notice PIH 2012–7, Section 9 and 4. HUD will not process a Special Application Center (SAC) application that is incomplete or deficient on a substantial item (*e.g.*, supporting information required under 24 CFR sections 970.7(a)(1)–(17) (environmental review must still be performed)). HUD is willing to consider a request to waive this for MDD PHAs to allow these PHAs to apply for tenant protection vouchers (TPVs) after the submission of a SAC application based on imminent health and safety issues (in accordance with PIH Notice 2018–09).

P. 24 CFR 970.15(b)(1)(ii). For Section 18 demolition applications (and disposition applications) justified by location obsolescence, in addition to accepting an environmental review performed by HUD under 24 CFR part 50, for MDD PHAs, HUD is willing to accept an environmental review performed under 24 CFR part 58 if HUD determines the part 58 review indicates the environmental conditions jeopardize the suitability of the site or a portion of the site and its housing structures for residential use.

Q. 24 CFR 970.15(b)(2) and PIH 2012–7, Section 14. For Section 18 demolition applications (and disposition applications) justified by obsolescence, HUD generally shall not consider a program of modifications to be cost-effective if the costs of such programs exceed 62.5 percent of TDC for elevator structures and 57.14 percent of TDC for all other types of structures in effect at the time the application is submitted to HUD. In addition, HUD requires that PHAs support rehabilitation cost-estimate by a list of specific and detailed work-items identified on form HUD–52860–B and other criteria outlined in PIH Notice 2012–7, Section 14. HUD is willing to consider requests to waive these requirements if MDD PHAs submit other evidence (*e.g.*, insurance adjuster reports, condemnation orders from local municipalities, and photographs) that support the MDD PHA's certification that a program of modifications is not cost-effective.

R. Notice PIH 2012–7, Section 14. HUD approves Section 18 demolition applications and disposition applications justified by physical obsolescence. HUD is willing to consider requests to waive these criteria for MDD PHAs if they submit other evidence (*e.g.*, insurance adjuster reports, photographs) that support the MDD PHA's certification that a program of modifications is not cost-effective.

IV. Notification and Expedited Waiver Process During CY 2018—Instructions

HUD has developed a checklist (Attachment A to this Notice) that an MDD PHA must complete and submit to take advantage of the provisions identified in this Notice and the expedited review of waiver requests. Each provision on the checklist indicates the documentation that must accompany the MDD PHA's submission. Each request for a waiver (Section 3 of the checklist) must include a good-cause justification stating why the waiver is needed for the PHA's relief and recovery efforts.

To complete the checklist, take the following steps:

1. Download the checklist to your computer, saving the document with the following filename: FR–6050–N–02. Your Agency's HA Code (*e.g.*, FR–050–N02.MI001). HUD will consider other methods of submission as needed.

2. Complete the section titled Information about Requesting Agency. This section must be complete. An official of the MDD PHA must sign where indicated. If the information about the requesting agency is incomplete or the checklist has not been signed, then the checklist will be returned without review.

3. Complete Sections 1, 2, and/or 3 of the checklist, as applicable, noting the documentation (if any) that accompanies each provision.

4. Address an email to both *PIHDisasterRelief@hud.gov* and your Field Office Public Housing Director. In the subject line, type ''PHA Name—PHA Code—MDD Disaster Relief—Month and Year''.

5. Attach the completed checklist, letter of justification, and supporting documentation as applicable to your email.

6. Click ''Send.''

Checklists and any supporting documentation or information must be submitted not later than 4 months following the MDD. Requests submitted after that time period will not be considered except in special cases outside of the agency's control.

V. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by Calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Dated: September 5, 2018.

Danielle Bastarache,

Deputy Assistant Secretary.

BILLING CODE 4210–67–P

ATTACHMENT A
Relief from HUD Requirements
Available to Public Housing Agencies During CY 2018 to Assist with
Recovery and Relief Efforts on Behalf of Families
Affected by Disasters

Information about Requesting Agency

NAME OF PHA:
PHA CODE:
Address:
City or Locality: (must be covered under PDD)
Parish:
Date of Submission:

Signature of PHA Official: _____

Name/Title of PHA Official:
Phone number of PHA Official:

Section 1. List the Presidentially Declared Disaster(s) your agency is under:

_____

_____

Section 2. Insert an "X" next to the applicable flexibilities.

An MDD PHA may adopt the flexibilities listed below.

___ **A. 42 U.S.C. 1437g(j)(1) and (j)(2)(A) (Extension of deadline for obligation of Capital Funds.).** (Office of Capital Improvements)

My agency requests that HUD extend the deadline for the obligation and expenditure of Capital Funds for an additional 12 months. We will maintain documentation substantiating the need for this extension.

___ **B. 24 CFR 984.105 (Family Self-Sufficiency minimum program size).** (Housing Voucher Management and Operations; Public Housing Management and Occupancy)

My agency submits the certification required by 24 CFR 984.105(d) and will operate an FSS program that is smaller than the required program size for up to 24 months from [insert effective date of notice].

___ **C. 24 CFR 990.145(b) (Public housing dwelling units with approved vacancies).** (REAC – Public Housing Financial Management Division)

My agency requests HUD approval to treat certain public housing units in our inventory as approved vacancies. I have attached a project-by-project listing of the units for which this approval is requested. I understand that any units that remain vacant shall be considered approved vacancies only for a period not to exceed 12 months from the date of HUD approval.

Section 3. Insert an "X" next to the applicable waiver requests.

An MDD PHA may request a waiver of a HUD requirement listed below or of any other HUD requirement and receive expedited review of the request, if the MDD PHA demonstrates that the waiver is needed for relief and recovery purposes. **Each request must include a good-cause justification for the waiver, documenting why the waiver is needed for such purposes**. No requested waiver may be implemented unless and until written approval from HUD has been obtained.

___ **A. 24 CFR 5.801(c) and 5.801(d)(1) (Uniform financial reporting standards; Filing of financial reports; Reporting compliance dates).** (REAC)

My agency requests a waiver of 24 CFR 5.801(c) to extend the deadline for reporting of unaudited financial information to 180 days and of 24 CFR 5.801(d)(1) to extend the reporting deadline for audited financial information to 13 months.

For requests to waiver the deadlines to report both unaudited financial information and audited financial information.

___ **B. 24 CFR 902 (Public Housing Assessment System).** (REAC)

My agency requests a waiver of the inspection and scoring of public housing projects, as required under 24 CFR 902.

___ **C. 24 CFR 905.322(b) (Fiscal closeout)** (Office of Capital Improvements)

My agency requests a waiver of 24 CFR 905.322(b) to extend the deadline for submission of the Actual Development Cost Certificate and the Actual Modernization Cost Certificate by 12 months.

___ **D. 24 CFR 905.314(b)–(c) (Cost and other limitations; Maximum project cost; TDC limit).** (Office of Capital Improvements)

My agency requests a waiver of 24 CFR 905.314(b)–(c), which establish the calculation of maximum project cost and total development cost limits for the Capital Fund program. I understand that this waiver is in effect only until 2018 TDC limits have been published.

___ **E. 24 CFR 905.314(j) (Cost and other limitations; Types of labor)** (Office of Capital Improvements)

My agency requests a waiver of 24 CFR 904.314(j) to allow for the use of force account labor for modernization activities even if this activity has not been included in our

agency's 5-Year Action Plan. I understand that this waiver will be in effect for a period not to exceed 12 months from the date of HUD approval.

___ **F. 24 CFR 905.400(i)(5) (Capital Fund Formula; Limitation of Replacement Housing Funds to New Development)** (Office of Capital Improvements)

My agency requests a waiver of 24 CFR 905.400(i)(5) to allow for the use of Capital Fund Replacement Housing Factor grants with undisbursed balances for public housing modernization. I understand that this waiver will be in effect only for funds obligated within 12 months from the date of HUD approval.

___ **G. 24 CFR 960.202(c)(1) (Tenant selection policies) and 24 CFR 982.54(a) (Administrative plan).** (Housing Voucher Management and Operations; Public Housing Management and Occupancy)

My agency requests a waiver of 24 CFR 960.202(c)(1) and/or 24 CFR 982.54(a) so that our public housing tenant selection policies and section 8 administrative plan may be revised on a temporary basis, without formal approval, to address circumstances unique to relief and recovery efforts. I have attached documentation that our Board of Commissioners or an authorized PHA official supports the waiver request. I have also attached documentation identifying the temporary revisions. The adoption of these revisions does not constitute a significant amendment to our PHA plan, nor does state law prevent us from adopting the revisions without formal approval. I understand that these revisions will be in effect for a period not to exceed 12 months from the date of HUD's approval.

___ **H. 24 CFR 982.206(a)(2) (Waiting List; Opening and closing; Public notice)**. (Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 982.206(a)(2) so that we can provide public notice of the opening of our waiting list via our Web site, at any of our offices, and/or in a voice-mail message in lieu of providing notice in a local newspaper of general circulation. I understand that my agency must comply with the requirements at 24 CFR 982.206(a)(2) to provide public notice in minority media and ensure that the notice complies with HUD fair housing requirements. I understand that this waiver is in effect for a period not to exceed 12 months from the date of HUD approval.

___ **I. 24 CFR 982.503(c) (HUD approval of exception payment standard amount).** (Housing Voucher Management and Operations)

My agency requests to establish an exception payment standard amount that is higher than 110 percent of the published fair market rent (FMR). I have attached our proposed emergency exception payment standard schedule, which shows both the dollar amounts requested and those amounts as a percentage of the FMRs in effect at the time of the request. I understand that any approved exception payment standard will remain in effect until HUD revises the FMRs for the area. I also understand that increased per-family costs resulting from the use of such exception payment standard may result in a reduction in the number of families assisted or may require my agency to adopt other cost-saving

measures.

___ **J. 24 CFR 982.401(d) (Housing quality standards; Space and security).** (Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 982.401(d) so that we may allow families to occupy units that are smaller than our occupancy standards would otherwise dictate. I understand that this waiver is in effect only for HAPs entered into during the 12-month period following the date of HUD approval, and then only with the written consent of the family.

___ **K. 24 CFR 982.633(a) (Occupancy of home).** (Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 982.633(a) so that we may continue HAP for homeownership for families displaced from their homes if needed to comply with mortgage terms or make necessary repairs. We have determined that the family is not receiving assistance from another source. I understand that such payments must cease if the family remains absent from their home for more than 180 consecutive calendar days.

___ **L. 24 CFR 984.303(d) (Contract of participation; contract extension).** (Public Housing Management and Occupancy; Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 984.303(d) so that a family's contract of participation may be extended for up to 3 years. I understand that such extensions may be made only during the 12-month period following the date of HUD approval.

___ **M. 24 CFR 985.101(a) (Section 8 Management Assessment Program (SEMAP)).** (Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 985.101(a) so that our SEMAP score from the previous year may be carried over. My agency has a fiscal year end of 9/30/17, 12/31/17, or 3/31/18.

___ **N. Notice PIH 2012–10, Section 8(c) (Verification of the Social Security Number (SSN))** (REAC)

My agency requests a waiver of section 8(c) of Notice PIH 2012–10 to allow for the submission of Form HUD–50058 90 calendars days from receipt of an applicant's or participant's SSN documentation. I understand that this waiver will be in effect for a period not to exceed 12 months from the date of HUD approval.

___ **O. Waivers not identified in FR-6050-N-02.**

My agency seeks waivers of the HUD requirements listed below. I have included documentation justifying the need for the waivers.

Regulation	Description
Example: 24 CFR 982.54	*Example: A waiver of this regulation will facilitate our agency's capacity to participate in relief and recovery efforts by…*

[FR Doc. 2018–19708 Filed 9–11–18; 8:45 am]
BILLING CODE 4210–67–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB00000.L10200000.BS0000.LXSSH1060000.18X.HAG 18–0149]

Notice of Public Meetings for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM), Southeast Oregon Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Southeast Oregon RAC will meet Thursday, October 11, and Friday, October 12, 2018 from 8 a.m. to 5 p.m. Pacific Daylight Time each day. A half-hour comment period, during which the public may address the RAC, will begin at 4 p.m. Friday, October 12. The final agenda will be posted online at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/southeast-oregon-rac* at least one week prior to the meeting.

ADDRESSES: This meeting will be held at the Harney County Chamber of Commerce, 484 N Broadway, Burns, OR 97720.

FOR FURTHER INFORMATION CONTACT: Larisa Bogardus, Public Affairs Officer, 1301 S G Street, Lakeview, Oregon 97630; (541) 947–6811; *lbogardus@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1(800) 877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The meeting Thursday, October 11, will consist of working sessions that pertain to the Lakeview Resource Management Plan Amendment (RMP–A) and the Southeast Oregon (Vale) RMP–A. The meeting Friday, October 12, will include discussions about potential management approaches for the draft alternatives for the Lakeview District's RMP–A; development of interstate fuel breaks to protect against wildfire; a discussion of potential comments to submit regarding the draft alternatives proposed for the Southeast Oregon RMP–A; a report on the 2018 Fire Season; a presentation by the State of Oregon Department of Fish and Wildlife regarding their wolf management plan and how it applies to Federal lands; and any other business that may reasonably come before the RAC.

The 15-member Southeast Oregon RAC was chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to the BLM and US Forest Service resource managers regarding management plans and proposed resource actions on public land in southeast Oregon. All meetings are open to the public in their entirety. Information to be distributed to the RAC is requested prior to the start of each meeting.

Before including your address, phone number, email address, or other personal identifying information in your comments, please 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 we will be able to do so.

Authority: 43 CFR 1784.4–2.

Jeff Krauss,

Acting Assistant Director, Communications.

[FR Doc. 2018–19839 Filed 9–11–18; 8:45 am]
BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK940000.L14100000.BX0000.18X.LXSS001L0100]

Filing of Plats of Survey: Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of lands described in this notice are scheduled to be officially filed in the Bureau of Land Management (BLM), Alaska State Office, Anchorage, Alaska. The surveys, which were executed at the request of the U.S. Fish and Wildlife Service and the BLM, are necessary for the management of these lands.

DATES: The BLM must receive protests by October 12, 2018.

ADDRESSES: You may obtain a copy of the plats from the Alaska Public Information Center at the BLM Alaska State Office, 222 W. 7th Avenue, Anchorage, AK 99513, upon required payment. You may view the plats at this location at no cost. Please use this address when filing written protests.

FOR FURTHER INFORMATION CONTACT: Douglas N. Haywood, Chief, Branch of Cadastral Survey, Alaska State Office, Bureau of Land Management, 222 W 7th

Avenue, Anchorage, AK 99513; 907–271–5481; *dhaywood@blm.gov.* People who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands surveyed are:

U.S. Survey No. 14489, accepted August 30, 2018.

U.S. Survey No. 14495, accepted August 30, 2018.

Seward Meridian, Alaska

T. 1 N, R. 20 W, accepted June 22, 2018
T. 1 N, R. 21 W, accepted June 22, 2018
T. 2 N, R. 18 W, accepted June 22, 2018
T. 2 N, R. 19 W, accepted June 22, 2018
T. 2 N, R. 20 W, accepted June 22, 2018
T. 2 N, R. 21 W, accepted June 22, 2018
T. 3 N, R. 17 W, accepted June 22, 2018
T. 3 N, R. 18 W, accepted June 22, 2018
T. 3 N, R. 19 W, accepted June 22, 2018
T. 3 N, R. 20 W, accepted June 22, 2018
T. 4 N, R. 18 W, accepted June 22, 2018
T. 4 N, R. 19 W, accepted June 22, 2018
T. 4 N, R. 20 W, accepted June 22, 2018
T. 4 N, R. 21 W, accepted June 22, 2018
T. 1 S, R. 21 W, accepted June 22, 2018
T. 40 S, R. 57 W, accepted June 29, 2018
T. 40 S, R. 58 W, accepted July 2, 2018

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the State Director for the BLM in Alaska. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. You must file the notice of protest before the scheduled date of official filing for the plat(s) of survey being protested. The BLM will not consider any notice of protest filed after the scheduled date of official filing. A notice of protest is considered filed on the date it is received by the State Director for the BLM in Alaska during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the State Director for the BLM in Alaska within 30 calendar days after the notice of protest is filed.

If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personal identifiable information in a notice of protest or statement of reasons, you should be aware that the documents you submit, including your personal identifiable information, may be made publicly available in their entirety at any time. While you can ask the BLM to withhold your personal identifiable information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Douglas N. Haywood,

Chief Cadastral Surveyor, Alaska.

[FR Doc. 2018–19890 Filed 9–11–18; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1422–1423 (Preliminary)]

Strontium Chromate From Austria and France; Institution of Anti-Dumping Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping duty investigation Nos. 731–TA–1422–1423 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of strontium chromate from Austria and France, provided for in subheadings 2841.50.91 and 3212.90.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping duty investigations in 45 days, or in this case by October 22, 2018. The Commission's views must be transmitted to Commerce within five business days thereafter, or by October 29, 2018.

DATES: September 5, 2018.

FOR FURTHER INFORMATION CONTACT: Kristina Lara (202) 205–3386, Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), in response to a petition filed on September 5, 2018, by WPC Technologies, Oak Creek, Wisconsin.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the

publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Wednesday, September 26, 2018, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before September 24, 2018. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 1, 2018, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: September 6, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–19790 Filed 9–11–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0249]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection: Mortality in Correctional Institutions (State Prisons)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting an extension to an existing information collection to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until November 13, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mary Cowhig, Statistician, 810 Seventh Street NW, Washington, DC 20531 (email: *mary.cowhig@usdoj.gov;* telephone: 202–353–4982).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Mortality in Correctional Institutions (State Prisons) (MCI-State Prisons).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The MCI-State Prisons collection currently includes the following forms:

• *NPS–4: Annual Summary of Inmate Deaths in State Prisons.* This form is sent to the 50 state DOCs to collect the number of state prisoner deaths in a calendar year.

• *NPS–4A: State Prison Inmate Death Report Form.* Annually, this form is sent to the 50 state DOCs to collect details about each state prisoner death.

The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

BJS proposes to transfer the MCI-Jails information collection from the currently approved OMB collection under control number 1121–0094, where it was bundled with the Annual Survey of Jails and the Survey of Jails in Indian Country collections in 2015, to this collection (OMB Control Number 1121–0249, expiration 03/31/2019) to form one mortality collection program.

The combined mortality collection would include the 50 state departments of corrections (DOCs) plus approximately 3,000 local jail jurisdictions and would collect data on the number and nature of inmate deaths in the custody of state correctional facilities.

Prior to 2015, BJS collected mortality data from both state prisons and local jails under the OMB Control Number 1121–0249. In 2015, the Mortality in Correctional Institutions (Jails) (MCI-Jails) portion of the collection was bundled with the Annual Survey of Jails (ASJ) and the Survey of Jails in Indian Country (SJIC) in an attempt to consolidate the response burden placed on jails. However, the overlap among these three collections is small, both in terms of jails covered in each and context collected:

• MCI-Jails requests annual data from about 3,000 jail jurisdictions on deaths, the confined population as of December

31, average daily population (ADP), number of holds for other jurisdictions, and number of admissions.

• The ASJ samples approximately 900 local jails, and provides data to estimate the number and characteristics of local jail inmates nationwide. The ASJ collects population information, including the number of confined inmates, number of individuals supervised in the community by local jails, average daily population, and the number of holds for other authorities as of June 30. The ASJ also obtains data on inmate movements, including the number of admissions and discharges; facility characteristics, including rated and peak capacities and staffing; and inmate characteristics, including race and ethnicity, sex, age group (adult or juvenile), primary offense, and conviction status.

• The SJIC collects data from Indian country jails that are not part of either the ASJ or the MCI-Jails collections. The SJIC collects information from confinement facilities, detention centers, jails, and other facilities operated by tribal authorities or the Bureau of Indian Affairs.

Although there is some duplication in data collected by the ASJ and MCI-Jails, the reference dates are different and the ASJ is a sample, whereas MCI-Jails is a full enumeration of jail jurisdictions. Due to seasonal fluctuations in jail populations, and fewer inmates held at year-end (December 31), the ASJ uses the last weekday in June as its reference date. MCI-Jails uses December 31 as its reference date, and more importantly, uses ADP from January 1 to December 31 as the denominator in calculating mortality rates, which is consistent with the time period represented by the numerator, the number of deaths in a calendar year.

The following forms are proposed to be transferred from OMB Control Number 1121–0094 to OMB Control Number 1121–0249:

• *CJ–9: Death Report on Inmates under Jail Jurisdiction.* This form goes to all jail jurisdictions that are operated by a county or city. Jail administrators are requested to complete the form if their facilities had one or more deaths in a calendar year.

• *CJ–10: Death Report on Inmates in Private and Multi-Jurisdictional Jails.* This form goes to all confinement facilities administered by two or more local governments (regional jails) and privately owned or operated confinement facilities. Jail administrators are requested to complete the form if their facilities had one or more deaths in a calendar year.

• *CJ–9A: Annual Summary on Inmates under Jail Jurisdiction.* This form goes to county and city jail jurisdictions. The form collects the number of male and female deaths in custody in a calendar year, the number of males and females confined as of December 31, the number of male and female admissions during the year, the average daily population by sex, and the number of persons confined on behalf of other agencies.

• *CJ–10A: Annual Summary on Inmates in Private and Multi-Jurisdictional Jails.* This form goes to confinement facilities administered by two or more local governments (regional jails) and to privately owned or operated facilities. The form collects the same information as Form CJ–9A.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The combined MCI for prisons and jails would collect annual data from the 50 state departments of corrections and roughly 3,000 jail jurisdictions on the number and nature of deaths in their custody.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Data supplier and form	Reporting method	Number of data suppliers	Number of responses	Average reporting time (in minutes)	Total burden (in hours, rounded to whole number)
Verification calls (local jails)	Telephone	3,000	3,000	9	450
CJ–9A, CJ–10A jail annual summary	Online, mail	3,000	2,900	15	725
CJ–9, CJ–10 jail death report	Online, mail	3,000	1,000	30	500
Data quality follow-up (local jails)	Telephone, email	3,000	350	10	58
Total, MCI-Jails					1,733
Verification calls (state prisons)	Telephone	50	50	9	8
NPS–4A, state prison death report	Online, mail	50	3,500	30	1,750
NPS–4, state prison annual summary	Online, mail	50	50	5	4
Data quality follow-up (state prisons)	Telephone, email	50	420	10	70
Total, MCI-State Prisons					1,832
Total Burden					3,565

The estimated total burden hours associated with this combined jail and state prison mortality collection for report year 2018 is 3,565. This is a transfer of 1,733 hours from the jail mortality collection to the state prison mortality collection. When the state prison mortality collection was last approved in 2016, the total burden estimate was 1,723 hours. The state prison portion is now estimated at 1,832 burden hours due to an increase in the expected number of individual death reports. Based on the average number of death reports received over the most recent 10-year period, BJS expects to receive about 3,500 state prison and 1,000 jail death reports per year.

If additional information is required, contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: September 7, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–19802 Filed 9–11–18; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (18–067)]

NASA Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, October 11, 2018, 10:45 a.m. to 12 p.m., Central Time.

ADDRESSES: NASA Johnson Space Center, Building 1, Room 966, 2101 NASA Parkway, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Ms. Evette Whatley, Aerospace Safety Advisory Panel Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358–4733, or email at *evette.whatley@nasa.gov* .

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel (ASAP) will hold its Fourth Quarterly Meeting for 2018. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include:

- Updates on the Exploration Systems Development
- Updates on the Commercial Crew Program
- Updates on the International Space Station Program

The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. This meeting is also available telephonically. Any interested person may call the USA toll free conference call number (888) 566–6575; pass code 3391926. Attendees will be required to sign a visitor's register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Any member of the public desiring to attend the ASAP 2018 Fourth Quarterly Meeting at the Johnson Space Center must provide their full name and company affiliation (if applicable) to Ms. Stephanie Castillo at *stephanie.m.castillo@nasa.gov* or by fax 281–483–2200 or telephone 281–483–3341 by October 1, 2018. Foreign Nationals attending the meeting will be required to provide a copy of their passport and visa, in addition to providing the following information by September 18, 2018: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); and title/position of attendee. Additional information may be requested. Permanent Residents should provide this information: Green card number and expiration date. Persons with disabilities who require assistance should indicate this. Photographs will only be permitted during the first 10 minutes of the meeting.

At the beginning of the meeting, members of the public may make a verbal presentation to the Panel on the subject of safety in NASA, not to exceed 5-minutes in length. To do so, members of the public must contact Ms. Evette Whatley at *evette.whatley@nasa.gov* or at (202) 358–4733 at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2018–19803 Filed 9–11–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Cyberinfrastructure (25150).

Date and Time: October 2, 2018; 10:00 a.m.–6:00 p.m.; October 3, 2018; 8:00 a.m.–2:30 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Room E3430, Alexandria, VA 22314.

Type of Meeting: Open.

Contact Person: Amy Friedlander, CISE, Division of Advanced Cyberinfrastructure, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–8970.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities in the ACI community. To provide advice to the Director/NSF on issues related to long-range planning.

Agenda: Updates on NSF wide ACI activities.

Dated: September 6, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–19782 Filed 9–11–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Antarctic Meteorite Collection, Documentation, and Curation Plan Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Antarctic Meteorite Collection, Documentation, and Curation Plan Received.

SUMMARY: On March 31, 2003, the National Science Foundation (NSF) issued a final rule that authorized the collection of meteorites in Antarctica for scientific purposes only. In addition, the regulations provide requirements for appropriate collection, handling, documentation, and curation of Antarctic meteorites to preserve their scientific value. These regulations implement the Antarctic Conservation Act of 1978, as amended by the Antarctic Science, Tourism and Conservation Act of 1996, and Article 7 of the Protocol on Environmental Protection to the Antarctic Treaty. The NSF is required to publish notice of the availability of Meteorite Collection, Documentation, and Curation Plans received under the Antarctic Conservation Act of 1978. This is the required notice.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this plan by September 27, 2018. This plan may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at

the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: An Antarctic meteorite collection, documentation, and curation plan has been received from Ralph Harvey and James Karner of Case Western University.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–19823 Filed 9–11–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended, (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of RESCHEDULING a meeting for the transaction of National Science Board business.

FEDERAL REGISTER CITATION OF ORIGINAL ANNOUNCEMENT: 83 FR 43710, published on August 27, 2018. The teleconference meeting was originally scheduled for Thursday, August 30, 2018, from 3:00–4:00 p.m. EDT.

FEDERAL REGISTER CITATION OF POSTPONEMENT: 83 FR 44675, published on August 30, 2018.

NEW TIME AND DATE OF MEETING: This closed teleconference meeting of the National Science Board has been rescheduled and will be held on Tuesday, September 18, 2018, from 4:00–5:00 p.m. EDT.

CONTACT PERSON FOR MORE INFORMATION: Brad Gutierrez, *bgutierr@nsf.gov,* 703–292–7000. Please refer to the National Science Board website for additional information. Meeting information and schedule updates (time, place, subject matter, and status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.*

Chris Blair,

Executive Assistant, National Science Board Office.

[FR Doc. 2018–19927 Filed 9–10–18; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Request.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 12, 2018. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

1. *Description of Permit Modification Requested:* NSF issued a permit (ACA 2018–012) to Jay J. Rotella on October 16, 2017. The issued permit allows the permit holder to continue long-term studies of Weddell seal populations in Erebus Bay and the McMurdo Sound region to evaluate how temporal variation in the marine environment affects individual life histories and population dynamics of a long-lived mammal. These studies may require the permit holder and agents to enter into six ASPAs in the area. Research involves capture and release of up to 675 Weddell seal pups at one to four days after birth for flipper tagging per year. A recent modification to this permit, dated November 22, 2017, permitted the permit holder to increase the total take of Weddell seal pups for flipper tagging from 675 to 1000.

Now the permit holder proposes a modification to the permit to increase the number of takes allocated to certain permitted activities to reflect the same increases authorized earlier this year in NMFS Permit No. 21158–02. The take increases from those allowed under the ACA permit, as originally issued, would be as follows: Increase from 515 to 800 pups, flipper tagged once; increase from 10 to 20 pups, flipper tagged twice; increase from 285 to 385 adults, flipper tagged once; increase from 1325 to 1800 adults, harassment takes (4 per animal); increase from 675 to 910 pups, harassment takes (4 per animal); increase from 10 to 35 adults, salvage parts and vibrissae samples (3 per animal). These proposed changes would set the total number of takes of Weddell seal pups for flipper tagging to 970. The permit holder has also requested that a documentary film crew be allowed to accompany and film the permit holder and agents as they conduct the permitted activities this season.

Location: Erebus Bay, McMurdo Sound; ASPA 137, North-West White Island, McMurdo Sound; ASPA 155, Cape Evans; ASPA 121, Cape Royds; ASPA 157, Backdoor Bay, Cape Royds, Ross Island; ASPA 158, Hut Point, Ross Island; ASPA 161, Terra Nova Bay, Ross Sea.

Dates of Permitted Activities: October 1, 2018—September 30, 2022.

2. *Description of Permit Modification Requested:* The Foundation issued a permit (ACA 2018–013) to Linnea Pearson on October 16, 2017. The issued permit allows the permit holder to handle Weddell seal pups per year for the purposes of studying the thermoregulatory strategies by which the pups maintain euthermia in air and in water and examine the development of diving capability as the animals prepare for independent foraging. Each of the ten seal pups, separated into two cohorts of five each, were to be handled at four time points between one and eight weeks of age. Flipper-mounted ime/depth recorder tags were to be attached to 1-week-old seal pups and removed from the pups at 7–8 weeks of age. At the 3-week time point, accelerometer tags were to be attached to the dorsal pelage of the pups and then removed at 7–8 weeks of age. VHF radio transmitters were allowed to be attached to the seal pups dorsal, caudal pelage after molting. The collection of a single whisker by plucking from each seal pup was allowed at 7–8 weeks of age. Protocols not requiring sedation (mass, morphometrics, core and surface temperatures, metabolic rates) and protocols requiring anesthesia (body composition, biopsies, blood volume analysis) were to be conducted on the first cohort of five pups at all four time points. The sedative midazolam was to be used alone on 1-week-old pups in the first cohort, while a combination of

midazolam and butorphanol was allowed for use in the first cohort at 3, 5, and 7–8 weeks of age time points. A combination of midazolam and ketamine could have been used on 7–8-week-old pups, if deemed necessary. Metabolic and morphometric measurements were to be conducted on a second, separate cohort of five pups at each of the four time points. Sedation of seal pups in the second cohort, with a combination of midazolam and butorphanol, was only allowed for study animals at 3 weeks of age for the purposes of attaching an accelerometer tag. The permit holder was also allowed to conduct behavioral observations, imaging, and may disturb up to 350 Weddell seals. An additional seven Weddell seal pups, 15 Weddell seal adult females, and 20 crabeater seals were allowed to be disturbed during procedures on study animals. Up to two pup mortalities were requested per year, not to exceed three over the course of two field seasons. The permit holder was also allowed to collect tissues from Weddell seals (any age or gender) found dead from natural causes.

Now the applicant proposes a modification to the permit to allow the following: Sedation of all seal pups at all time points using midazolam with or without butorphanol (and continue to have the option of using midazolam in combination with ketamine at 7–8 weeks of age); collection of blood samples from seal pups in the second cohort, at all four time points, while the pups are under sedation; use of a cannulated biopsy needle for muscle tissue sampling of seal pups in the first cohort (rather than a dermal biopsy punch), at all four time points; attachment of a flipper-mounted VHF transmitter tag to seal pups in both cohorts at 3 weeks of age, on the flipper opposite the one with the time/depth tag attached, with removal at the final time point; attachment of accelerometer tags to the dorsal pelage of 1-week-old pups in both cohorts with removal of the tags at 3 weeks of age; administration of antibiotics to treat local or systemic infections in seal pups involved in the study; and increased takes of seal pups and adult females such that a total of 12 pups would be handled for study purposes compared with 10 in the original permit (six pups in each cohort compared with five in the original permit) and a total of 12 adult females, the mothers of the pups, would be disturbed during the handling of the pups (10 in the original permit). The permit holder has also requested a modification of NMFS Permit No. 21006.

Location: Erebus Bay, McMurdo Sound; ASPA 121, Cape Royds.

Dates of Permitted Activities: October 1, 2018—September 30, 2020.

3. *Description of Permit Modification Requested:* The Foundation issued a permit (ACA 2017–005) to David Ainley on July 27, 2016. The issued permit allows the permit holder and agents to enter three Antarctic Specially Protected Areas (ASPAs); observe Adelie penguins; mark and measure penguin nests; attach tags, flipper bands, and special instruments to penguins; take small feather samples; and weigh and measure penguin chicks and adults. The permitted activities also include maintaining a webcam just inside the boundary of the Cape Royds ASPA.

Now the permit holder proposes a modification to the permit to attach a miniature video camera to adult Adelie penguins (n=40) to document activities during diving. The permit holder also proposes to engage the services of experienced pilots to operate remotely piloted aircraft systems (RPAS) to capture video imagery of penguin colonies for the purposes of census and quantifying habitat characteristics. The RPAS operations would occur within the boundaries of ASPA 121, Cape Royds, and ASPA 124, Cape Crozier.

Location: ASPA 121, Cape Royds; ASPA 124, Cape Crozier; ASPA 105, Beaufort Island; Cape Bird (outside ASPA boundary).

Dates of Permitted Activities: October 1, 2018—February 5, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–19822 Filed 9–11–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Environmental Research and Education (9487).

Date and Time: October 24, 2018; 9:00 a.m.–5:30 p.m. (EDT); October 25, 2018; 9:00 a.m.–3:00 p.m. (EDT).

Place: National Science Foundation, 2415 Eisenhower Avenue, Room E 2020, Alexandria, VA 22314.

Type of Meeting: Open.

Contact Person: Dr. Leah Nichols, Staff Associate, Office of Integrative Activities/Office of Director/National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; (Email: *lenichol@nsf.gov/.* Telephone: (703) 292–2983).

Minutes: May be obtained from *https://www.nsf.gov/ere/ereweb/minutes.jsp.*

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda: Approval of minutes from past meeting. Updates on agency support for environmental research and activities. Discussion with NSF Director and Assistant Directors. Plan for future advisory committee activities. Updated agenda will be available at *https://www.nsf.gov/ere/ereweb/minutes.jsp.*

Dated: September 6, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–19781 Filed 9–11–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Computing and Communication Foundations; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal review panel for Computing and Communication Foundations (#1192)—Expeditions in Computing Division—Year 2 Site Visit at Cornell University.

Date and Time: September 12, 2018; 7:00 p.m.–9:00 p.m.; September 13, 2018; 8:00 a.m.–9:00 p.m.; September 14, 2018: 8:30 a.m.–3:30 p.m.

Place: BU George Sherman Union, Metcalf Hall, 775 Commonwealth Ave., Boston, MA 02215.

Type of Meeting: Part-Open.

Contact Person: Sylvia Spengler, Expeditions in Computing Program, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; Telephone 703/292–8930.

Purpose of Meeting: Site visit to assess the progress of the EIC Award: CCF–1522054, ''Collaborative Research: CompSustNet: Expanding the Horizons of Computational Sustainability,'' and to provide advice and recommendations concerning further NSF support for the project.

Agenda

Wednesday, September 12, 2018

7:00 p.m.–9:00 p.m.: Closed

Evening briefing to discuss the Expeditions award and forthcoming site visit.

Thursday, September 13, 2018

8:00 a.m.–12:30 p.m.: Open
Presentations by Awardee Institution, faculty staff and students, to Site Team and NSF Staff. Discussions, question and answer sessions.
1:30 p.m.–2:00 p.m.: Closed
NSF Staff and Panelists deliberation.
2:00 p.m.–5:00 p.m.: Open
Continued presentations by Awardee Institution. Response and feedback to presentations by Site Team and NSF Staff. Discussions, question and answer sessions. Draft report on education and research activities. Complete written site visit report with preliminary recommendations.
6:00 p.m.–9:00 p.m.: Closed
NSF Staff and Panelists working dinner.

Friday, September 14, 2018

8:30 a.m.–10:30 a.m.: Open
Expeditions PIs responses to issues raised by panelists.
10:30 a.m.–2:30 p.m.: Closed
Panelists prepare site visit report.
2:30 p.m.–3:30 p.m.: Open
Presentation of site visit report to Expeditions leadership team.

Reason For Closing: Topics to be discussed and evaluated during closed portions of the site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 6, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–19780 Filed 9–11–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 12, 2018. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2019–005

1. *Applicant:* Bill Davis, VP Operations, Quark Expeditions, 3131 Elliot Avenue, Suite 250, Seattle, WA 98121.

Activity for Which Permit is Requested: Waste Management. The applicant is seeking a waste management permit associated with the operation of the i/b Kapitan Khlebnikov in the Antarctic Peninsula region. The vessel will complete multiple cruises and multiple landings per cruise. Maximum passengers taken ashore at any one time will be limited to 100 persons. Quark would offer activities including shore excursions by Zodiac or helicopter, sightseeing by helicopter, visits to the Snow Hill emperor penguin colony, polar plunges, and vessel-supported short overnight stays (camping). The applicant also proposes to operate a small, battery-operated remotely piloted aircraft system (RPAS) consisting, in part, of a quadcopter equipped with a camera to collect footage for commercial and educational purposes. Mitigation measures would be in place to reduce the risk of non-native species introductions and the risk of spills or releases to the environment. Waste generated during small boat and shore-based activities would be returned to the vessels for proper disposal.

For vessel-supported short overnight stays (camping): Camping would be away from vegetated sites and at least 150m from wildlife concentrations or lakes, protected areas, historical sites, and scientific stations. Tents would be pitched on snow, ice, or bare smooth rock, at least 15m from the high-water line. No food, other than emergency rations, would be brought onshore and all wastes, including human waste, would be collected and returned to the ship for proper disposal. Campers would be limited to 30 passengers plus staff, except at the following sites where campers are limited to 60 passengers plus staff: Damoy Point/Dorian Bay, Danco Island, Pleneau Island, Leith Cove, and Rongé Island. The ratio of staff to passengers would be 1:10. Camping would include overnight stays of any duration, but in accordance with the visitor site guidelines for each site.

For remotely piloted aircraft systems (RPAS) operation: The quadcopter would not be flown over wildlife, or over Antarctic Specially Protected Areas or Historic Sites and Monuments. The RPAS would only be operated by pilots with adequate experience. Several measures would be taken to prevent against loss of the quadcopter including painting the them a highly visible color; only flying when the wind is calm; flying for only 15 minutes at a time to maintain adequate battery charge; having a flotation device for operations over water, and an ''auto go home'' feature in case of loss of control link or low battery; having an observer on the lookout for wildlife, people, and other hazards; and ensuring that the separation between the operator and quadcopter does not exceed a maximum distance of 300 meters.

Location: Snow Hill Island; Antarctic Peninsula region. For camping: Damoy Point/Dorian Bay, Danco Island, Rongé Island, Errera Channel, Paradise Bay, Andvord Bay, Pleneau Island, Argentine Islands (Winter Island by Wordie House), Hovgaard Island, Orne Harbour, Leith Cove, Prospect Point, Portal Point, Skontorp Cove, Horseshoe Island, Stony Point, Lefevre-Utile, the Naze.

Dates of Permitted Activities: October 1, 2018–March 31, 2019.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–19824 Filed 9–11–18; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–346, 50–440, 50–334 and 50–412; NRC–2018–0187, NRC–2018–0192, and NRC–2018–0193]

FirstEnergy Nuclear Operating Company (FENOC) and FirstEnergy Nuclear Generation, LLC, Beaver Valley Power Station, Units 1 and 2, Davis-Besse Nuclear Power Station, Unit No. 1, Perry Nuclear Power Plant, Unit No. 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a July 19, 2017 request from FirstEnergy Nuclear Operating Company (FENOC) and FirstEnergy Nuclear Generation, LLC (collectively, the licensee), as supplemented by letters dated March 16, 2018, and May 2, 2018. The exemption is from the NRC definition for a physical barrier regarding the construction standards for the fence bracket angle. The exemption allows the licensee to apply a fence topper bracket angle of zero degrees (or vertical) at specific locations on the protected area fence at each facility, in lieu of the 30 to 45 degree fence bracket angle required by Commission regulations. All other construction standards contained in the Commission regulations for a physical barrier fence topper remain applicable.

DATES: The exemption was issued on September 6, 2018.

ADDRESSES: Please refer to Docket IDs. NRC–2018–0187, NRC–2018–0192, and NRC–2018–0193 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0187, NRC–2018–0192, and NRC–2018–0193. Address questions about dockets in *Regulations.gov* to Jennifer Borges, telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Bhalchandra K. Vaidya, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3308; email: *Bhalchandra.Vaidya@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see **ADDRESSES** section of this document.

Document	ADAMS Accession No.
FirstEnergy Nuclear Operating Company—Exemption Request for a Physical Barrier Requirement. Dated July 19, 2017	ML17200D139
FirstEnergy Nuclear Operating Company—Response to Request For Additional Information Regarding Exemption Request for a Physical Barrier Requirement. Dated March 16, 2018.	ML18078A033
FirstEnergy Nuclear Operating Company—Response to Request For Additional Information Regarding Exemption Request for a Physical Barrier Requirement. Dated May 2, 2018.	ML18122A133
U.S. Nuclear Regulatory Commission—FENOC FLEET—Beaver Valley Power Station, Unit Nos. 1 and 2; Davis-Besse Nuclear Power Station, Unit No. 1; and Perry Nuclear Power Plant, Unit No. 1—Environmental Assessment and Finding of No Significant Impact Related to Exemption Request for a Physical Barrier Requirement.	ML18130A760, ML18130A849, ML18130A820

The text of the exemption is attached.

Dated at Rockville, Maryland, this 7th day of September 2018.

For the Nuclear Regulatory Commission.

Bhalchandra K. Vaidya,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50–334, 50–412, 50–346, 50–440

FirstEnergy Nuclear Operating Company (FENOC)

Exemption

I. Background

FirstEnergy Nuclear Operating Company (FENOC) and FirstEnergy Nuclear Generation, LLC (collectively, the licensee), are the holders of the following operating licenses: (1) Renewed Facility Operating License No. DPR–66, and No. NPF–73, at Beaver Valley Power Station, Units 1 and 2 (BVPS), issued on November 5, 2009; (2) Renewed Facility Operating License No. NPF–3 at Davis-Besse Nuclear Power Station (DBNPS), Unit No. 1, issued on December 8, 2015; and (3) Facility Operating License No. NPF–58 at Perry Nuclear Power Plant (PNPP), Unit No. 1, issued on November 13, 1986. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the NRC now or hereafter in effect.

II. Request/Action

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' by letter dated July 19, 2017 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML17200D139), FENOC requested a specific partial exemption from one physical barrier construction standard described in 10 CFR 73.2, ''Definitions'' for fences. The Commission requirement for a protected area physical barrier is stated in 10 CFR 73.55(e)(8)(i) which requires, in part, that: ''The protected area perimeter must be protected by physical barriers that are designed and constructed to . . . '' to limit access, etc. The construction standards for a physical barrier are defined in 10 CFR 73.2.

The regulation in 10 CFR 73.2 requires, in part, that fences must be constructed of No. 11 American wire gauge, or heavier wire fabric, topped by three strands or more of barbed wire or similar material on brackets angled inward or outward between 30 and 45 degrees from the vertical. Currently, some of the barbed wire bracketing on top of the protected area physical barrier fencing does not meet this design criteria specified in 10 CFR, Section 73.2.

The requested partial exemption would allow the licensees to configure the bracket topper supporting three strands of barbed-wire or similar material at the vertical orientation (or 0 degrees) only at specific

locations along the protected area perimeter fence at each facility, as specified in the licensees' supplemental letter dated March 16, 2018 (ADAMS Accession No. ML18078A033).

III. Discussion

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

In the request dated July 19, 2017, FENOC states, in part, that brackets on the top of physical barrier fencing are currently oriented vertically on gates, near gates, near interfaces with buildings, and on corners. BVPS, DBNPS, and PNPP have similar configurations while DBNPS has vertical brackets on top of fences near the intrusion detection system (lDS). The FENOC exemption request is limited to specific portions of the protected area perimeter fence where the licensee prefers to orient the bracket topper on the protected area fence at a vertical orientation, in lieu of the inward or outward, 45 to 30 degree angular construction standard stated in the 10 CFR 73.2.

In Section 4.0 of the submittal dated July 19, 2017, FENOC states that the basis for this exemption is that the vertical configuration of the brackets on and near gates, near interfaces with buildings, on corners, and near the IDS, of the protected area fence does not have an adverse impact on the site protective strategies and will continue to protect against the design basis threat of radiological sabotage. FENOC further states that because the vertical barbed wire will maintain the plant's physical security, the underlying purpose of the regulation is met. The limited protected area fence sections where the configuration does not meet the current regulatory requirement is a small portion of the entire protected area perimeter fence. Consultation of design drawings and protected area site walk-downs estimates this portion to be approximately 6 percent or less for each of the three sites. Finally, in Chapter 6, Section 6.2, of the BVPS, DBNPS, and PNPP Physical Security Plans, the licensee states that the 45 to 30 degree angular requirement for the fence topping may not be met at locations such as gates and buildings.

In the supplemental submission dated March 16, 2018, to NRC staff Request for Additional Information (RAI) No. 2, the licensee stated that the technical basis for the FENOC request for exemption from this requirement is that the vertical bracket configuration is limited to locations on gates, near gates, near interfaces with buildings, and on corners where the licensee prefers to increase the tension that can be applied to the three strands of barbed-wire. The licensee goes on to state that ''DBNPS also has vertical brackets in two locations adjacent to the IDS where physical separation clearance is required.'' In the supplemental submission dated May 2, 2018 (ADAMS Accession No. ML18122A133), to NRC staff request for Follow-up RAI No. 1, the licensee stated that the outward angular fence bracket requirement would interfere with the effective operation of the IDS in that it would result in an unacceptable frequency of false alarms and would reduce the sensitivity of the detection capability to an unacceptable level.

The licensee further states in the supplemental response dated March 16, 2018, that ''other than the DBNPS locations near the IDS, the vertical bracket configuration at the other locations described in the exemption request is preferred to maintain sufficient tension in the barbed wire strands.'' The licensee goes on to state that the vertical bracket configuration is preferred because greater barbed wire tension can be applied when using vertical brackets as opposed to angular brackets on the end of fence runs (which includes on top of gates, adjacent to gates, and adjacent to buildings). Angular corner arms do not provide a good tension point in the barbed wire.

In the supplemental submission dated March 16, 2018, in response to NRC staff RAI No. 3, the licensee stated that the vertical bracket configuration has no impact to adversary or responder timelines in the protective strategies for the FENOC fleet. This is due to site-specific evaluations that determined the limiting perimeter barrier fence scenarios are most similar to a configuration illustrated in Regulatory Issue Summary 2003–06, or the use of mechanical breaching utilizing the same configuration. The licensee also stated that whether or not the fence toppings are vertical or angled makes no difference to the protective strategy limiting timelines.

A. The Exemption Is Authorized by Law

This exemption would allow the application of a 0 degree (or vertical/upward) fence topper bracket angle at specific locations at BVPS Units 1 and 2, DBNPS, and PNPP. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR part 73. The fence topper bracket angle that will be applied at BVPS, DBNPS, and PNPP does not conform to the fence topper bracket angle of inward or outward, between 30 and 45 degrees that is explicitly defined in 10 CFR 73.2; however, the NRC staff has determined that the construction standard applied at each of the three facilities and as described in the Chapter 6, Section 6.2 of the BVPS, DBNPS, and PNPP Physical Security Plans does not negatively impact the capability of the physical protection program at each facility meet the requirements of 10 CFR 73.55(b). Therefore, granting the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Accordingly, the granting of the partial exemption request from the requirements of 10 CFR 73.2 is authorized by law.

B. The Exemption Will Not Endanger Life or Property

The objectives of 10 CFR 73.55(e) for physical barriers and the construction standards for fences contained in the 10 CFR 73.2 definition are to ensure that licensees provide physical barriers that are adequately designed and constructed to perform their intended physical protection program function. Further, all other construction materials and components required for a fence as defined in 10 CFR 73.2 are currently in place and are maintained at the affected FENOC facilities as stated. In addition, the level of protection offered by the requested bracket configuration has been accounted for by the licensee as part of the facility physical protection program. Finally, based on the above discussion, the NRC staff has concluded that the use of physical barriers as described in the BVPS, DBNPS, and PNPP security plans would provide adequate protection against the design basis threat of radiological sabotage, if effectively implemented. Therefore, the NRC staff has determined that this exemption would not endanger life or property.

C. The Exemption Would Not Endanger Common Defense and Security

The partial exemption would allow the licensee to apply a fence topper bracket angle of 0 degrees (or vertical) at specific locations in lieu of the required inward or outward angle of 30 to 45 degrees. In Section 4.0 of the submittal dated July 19, 2017, the licensee states that the vertical configuration of the brackets on and near gates, near interfaces with buildings, on corners, and near the IDS, of the protected area fence does not have an adverse impact on the site protective strategies and will continue to protect against the design basis threat of radiological sabotage. Because the vertical barbed wire will maintain the plant's physical security, the NRC staff finds that the underlying purpose of the regulation is met. The licensee is required to develop and maintain a physical protection program that maintains the capability to detect, assess, interdict, and neutralize all threats up to and including the design basis threat of radiological sabotage. Therefore, the NRC staff has determined that this exemption would not endanger common defense and security.

D. Exemption Is Otherwise in the Public Interest

Based on its evaluation of licensee's request for an exemption to allow vertical barbed wire fence toppings in limited protected area sections (on and near gates, near interfaces with buildings, on corners, and near the IDS) as described in the licensee's submission dated March 16, 2018, the NRC staff has determined that the partial exemption would maintain the physical security of the sites and would not have an adverse effect on public interest. Therefore, the NRC staff has determined that this exemption is otherwise in the public interest.

E. Environmental Considerations

In accordance with 10 CFR 51.31(a), the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment as discussed in the NRC staff's Finding of No Significant Impact and associated Environmental Assessment published in **Federal Register** on September 4, 2018 (83 FR 44914, 83 FR 44923, and 83

FR 44927), the NRC staff finds that the proposed exemption would not significantly affect plant safety, would not have a significant adverse effect on the probability of an accident occurring, and would not have any significant radiological and non-radiological impacts. Therefore, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action

V. Conclusion

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, the exemption is authorized by law, will not endanger life or property, is consistent with the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants FENOC a partial exemption from the requirements of 10 CFR 73.2 for a fence bracket to be angled inward or outward between 30 and 45 degrees, to allow the fence bracket angular orientation of 0 degrees (or vertical/upward) at BVPS, DBNPS, and PNPP at only those locations specifically identified by the licensee in the supplemental response dated March 16, 2018, to NRC staff RAI No.1, explicitly, ''site layouts with the locations and descriptions of the protected area physical barrier fencing sections topped with vertically-oriented brackets containing barbed wire or similar material are provided in Figures 1, 2, and 3 for BVPS, DBNPS, and PNPP, respectively.'' All other construction and design requirements apply to the specified locations as stated in 10 CFR 73.2. Additionally, all construction and design requirements for a physical barrier as stated in 10 CFR 73.2, remain applicable to all other facility locations not specified in Figures 1, 2, and 3, for BVPS, DBNPS, and PNPP, respectively as specified in the supplemental response to NRC staff RAI No. 1, dated March 16, 2018.

Dated at Rockville, Maryland, this 6th day of September, 2018.

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–19848 Filed 9–11–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2018–0093]

Guidance About Administrative Licensing Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is revising its guidance about administrative licensing procedures and agency policies for reviewing nuclear materials licensing requests. The NRC is requesting public comment on draft NUREG–1556, Volume 20, ''Consolidated Guidance About Materials Licenses: Guidance About Administrative Licensing Procedures.'' The document has been updated from the original version to include information on updated regulatory requirements, safety culture, security of radioactive materials, protection of sensitive information, and changes in regulatory policies and practices. This document is intended for use by the NRC staff when reviewing NRC materials licensing requests.

DATES: Submit comments by October 15, 2018. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to assure consideration of comments received on or before this date.

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

- *Federal Rulemaking Website: Go to http://www.regulations.gov* and search for Docket ID NRC–2018–0093. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Program Management, Announcements, and Editing (PMAE), Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: Anthony McMurtray, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2746; email: *Anthony.McMurtray@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2018–0093 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0093.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft NUREG–1556, Volume 20, Revision 1, is available in ADAMS under Accession Number ML18240A014.
- *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.

The draft NUREG–1556, Volume 20, Revision 1, is also available on the NRC's public website at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/* under ''Consolidated Guidance About Materials Licenses (NUREG–1556).''

B. Submitting Comments

Please include Docket ID NRC–2018–0093 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want 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, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

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

II. Additional Information

NUREG–1556, Volume 20, Revision 1 provides guidance to NRC management and staff regarding administrative licensing procedures and agency policies for reviewing NRC materials licensing requests. The purpose of this notice is to provide the public with an opportunity to review and provide comments on draft NUREG–1556, Volume 20, Revision 1, ''Consolidated Guidance About Materials Licenses: Guidance About Administrative Licensing Procedures.'' These comments will be considered in the final version or subsequent revisions.

Dated at Rockville, Maryland, this 6th day of September 2018.

For the Nuclear Regulatory Commission.

Daniel S. Collins,

Director, Division of Materials Safety, Security, State and Tribal Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–19755 Filed 9–11–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0098]

Disposition of Information Related to the Time Period That Safety-Related Structures, Systems, or Components Are Installed

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory issue summary; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing draft regulatory issue summary, ''Disposition of Information Related to the Time Period that Safety-Related Structures, Systems or Components are Installed,'' which was published for public comment in the **Federal Register** on May 17, 2016. This document is being withdrawn because public interactions to date between NRC staff and industry have adequately communicated the issues identified by the staff to the industry. The NRC will continue to follow up on these issues via the reactor oversight process.

DATES: The effective date of the withdrawal of the draft regulatory issue summary is September 12, 2018.

ADDRESSES: Please refer to Docket ID NRC–2016–0098 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0098. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John Thompson, Office of Nuclear Reactor Regulation, telephone: 301–415–1011, email: *John.Thompson@nrc.gov,* and Eric Thomas, Office of Nuclear Reactor Regulation, telephone: 301–415–6772, email: *Eric.Thomas@nrc.gov*. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: On September 14, 2017, NRC's Committee for the Review of Generic Requirements (CRGR) held a public meeting (Meeting No. 447) with industry to discuss this Regulatory Issue Summary (RIS). The meeting minutes are available in ADAMS at ML17276B156. Based on industry concerns expressed during the public meeting, the CRGR recommended that NRC staff cease efforts to further develop and issue the RIS.

Dated at Rockville, Maryland, this 6th day of September 2018.

For the Nuclear Regulatory Commission.

Robert B. Elliott,

Chief, Operating Experience Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–19800 Filed 9–11–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0027]

Information Collection: NRC Form 7, Application for NRC Export/Import License, Amendment, Renewal or Consent Request(s)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''NRC Form 7, Application for NRC Export/Import License, Amendment, Renewal or Consent Request(s).''

DATES: Submit comments by October 12, 2018.

ADDRESSES: Submit comments directly to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0027), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0027 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–2015–0027. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2015–0027 on this website.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For

problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement and Application for NRC Export or Import License, Amendment, Renewal, or Consent Request(s) are available in ADAMS under Accession Nos. ML18180A163 and ML18179A369.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

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

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, NRC Form 7, ''NRC Form 7, Application for NRC Export/Import License, Amendment, Renewal or Consent Request(s).'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 26, 2018, pp. 18356–18357. No comments were received.

1. *The title of the information collection:* NRC Form 7, Application for NRC Export/Import License, Amendment, Renewal or Consent Request(s).

2. *OMB approval number:* 3150–0027.

3. *Type of submission:* Extension.

4. *The form number if applicable:* NRC Form 7.

5. *How often the collection is required or requested:* On occasion.

6. *Who will be required or asked to respond:* Any person in the U.S. who wishes to export or import (a) nuclear material and equipment subject to the requirements of a specific license; (b) amend a license; (c) renew a license; (d) obtain consent to export Category 1 quantities of materials listed in Appendix P to 10 CFR part 110; or (5) request an exemption from a licensing requirement under Part 110.

7. *The estimated number of annual responses:* 85.

8. *The estimated number of annual respondents:* 85.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 204.

10. *Abstract:* Persons in the U.S. wishing to export or import nuclear material or equipment, who are required to obtain a specific license, amendment, license renewal, obtain consent to export Category 1 quantities of byproduct material listed in Appendix P to 10 CFR part 110 or request an exemption from a licensing requirement under Part 110. The NRC Form 7 application will be reviewed by the NRC and by the Executive Branch, and if applicable statutory, regulatory, and policy considerations are satisfied, the NRC will issue an export, import, amendment or renewal license.

Dated at Rockville, Maryland, on September 7, 2018.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2018–19859 Filed 9–11–18; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84047; File No. SR–NASDAQ–2017–128]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To List and Trade Shares of the Western Asset Total Return ETF

September 6, 2018.

I. Introduction

On December 20, 2017, The Nasdaq Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Western Asset Total Return ETF (''Fund''), a series of Legg Mason ETF Investment Trust (''Trust''), under Nasdaq Rule 5735 (Managed Fund Shares). The proposed rule change was published for comment in the **Federal Register** on January 9, 2018.[3] On February 21, 2018, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On April 6, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.[6] On July 3, 2018, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the proposed rule change.[7] On July 30, 2018, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82439 (Jan. 3, 2018), 83 FR 1062 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 82757, 83 FR 8532 (Feb. 27, 2018). The Commission designated April 9, 2018, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] *See* Securities Exchange Act Release No. 83007, 83 FR 15883 (Apr. 12, 2018) (''OIP''). The Commission designated July 8, 2018, as the date by which the Commission shall approve or disapprove the proposed rule change.

[7] *See* Securities Exchange Act Release No. 83588, 83 FR 31827 (Jul. 9, 2018). The Commission extended the date by which the Commission shall approve or disapprove the proposed rule change to September 6, 2018.

Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety. On August 27, 2018, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1, in its entirety. On September 5, 2018, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment Nos. 1 and 2, in its entirety.[8] The Commission has received no comments on the proposed rule change. The Commission is publishing notice of the filing of Amendment No. 3 to solicit comment from interested persons and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

II. Exchange's Description of the Proposal, as Modified by Amendment No. 3

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares[9] on the Exchange. The Fund will be an exchange-traded fund (''ETF'') that is actively-managed. The Shares will be offered by the Trust, which was established as a Maryland statutory trust on June 8, 2015.[10] The Exchange notes that other actively-managed, broad market fixed-income ETFs have been previously approved by the SEC prior to the adoption of ''generic'' listing standards for actively-managed ETFs.[11] The Trust is registered with the Commission as an investment company under the 1940 Act and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission with respect to the Fund.[12] The Fund will be a series of the Trust. The Fund intends to qualify each year as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.

Legg Mason Partners Fund Advisor, LLC will be the investment manager (''Manager'')[13] to the Fund. Western Asset Management Company, LLC will serve as the sub-adviser to the Fund (the ''Sub-Adviser'')[14] and Western Asset Management Company Limited in London (''Western Asset London''), Western Asset Management Company Pte. Ltd. in Singapore (''Western Asset Singapore'') and Western Asset Management Company Ltd in Japan (''Western Asset Japan'') will each serve as the sub-sub-advisers to the Fund (collectively, the ''Sub-Sub-Advisers'' and each, a ''Sub-Sub-Adviser'').[15]

[8] In Amendment No. 3, the Exchange: (1) Provided that the Fund's investments in ABS/Private MBS (as defined below) (excluding, for the purposes of the rule filing, CDOs (as defined below)) would be limited to 20% of the weight of the fixed income portion of the Fund's portfolio, and that the Fund's holdings in CDOs would be limited to 10% of the Fund's total assets; (2) clarified the types of Debt (as defined below) in which the Fund may invest, and that, for purposes of the proposed rule change, bank loans would be classified as Debt rather than fixed income securities and would not meet the generic requirements for fixed income securities set forth in Nasdaq Rule 5735(b)(1)(B) but would instead comply with the alternative limitations proposed for Debt holdings of the Fund as further described below; (3) stated that the Fund would not invest more than 20% of its total assets in Debt that is unsecured and subordinated; (4) stated that, for purposes of the proposed rule change, in applying the generic requirements for fixed income securities set forth in Nasdaq Rule 5735(b)(1)(B), the terms ''fixed income weight of the portfolio'' and ''weight of the fixed income portion of the portfolio'' would be interpreted to include all fixed income securities and Debt held by the Fund as well as derivatives held by the Fund that provide exposure to fixed income securities or Debt; (5) stated that no more than 10% of the Fund's total assets would be invested in exchange-listed securities and Exchange-Traded Derivatives (as defined below) that are listed and traded on an exchange that is not an ISG (as defined below) member or does not have a comprehensive surveillance sharing agreement (''CSSA'') with the Exchange; (6) clarified that, for purposes of the proposed rule change, Fixed-Income Related Warrants (as defined below) are treated as fixed income securities and would be subject to and comply with the generic listing requirements for fixed income securities rather than the requirements applicable to equity securities; (7) clarified the types of derivatives in which the Fund may invest and the reference assets for such derivatives; (8) stated that the Fund expects that it will primarily issue and redeem Creation Units (as defined below) for cash, that orders to create or redeem Creation Units must be received from 9 a.m., E.T., to 10 a.m., E.T. on a given business day, in order to receive the NAV (as defined below) determined on the business day the order was placed, and that when the Fund permits Creation Units to be issued in-kind, the Fund will cause to be published by the National Securities Clearing Corporation, on each business day, at or before 9 a.m., E.T., the identity and the required number of each deposit security and the amount of the cash component, if any, to be included in the Fund Deposit (as defined below); (9) provided additional information about sources of price information for the Fund's proposed holdings; (10) provided additional justification as to why the listing and trading of the Shares is consistent with the Act even though certain of the Fund's proposed holdings would not meet the generic listing standards for Managed Fund Shares set forth in Nasdaq Rule 5735(b)(1); and (11) made other clarifications, corrections, and technical changes.

[9] A Managed Fund Share is a security that represents an interest in a company, which is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the ''1940 Act'') and organized as an open-end investment company or similar entity, that invests in a portfolio of securities selected by its investment adviser consistent with the company's investment objective and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[10] The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 32391 (December 13, 2016) (File No. 812–14547) (the ''Exemptive Relief''). In addition, on December 6, 2012, the staff of the Commission's Division of Investment Management (''Division'') issued a no-action letter (''No-Action Letter'') relating to the use of derivatives by actively-managed ETFs. *See* No-Action Letter dated December 6, 2012 from Elizabeth G. Osterman, Associate Director, Office of Exemptive Applications, Division of Investment Management. The No-Action Letter stated that the Division would not recommend enforcement action to the Commission under applicable provisions of and rules under the 1940 Act if actively-managed ETFs operating in reliance on specified orders (which include the Exemptive Relief) invest in options contracts, futures contracts or swap agreements provided that they comply with certain representations stated in the No-Action Letter.

[11] *See, e.g.,* Securities Exchange Act Release Nos. 76719 (December 21, 2015), 80 FR 80859 (December 28, 2015) (SR–NYSEArca–2015–73) (granting approval for the listing of shares of the Guggenheim Total Return Bond ETF); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (granting approval for the listing of shares of the PIMCO Total Return Exchange Traded Fund (now known as the PIMCO Active Bond Exchange-Traded Fund)); and 72666 (July 24, 2014), 79 FR 44224 (July 30, 2014) (SR–NYSEArca–2013–122) (granting approval to the use of derivatives by the PIMCO Total Return Exchange Traded Fund); *see also infra* notes 84 and 102.

[12] *See* Post-Effective Amendment No. 53 to the Registration Statement on Form N–1A for the Trust (File Nos. 333–206784 and 811–23096) as filed on July 30, 2018. The Trust will file additional amendments to the Registration Statement as necessary to conform to the representations in this filing. The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

[13] Legg Mason Partners Fund Advisor, LLC describes its role as ''investment manager'' rather than as ''investment adviser'' in applicable Fund-related documents, including the Registration Statement, in its investment management agreement with the Fund and in connection with its annual approval process by the board of trustees for the Trust (the ''Board''). As a result, the defined term ''Manager'' is used in this filing with respect to a proposed rule change instead of the term ''investment adviser,'' which is the term used by certain other investment advisers to ETFs in their filings with respect to proposed rule changes under Rule 19b–4 of the Act.

[14] The Sub-Adviser is responsible for the day-to-day management of the Fund and, as such, typically makes all decisions with respect to portfolio holdings regardless of where the instruments are traded. The Manager has ongoing oversight responsibility.

[15] Each of the Sub-Sub-Advisers provides advisory services to the Fund relating to the Fund's investments. Sub-Sub-Advisers advise primarily on instruments traded in the region in which the Sub-Sub-Adviser is located, but they may advise on portfolio instruments held by the Fund that are traded in other regions. Western Asset London generally advises on the Fund's portfolio holdings in non-U.S. and non-Asian investment instruments and currencies (including through ETFs and

Continued

Hereinafter, references to ''Sub-Adviser'' or ''Sub-Advisers'' include the Sub-Adviser and each applicable Sub-Sub-Adviser. Legg Mason Investor Services, LLC (the ''Distributor'') will be the distributor of the Fund's Shares. The Manager, each of the Sub-Advisers and the Distributor are wholly-owned subsidiaries of Legg Mason, Inc. (''Legg Mason''). An entity that is not affiliated with Legg Mason, and which is named in the Registration Statement, will act as the administrator, accounting agent, custodian, and transfer agent to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company's portfolio.[16] In addition, paragraph (g) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the investment company's portfolio.

Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment and maintenance of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable investment company's portfolio, not an underlying benchmark index, as is the case with index-based funds. None of the Manager or any of the Sub–Advisers is a broker-dealer, but each is affiliated with the Distributor, a broker-dealer, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.

In addition, personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio. In the event (a) the Manager or any of the Sub–Advisers registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new investment adviser or any new sub–adviser to the Fund is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Western Asset Total Return ETF

Principal Investments

The investment objective of the Fund will be to seek to maximize total return, consistent with prudent investment management and liquidity needs. Although the Fund may invest in securities and Debt (as defined below) of any maturity, the Fund will normally maintain an effective duration as set forth in the prospectus.[17] Effective duration seeks to measure the expected sensitivity of market price to changes in interest rates, taking into account the anticipated effects of structural complexities (for example, some bonds can be prepaid by the issuer).

Under Normal Market Conditions,[18] the Fund will seek to achieve its investment objective by investing at least 80% of its assets in a portfolio comprised of U.S. or foreign fixed income securities; U.S. or foreign Debt (as defined below);[19] ETFs[20] that provide exposure to such U.S. or foreign fixed income securities, Debt or other Principal Investments (defined below); derivatives[21] that (i) provide exposure

derivative instruments that provide exposure to those instruments and currencies); Western Asset Japan generally advises on the Fund's portfolio holdings in Japanese investment instruments and currencies (including through ETFs and derivative instruments that provide exposure to those instruments and currencies); and Western Asset Singapore generally advises on the Fund's portfolio holdings in non-Japan, Asian investment instruments and currencies (including through ETFs and derivative instruments that provide exposure to those instruments and currencies).

[16] An investment adviser to an investment company is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Manager and the Sub-Advisers, as registered investment advisers, and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. Rule 204A–1 requires investment advisers (such as the Manager and the Sub-Advisers) to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by the Manager and the Sub-Advisers must be consistent with the Advisers Act and Rule 204A–1 thereunder. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser (such as the Manager and the Sub-Advisers) to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[17] The effective duration of the Fund may fall outside of its expected range due to market movements. If this happens, the Sub–Advisers will take action to bring the Fund's effective duration back within its expected range within a reasonable period of time.

[18] The term ''Normal Market Conditions'' has the meaning set forth in Nasdaq Rule 5735(c)(5). The Fund may vary from ordinary parameters on a temporary basis, including for defensive purposes, during the initial invest-up period (*i.e.,* the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows (*i.e.,* rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of the Fund's assets as of the opening of business on the first day of such periods). In those situations, the Fund may depart from its principal investment strategies and may, for example, hold a higher than normal proportion of its assets in cash and cash equivalents. During such periods, the Fund may not be able to achieve its investment objective. The Fund may also adopt a defensive strategy and hold a significant portion of its assets in cash and cash equivalents when the Manager or any Sub–Adviser believes securities, Debt and other instruments in which the Fund normally invests have elevated risks due to political or economic factors, heightened market volatility or in other extraordinary circumstances that do not constitute ''Normal Market Conditions''. The Fund's investments in cash equivalents are described in greater detail in note 28 *infra.*

[19] As noted below, the Fund will not invest more than 30% of its total assets in fixed income or equity securities or Debt of non-U.S. issuers or more than 25% of its total assets directly in non-U.S. dollar denominated fixed income or equity securities or Debt. As a result, although the Fund does intend to invest in foreign instruments as described above, the size of such investments will be limited. *See infra* ''Investment Restrictions.''

[20] The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705(b)), Portfolio Depositary Receipts (as described in Nasdaq Rule 5705(a)), and Managed Fund Shares (as described in Nasdaq Rule 5735). The Fund will not invest in ETFs that are not registered as investment companies under the 1940 Act. The ETFs held by the Fund will invest in fixed income securities, Debt, money-market instruments and other Principal Investments to which the Fund seeks exposure. All such ETFs will trade in markets that are members of the ISG or exchanges that are parties to a comprehensive surveillance sharing agreement with the Exchange. The Fund will not invest in leveraged ETFs, inverse ETFs, or inverse leveraged ETFs. Other fixed-income funds have been approved to include ETFs in their 80% principal investment category. *See, e.g.,* Securities Exchange Act Release No. 80946 (June 15, 2017), 82 FR 28126 (June 20, 2017) (SR–NASDAQ–2017–039) (approving fund seeking to meet its investment objective of having at least 80% of assets invested in a portfolio of debt instruments in part through investments in ETFs that invest substantially all of their assets in such debt instruments).

[21] Derivatives will include: (i) Swaps and security-based swaps, futures, options, options on futures, and swaptions that are traded on an exchange, trading facility, swap execution facility or alternative trading system (''Exchange-Traded Derivatives'') (A) that is a member of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and

to such U.S. or foreign fixed income securities, Debt and other Principal Investments, (ii) are used to risk manage the Fund's holdings, and/or (iii) are used to enhance returns, such as through covered call strategies; [22] U.S. or foreign equity securities of any type acquired in reorganizations of issuers of fixed income securities or Debt held by the Fund (''Work Out Securities''); [23] U.S. or foreign non-convertible preferred securities (other than trust preferred securities, which the Fund may invest in, but which are treated as fixed income securities [24]) (''Non-Convertible Preferred Securities''); [25] warrants,[26] comprised of: Warrants on U.S. or foreign fixed income securities (''Fixed-Income Related Warrants'') and warrants on U.S. or foreign equity securities (''Equity-Related Warrants''), both fixed income and equity securities of which are generally issued by the issuer of the warrants, and both types of warrants of which are generally attached to, accompany or are purchased alongside of investments in fixed income securities; [27] cash and cash equivalents; [28] and foreign currencies (together, the ''Principal Investments'' and the equity elements of the Principal Investments, which consist of Work Out Securities, ETFs that provide exposure to fixed income securities, Debt or other Principal Investments, Equity-Related Warrants [29] and Non-Convertible Preferred Securities, are referred to as the ''Principal Investment Equities'').[30]

The Manager or Sub-Advisers (as applicable) may select from any of the following types of fixed income securities: (i) U.S. or foreign corporate debt securities, including notes, bonds, debentures, trust preferred securities, and commercial paper issued by corporations, trusts, limited partnerships, limited liability companies and other types of non-governmental legal entities; (ii) U.S. government securities, including obligations of, or guaranteed by, the U.S. government, its agencies or government-sponsored entities (other than MBS described below); (iii) sovereign debt securities, which include fixed income securities issued by governments, agencies or instrumentalities and their political subdivisions, securities issued by government-owned, controlled or sponsored entities, interests in entities organized and operated for the purpose of restructuring the investment instruments issued by such entities, Brady Bonds,[31] and fixed income securities issued by supranational entities such as the World Bank; [32] (iv)

most futures exchanges, (B) that is subject to a comprehensive surveillance sharing agreement with the Exchange, or (C) that is not an ISG member and with which the Exchange does not have a comprehensive surveillance sharing agreement; and (ii) swaps and security-based swaps, options, options on futures, swaptions, forwards and similar instruments that are traded in the over-the-counter market and are either centrally cleared or cleared bilaterally (''OTC Derivatives''), as further described below. For the purposes of describing the scope of the Fund's potential investments in derivatives, the terms ''swaps'' and ''security-based swaps'' shall have the meanings set forth in the Commodity Exchange Act (''CEA''), as amended by The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (''Dodd-Frank''), and regulations thereunder, and references to swaps and forwards on foreign exchange or currencies shall include ''foreign exchange forwards'' and ''foreign exchange swaps'', as such terms are defined in Sections 1a(24)–(25) of the CEA. The terms ''exchange-traded'' and ''exchange-listed'', when used with respect to swaps and security-based swaps, shall include swaps and security-based swaps that are executed on swap execution facilities and security-based swap execution facilities and cleared through regulated, central clearing facilities. The types of derivatives in which the Fund may invest and the reference assets for such derivatives are described in greater detail below. Exchange-Traded Derivatives and OTC Derivatives may reference Principal Investments and other investments. Those Exchange-Traded Derivatives and OTC Derivatives that reference Principal Investments will be treated as Principal Investments and those that do not will not be treated as Principal Investments. For purposes of the 80% Principal Investments measure, the Fund will value Exchange-Traded Derivatives and OTC Derivatives based on the mark-to-market value of such derivatives. This approach is consistent with the valuation methodology for asset coverage purposes in Rule 18f–4 under the 1940 Act proposed by the Commission. *See* Investment Company Act Release No. 31933 (December 11, 2015); 80 FR 80884 (December 28, 2015) (the ''Derivatives Rule Proposing Release''); *see also infra* note 103. No more than 10% of the assets of the Fund will be invested in Exchange-Traded Derivatives and exchange-listed securities whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

[22] *See also infra* ''The Fund's Use of Derivatives.''

[23] Work Out Securities will generally be traded in the OTC market but may be listed on an exchange that may or may not be an ISG member. To the extent that the Work Out Securities are exchange-listed, they will be subject to the 10% limit on the Fund's total assets that can be listed on a market that is not a member of ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement. *See infra* ''Investment Restrictions.''

[24] *See* Nasdaq Rule 5735(b)(1)(B).

[25] Non-convertible preferred stock, such as that comprising the Non-Convertible Preferred Securities, provides holders with a fixed or variable distribution and a status upon bankruptcy of the issuer that is subordinated to debt holders but preferred over common shareholders. Non-Convertible Preferred Securities may be listed on either an ISG member exchange (or an exchange with which the Exchange has a comprehensive surveillance sharing agreement) or a non-ISG member exchange or be unlisted and trade in the over-the-counter market. Non-Convertible Preferred Securities that are listed and traded on a non-ISG member exchange or on an exchange with which the Exchange does not have a comprehensive surveillance sharing agreement, together with all other exchange-listed securities and Exchange-Traded Derivatives held by the Fund that are listed on a non-ISG member exchange or exchange with which the Exchange does not have a comprehensive surveillance sharing agreement, are limited to 10% of the Fund's total assets. *See infra* ''Investment Restrictions.''

[26] Warrants are equity securities that provide the holder with the right to purchase specified securities of the issuer of the warrants at a specified exercise price until the expiration date of the warrant. The Fund may hold warrants that provide the right to purchase fixed income securities or equity securities and expects that most of the warrants it holds will be attached to related fixed income securities. Warrants held by the Fund may be traded in the OTC market or may be listed on an exchange. Warrants that are listed on a non-ISG member exchange or an exchange with which the Exchange does not have a comprehensive surveillance sharing agreement, together with all other exchange-listed securities and Exchange-Traded Derivatives held by the Fund that are listed on a non-ISG member exchange or exchange with which the Exchange does not have a comprehensive surveillance sharing agreement, are limited to 10% of the Fund's total assets. *See infra* ''Investment Restrictions.''

[27] The Fund's interests in Equity-Related Warrants are similar to the Fund's interest in Work Out Securities in that they reflect interests in equity securities that are held solely in connection with investments in fixed income securities.

[28] Cash equivalents consist of the following, all of which have maturities of less than 360 days: U.S. government securities; certificates of deposit issued against funds deposited in a bank or savings and loan association; bankers' acceptances (which are short-term credit instruments used to finance commercial transactions); repurchase agreements and reverse repurchase agreements; and 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). Cash equivalents also consist of money market funds registered under the 1940 Act and money market funds that are not registered under the 1940 Act but that comply with Rule 2a–7 under the 1940 Act (together, ''Money Market Funds''), money market ETFs and commercial paper, which are short-term unsecured promissory notes, having maturities of 360 days or less. The Exchange notes that, while the Fund treats commercial paper having maturities of 360 days or less as cash equivalents for the purposes of the 80% Principal Investments measure, the Fund will apply the definition of cash equivalents in Nasdaq Rule 5735(b)(1)(C) (which is limited to instruments with maturities of less than three months) for purposes of compliance with Nasdaq Rule 5735(b)(1) and will comply with the applicable requirements of Nasdaq Rule 5735(b)(1) with respect to all commercial paper held by the Fund. Investments in cash equivalents that are Money Market Funds will be made in accordance with Rule 12d1–1 under the 1940 Act.

[29] For purposes of this proposed rule change, Fixed-Income Related Warrants are treated as fixed income securities and not as Principal Investment Equities. Fixed-Income Related Warrants will be subject to and comply with the generic listing requirements for fixed income securities rather than the requirements applicable to equity securities.

[30] The Manager and Sub–Advisers will manage the Fund to ensure that the weight of Non-Convertible Preferred Securities, Equity-Related Warrants and Work Out Securities (which are generally traded solely in the over-the-counter market) together does not exceed 30% of the Fund's assets.

[31] Brady Bonds are debt securities issued under the framework of the Brady Plan as a means for debtor nations to restructure their outstanding external indebtedness.

[32] A supranational entity is a bank, commission or company established or financially supported by the national government of one or more countries to promote reconstruction or development.

municipal securities, which include general obligation bonds, revenue bonds, housing authority bonds, private activity bonds, industrial development bonds, residual interest bonds, tender option bonds, tax and revenue anticipation notes, bond anticipation notes, tax-exempt commercial paper, municipal leases, participation certificates and custodial receipts; (v) zero coupon securities, which are securities that pay no interest during the life of the obligation but are issued at prices below their stated maturity value; (vi) pay-in-kind securities, which have a stated coupon, but the interest is generally paid in the form of obligations of the same type as the underlying pay-in-kind securities (*e.g.,* bonds) rather than in cash; (vii) deferred interest securities, which are obligations that generally provide for a period of delay before the regular payment of interest begins and are issued at a significant discount from face value; (viii) U.S. or foreign structured notes and indexed securities, including securities that have demand, tender or put features, or interest rate reset features; (ix) U.S. or foreign inflation-indexed or inflation-protected securities, which are fixed income securities that are structured to provide protection against inflation and whose principal value or coupon is periodically adjusted according to the rate of inflation and which include, among others, treasury inflation protected securities; and (x) fixed income securities issued by securitization vehicles (''Securitized Products'').[33] Securitized Products include: (A) U.S. or foreign mortgage-backed securities (''MBS''), which are securities that represent direct or indirect participations in, or are collateralized by and payable from, mortgage loans secured by real property and which may be issued or guaranteed by government-sponsored entities (''GSEs'') [34] such as Fannie Mae (formally known as the Federal National Mortgage Association) or Freddie Mac (formally known as the Federal Home Loan Mortgage Corporation) or issued or guaranteed by agencies of the U.S. government, such as the Government National Mortgage Association (''Ginnie Mae''); [35] (B) U.S. or foreign asset-backed securities (''ABS'') [36] and (C) U.S. or foreign collateralized debt obligations (''CDOs'').[37]

The securities in which the Fund invests may pay fixed, variable or floating rates of interest or, in the case of instruments such as zero coupon bonds, do not pay current interest but are issued at a discount from their face values. Securitized Products in which the Fund will invest make periodic payments of interest and/or principal on underlying pools of mortgages, in the case of MBS; loans, leases and receivables other than real estate, in the case of ABS; and government and corporate bonds or non-real estate related loans, in the case of CDOs. The Fund may also invest in stripped Securitized Products, which represent the right to receive either payments of principal or payments of interest on real estate receivables. Interests in CDOs and ABS will not be stripped so as to provide the right to receive only payments of principal or payments of interest.

Investments by the Fund in loans and similar debt instruments that are not characterized as ''securities'' under applicable case law (''Debt'') [38] are comprised primarily of the following: (i) U.S. or foreign loans made by banks and participations in such loans, loans made by commercial non-bank lenders and participations on such loans, loans made by governmental entities and participations in such loans and/or other extensions of credit, such as

[33] As defined in Rule 6710(m) of the Financial Industry Regulatory Authority, Inc. (''FINRA''), the term Securitized Product means a security collateralized by any type of financial asset, such as a loan, a lease, a mortgage, or a secured or unsecured receivable, and includes but is not limited to an asset-backed security as defined in Section 3(a)(79)(A) of the Act, a synthetic asset-backed security, any residual tranche or interest of any security specified above, which tranche or interest is a fixed income security for purposes of FINRA Rule 6700 and paragraph (a) of FINRA Rule 6710. Consistent with the requirements applicable to other fixed income securities listed pursuant to this proposed rule change, Securitized Products are subject to limits set forth in Nasdaq Rule 5735(b)(1)(B)(i), (ii), (iii), (iv) and (v), except that, with respect to the Fund's investments in ABS/Private MBS (as defined below), the Fund will not comply with the 90% requirement in Nasdaq Rule 5735(b)(1)(B)(iv) and CDOs (as defined below) will not be subject to the limits set forth in Nasdaq Rule 5735(b)(1)(B)(v) but will be required to comply with the tests in Nasdaq Rule 5735(b)(1)(B)(i)–(iv), including, without limitation, the 90% requirement in Nasdaq Rule 5735(b)(1)(B)(iv). Investments in CDOs will separately be subject to a limit of 10% of total assets of the Fund. In addition, the Fund's total investments in Securitized Products (including CDOs) will be subject to the restrictions applicable to all fixed income securities and Debt holdings of the Fund, including that: No more than 30% of the Debt and fixed income securities held by the Fund will be below investment grade; no more than 30% of the Fund's total assets will be invested in Debt and fixed income or equity securities of non-U.S. issuers; no more than 25% of the Fund's total assets will be invested in non-U.S. dollar denominated Debt, fixed income securities or equities; and no more than 25% of the total assets of the Fund will be invested in Debt or fixed income or equity securities of issuers in any one industry. *See infra* ''Investment Restrictions.''

[34] A ''GSE'' is a type of financial services corporation created by the United States Congress. GSEs include Fannie Mae and Freddie Mac but not Sallie Mae, which is no longer a government entity.

[35] MBS include collateralized mortgage obligations (''CMOs''), which are debt obligations collateralized by mortgage loans or mortgage pass-through securities. Typically, CMOs are collateralized by Ginnie Mae, Fannie Mae or Freddie Mac certificates, but they may also be collateralized by whole loans or pass-through securities issued by private issuers (*i.e.,* issuers other than U.S. government agencies or GSEs) (referred to as ''Private MBS''). Payments of principal and of interest on the mortgage-related instruments collateralizing the MBS, and any reinvestment income thereon, provide the funds to pay debt service on the CMOs. In a CMO, a series of bonds or certificates is issued in multiple classes. Each class of CMOs, often referred to as a ''tranche'' of securities, is issued at a specified fixed or floating coupon rate and has a stated maturity or final distribution date.

[36] As defined by FINRA Rule 6710(cc), ABS are Securitized Products in connection with which the securities issued, which may be issued by either a U.S. or a foreign entity, are collateralized by any type of financial asset, such as a consumer or student loan, a lease, or a secured or unsecured receivable. ABS exclude (per the FINRA definition, which is applicable for purposes of reporting and as used herein): (i) A Securitized Product that is backed by residential or commercial mortgage loans, mortgage-backed securities, or other financial assets derivative of mortgage-backed securities; (ii) a small business administration backed ABS traded ''To Be Announced'' or in a specified pool transaction as defined in FINRA Rule 6710(x); and (iii) CDOs (as defined in note 37 *infra).* Consistent with the requirements of Nasdaq Rule 5735(b)(1)(B)(v), the Fund will limit investments in ABS and Private MBS (together, ''ABS/Private MBS'') to 20% of the weight of the fixed income portion of the Fund's portfolio.

[37] For purposes of this proposed rule change, CDOs are excluded from the definition of ABS and, for purposes of this proposed rule change only, are comprised exclusively of collateralized loan obligations (''CLOs'') and collateralized bond obligations (''CBOs''). CLOs are securities issued by a trust or other special purpose entity that are collateralized by a pool of loans by U.S. banks and participations in loans by U.S. banks that are unsecured or secured by collateral other than real estate. CBOs are securities issued by a trust or other special purpose entity that are backed by a diversified pool of fixed income securities issued by U.S. or foreign governmental entities or fixed income securities issued by U.S. or corporate issuers. CDOs are distinguishable from ABS because they are collateralized by bank loans or by corporate or government fixed income securities and not by consumer and other loans made by non-bank lenders, including student loans. For purposes of this proposed rule change, CDOs will not be subject to the 20% limit set forth in Nasdaq Rule 5735(b)(1)(B)(v). However, the Exchange believes that the 10% limit on the Fund's holdings in CDOs will help to ensure that the Fund maintains a diversified portfolio and will mitigate the risk of manipulation. *See infra* ''Investment Restrictions.''

[38] Although bank loans are included as ''fixed income securities'' for purposes of the ''generic'' listing requirements of Nasdaq Rule 5735(b)(1), the types of bank loans in which the Fund invests are not treated as ''securities'' under applicable case law and, as a result, the Fund intends to treat bank loans as Debt and not as fixed income securities. *See, e.g., Banco Espanol de Credito et al.* v. *Security Pacific National Bank,* 973 F.2d 51 (2d Cir. 1992), *cert. denied,* 509 U.S. 903 (1993). Accordingly, the Fund will not seek to comply with the parameters on investments in fixed income securities under Nasdaq Rule 5735(b)(1)(B) with respect to the Fund's holdings in bank loans, but instead will comply with the alternative limitations applicable to Debt with respect to such holdings, as set forth herein. *See infra* ''Investment Restrictions.''

guarantees made by any of the foregoing lenders; and (ii) U.S. or foreign loans on real estate secured by mortgages and participations in such loans. Debt may be partially or fully secured by collateral supporting the payment of interest and principal, or unsecured and/or subordinated to other instruments.[39] Debt may relate to financings for highly-leveraged borrowers.

With respect to fixed income securities, the Fund may invest in restricted instruments which are subject to resale restrictions that limit purchasers to qualified institutional buyers, as defined in Rule 144A under the Securities Act of 1933, as amended (the ''Securities Act'') or to non-U.S. persons, within the meaning of Regulation S under the Securities Act.

The Fund will use derivatives to (i) provide exposure to U.S. or foreign fixed income securities, Debt and other Principal Investments, (ii) risk manage the Fund's holdings,[40] and/or (iii) enhance returns, such as through covered call strategies.[41] The Fund will not use derivatives for the purpose of seeking leveraged returns or performance that is the multiple or inverse multiple of a benchmark. Derivatives that the Fund may enter into include: (i) Over-the-counter deliverable and non-deliverable foreign exchange forward contracts; (ii) exchange-listed futures contracts on securities (including Treasury Securities[42] and foreign government securities), Debt, commodities, securities-, commodities-, or combined-asset-class-related indices, interest rates, financial rates and currencies; (iii) exchange-listed or over-the-counter options or swaptions (*i.e.,* options to enter into a swap) on securities, Debt, commodities, securities-, commodities-, or combined-asset-class-related indices, interest rates, financial rates, currencies and futures contracts; (iv) exchange-listed or over-the-counter swaps (including total return swaps) on securities, Debt, commodities, securities-, commodities-, or combined-asset-class-related indices, interest rates, financial rates, and currencies and (v) credit default swaps on single names, baskets and indices (both as protection seller and as protection buyer). As a result of the Fund's use of derivatives and to serve as collateral, the Fund may also hold significant amounts of Treasury Securities, cash and cash equivalents and, in the case of derivatives that are payable in a foreign currency, the foreign currency in which the derivatives are payable.

The Fund may, without limitation, enter into repurchase arrangements and borrowing and reverse repurchase arrangements, purchase and sale contracts, buybacks[43] and dollar rolls[44] and spot currency transactions. The Fund may also, subject to required margin and without limitation, purchase securities and other instruments under when-issued, delayed delivery, to be announced or forward commitment transactions, where the securities or instruments will not be delivered or paid for immediately.[45] To the extent required under applicable federal securities laws (including the 1940 Act), rules, and interpretations thereof, the Fund will ''set aside'' liquid assets or engage in other measures to ''cover'' open positions held in connection with the foregoing types of transactions, as well as derivative transactions.

Other Investments

Under Normal Market Conditions, the Fund will seek its investment objective by investing at least 80% of its assets in a portfolio of the Principal Investments. The Fund may invest its remaining assets exclusively in: (i) U.S. or foreign exchange-listed[46] or over-the counter convertible fixed income securities;[47] and (ii) OTC Derivatives and Exchange-Traded Derivatives for which the underlying reference asset is not a Principal Investment.[48]

The Fund's Use of Derivatives

The types of derivatives in which the Fund may invest and the reference assets for such derivatives are described in greater detail in ''Principal Investments'' and ''Other Investments'' above. Exchange-Traded Derivatives will primarily be traded on exchanges that are ISG members or exchanges with which the Exchange has a comprehensive surveillance sharing agreement. The Fund may, however, invest up to 10% of the assets of the Fund in Exchange-Traded Derivatives and exchange-listed securities whose principal market is not a member of ISG or a market with which the Exchange has a comprehensive surveillance sharing agreement. For purposes of this 10% limit, the weight of such Exchange-Traded Derivatives will be calculated based on the mark-to-market value of such Exchange-Traded Derivatives.

The Fund will limit the weight of its investments in OTC Derivatives to 10% of the assets of the Fund, with the exception of Interest Rate Derivatives[49]

[39] As discussed *infra* in ''Investment Restrictions,'' (i) at least 75% of the Fund's investments in Debt shall be in senior loans with an initial deal size of $100 million or greater under Normal Market Conditions; (ii) no more than 30% of the Debt, together with fixed income securities held by the Fund, will be below investment grade (as defined *infra* in ''Investment Restrictions''); (iii) no more than 30% of the Fund's total assets will be invested in Debt and fixed income or equity securities of non-U.S. issuers or more than 25% in non-U.S. dollar denominated Debt or fixed income securities or equities; and (iv) no more than 25% of the total assets of the Fund will be invested in Debt or fixed income or equity securities of issuers in any one industry.

[40] The risk management uses of derivatives will include managing (i) investment-related risks, (ii) risks due to fluctuations in securities prices, interest rates, or currency exchanges rates, (iii) risks due to the credit-worthiness of an issuer, and (iv) the effective duration of the Fund's portfolio.

[41] *See also infra* ''The Fund's Use of Derivatives.''

[42] The term ''Treasury Securities'' has the meaning set forth in Nasdaq Rule 5735(b)(1)(B).

[43] A buyback refers to a TBA transaction that incorporates a special feature for addressing a failure by the seller to deliver the mortgages promised under the contract. A buyback feature typically provides that, in the event a TBA seller fails to deliver the MBS that is the subject of the transaction to the TBA buyer on the scheduled settlement date, the TBA buyer will be entitled to close-out its payment obligations by either (i) selling the deliverable MBS back to the seller at a price established under the buyback or (ii) accepting assignment from the seller of its right to receive the specified MBS from the third-party entity that failed to deliver the MBS to the TBA seller.

[44] A dollar roll transaction is a simultaneous sale and purchase of an Agency Pass-Through Mortgage-Backed Security (as defined in FINRA Rule 6710(v), which is the only reference security for such transaction) for different settlement dates, where the initial seller agrees to take delivery, upon settlement of the re-purchase transaction, of the same or substantially similar securities. *See* FINRA Rule 6710(z).

[45] FINRA Rule 4210 is scheduled to begin requiring broker-dealers to impose margin requirements on investors in TBAs and certain other delayed delivery transactions beginning March 25, 2019.

[46] No more than 10% of the Fund's total assets will be invested in exchange-listed securities or Exchange-Traded Derivatives that are listed on an exchange that is not an ISG-member or an exchange with which the Exchange does not have a comprehensive surveillance sharing agreement. *See infra* ''Investment Restrictions.''

[47] The Fund's investment in U.S. or foreign fixed income securities that are convertible into common stock will be limited to 20% of the Fund's assets under Normal Market Conditions, as compared with the Fund's investment in Non-Convertible Preferred Securities, which are treated as a Principal Investment of the Fund. The Fund does not intend to invest in convertible preferred securities.

[48] Investments in OTC Derivatives and Exchange-Traded Derivatives will also be subject to the limitations described in the ''The Fund's Use of Derivatives'' section below. As is the case with respect to the Fund's investments in OTC Derivatives and Exchange-Traded Derivatives for which the underlying reference asset is a Principal Investment, the Fund will invest in OTC Derivatives and Exchange-Traded Derivatives whose underlying reference asset is not a Principal Investment in order to (i) provide exposure to non-Principal Investments instruments; (ii) to risk manage the Fund's holdings; and/or (iii) to enhance returns.

[49] ''Interest Rate Derivatives'' are comprised of interest rate swaps, swaptions (*i.e.,* options on

Continued

and Currency Derivatives [50] (together, ''Interest Rate and Currency Derivatives'') entered into with broker-dealers, banks and other financial intermediaries. Investments in Interest Rate and Currency Derivatives (whether the instruments are Exchange-Traded Derivatives or OTC Derivatives) will not be subject to a limit. The Exchange believes that this exception, which is generally consistent with the requirement in a previous filing for the listing of an ETF approved by the Commission,[51] is appropriate in light of the fact that Interest Rate and Currency Derivatives are among the most liquid investment instruments (including not only derivatives but also securities) in the market [52] (and are even more liquid than most non-government or government-guaranteed securities). Based on the data compiled by the Sub-Adviser in respect to its liquidity policy, these derivatives are among the most liquid investments traded. In addition, most Interest Rate Derivatives traded by the Fund are centrally cleared by regulated clearing firms, and Interest Rate and Currency

Derivatives are subject to trade reporting,[53] and other robust regulation.[54] Given the size of the trading market and the regulatory oversight of the markets, the Exchange believes that Interest Rate and Currency Derivatives are not readily subject to manipulation. The Exchange also believes that allowing the Fund to risk manage its portfolio through the use of Interest Rate and Currency Derivatives without limit is necessary to allow the Fund to achieve its investment objective and protect investors.

For purposes of the 10% limit applicable generally to OTC Derivatives (other than Interest Rate and Currency Derivatives), the weight of such OTC Derivatives will be calculated based on the mark-to-market value of such OTC Derivatives.[55] The mark-to-market methodology is consistent with the methodology proposed by the SEC in proposed Rule 18f–4 for the purposes of asset coverage requirements [56] and in keeping with disclosures regarding compliance with Section 18 of the 1940 Act made by other registered investment companies and reviewed by the SEC staff for a number of years.[57] In that regard, the SEC expressly noted in the Derivatives Rule Proposing Release that reliance on a mark-to-market valuation of a derivatives position for purposes of calculating the required coverage amount ''would generally correspond to the amount of the fund's liability with respect to the derivatives transaction'' and, therefore, be consistent with the appropriate valuation of the derivatives transaction.[58] The mark-to-market value is also the measure on which collateral posting is based under the Master Agreement published by the International Swaps and Derivatives Association, Inc. (''ISDA''), which is the predominant agreement used to trade derivatives.[59] This value measures gain and loss to the Fund of the Fund's derivatives positions on a daily basis, as well as on a net basis across all transactions covered by a master netting agreement and, as a result, accurately reflects the actual economic exposure of

interest rate swaps), rate options and other similar derivatives, and may be Exchange-Traded Derivatives or OTC Derivatives. As reflected in statistics compiled by the Bank for International Settlements, as of June 30, 2017 there were approximately $416 trillion (notional amount) of total interest rate contracts outstanding in the over-the-counter markets alone. As reflected by the statistics, the market is wide, deep and liquid. *See https://www.bis.org/statistics/d7.pdf (accessed November 2017).* Interest Rate Derivatives may trade on trading platforms that are not ISG members or that are not subject to a comprehensive surveillance sharing agreement with the Exchange. Holdings in Exchange-Traded Derivatives (together with exchange-listed securities) that are listed on an exchange that is not an ISG member or on a market with which the Exchange does not have a comprehensive surveillance sharing agreement are limited to 10% of the Fund's assets.

[50] ''Currency Derivatives'' are comprised of deliverable forwards, which are agreements between the contracting parties to exchange a specified amount of currency at a specified future time at a specified rate, non-deliverable forwards, which are agreements to pay the difference between the exchange rates specified for two currencies at a future date, swaps and options on currencies, and similar currency or foreign exchange derivatives. As reflected in statistics compiled by the Bank for International Settlements, as of June 30, 2017 there were approximately $77 trillion (notional amount) of Currency Derivatives outstanding in the over-the-counter markets alone. As reflected by the statistics, the market is wide, deep and liquid. *See https://www.bis.org/statistics/d6.pdf* (accessed November 2017). Currency Derivatives may trade on trading platforms that are not ISG members or that are not subject to a comprehensive surveillance sharing agreement with the Exchange. Holdings in Exchange-Traded Derivatives (together with exchange-listed securities) that are listed on an exchange that is not an ISG member or on a market with which the Exchange does not have a comprehensive surveillance sharing agreement are limited to 10% of the Fund's assets.

[51] *See* Securities Exchange Act Release No. 80657 (May 11, 2017), 82 FR 22702 (May 17, 2017) (SR–NYSEArca–2017–09) (approving up to 50% of the fund's assets (calculated on the basis of aggregate gross notional value) to be invested in over-the-counter derivatives that are used to reduce currency, interest rate, or credit risk arising from the fund's investments, including forwards, over-the-counter options, and over-the-counter swaps).

[52] Trading in foreign exchange markets averaged $5.1 trillion per day in April 2016, and 67% of this trading activity was in derivatives contracts such as currency or foreign exchange forwards, options and swaps (with the other 33% consisting of spot transactions). *See* Bank for International Settlements, *Triennal Central Bank Survey, Foreign Exchange Turnover in April 2016, available at http://www.bis.org/publ/rpfx16fx.pdf (accessed November 2017).* Trading in OTC interest rate derivatives averaged $2.7 trillion per day in April 2016. *See* Bank for International Settlements, *Triennal Central Bank Survey, OTC Interest Rate Derivatives Turnover in April 2016, available at http://www.bis.org/publ/rpfx16ir.pdf (accessed November 2017).*

[53] Transactions in Interest Rate and Currency Derivatives are required to be reported to a swap data repository, and transactions in Interest Rate Derivatives and certain Currency Derivatives (*i.e.,* Currency Derivatives that are not excluded from the definition of a ''swap'', as described below) are also publicly reported pursuant to rules issued by the Commodity Futures Trading Commission (''CFTC''). *See* 17 CFR parts 43, 45 and 46. Pursuant to Section 1(a)(47)(E) of the CEA and a related determination by the Department of the Treasury, physically-settled Currency Derivatives that meet the definition of ''foreign exchange forwards'' or ''foreign exchange swaps'' under Sections 1a(24)–(25) of the CEA that are entered into between eligible contract participants (as defined in the CEA) (''Excluded Currency Derivatives'') are excluded from the definition of a ''swap'' under the CEA. *See* Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act, 77 FR 69694 (Nov. 20, 2012). Transactions in such Excluded Currency Derivatives are required to be reported to a swap data repository, but they are not subject to the public reporting requirements.

[54] Interest Rate Derivatives and Currency Derivatives other than Excluded Currency Derivatives are comprehensively regulated as swaps under the CEA and regulations issued thereunder by the CFTC and other federal financial regulators. *See, e.g.,* 17 CFR part 23 (capital and margin requirements for swap dealers, business conduct standards for swap dealers, and swap documentation requirements); 17 CFR part 50 (clearing requirements for swaps). While Excluded Currency Derivatives are not subject to all swap regulations, they are subject to the ''business conduct standards'' adopted by the CFTC pursuant to the CEA. *See* Section 1(a)(47)(E) of the CEA; Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act, 77 FR 69694 (Nov. 20, 2012).

[55] The mark-to-market value reflects the Fund's actual delivery or payment obligation under the derivative. This measure differs from that referenced in Nasdaq Rule 5735(b)(1)(E), which bases its 20% limit of assets in the portfolio applicable for funds issuing Managed Fund Shares on the aggregate gross notional value of the over-the-counter derivatives rather than on the mark-to-market value.

[56] *See* Derivatives Rule Proposing Release at 157–158; *see also infra* note 103.

[57] *See* Derivatives Rule Proposing Release at n.58, citing Comment Letter on SEC Concept Release (November 11, 2011) (File No. S7–33–11), Davis Polk & Wardwell LLP, *available at http://www.sec.gov/comments/s7-33-11/s73311-49.pdf* (''[F]und registration statements indicate that, in recent years, the Staff has not objected to the adoption by funds of policies that require segregation of the mark-to-market value, rather than the notional amount . . . [for asset segregation purposes].'')

[58] *See* Derivatives Rule Proposing Release at 157–158.

[59] The Credit Support Annex to the ISDA Master Agreement bases the collateral amount owed by a party to a derivatives contract, which is defined as a party's ''exposure,'' by reference to the replacement value of the party's net positions. Replacement value, which has the same meaning as ''mark-to-market'' value, is the amount owed by a party at a point in time determined based on the net termination payment due under the outstanding transaction.

the Fund to the counterparty on each derivative (as compared to notional amount, which may overstate or understate economic risk).

The Fund may choose not to make use of derivatives.

Generally, derivatives are financial contracts whose value depends upon, or is derived from, the value of an underlying asset, reference rate or index, and may relate to stocks, bonds, interest rates, currencies or currency exchange rates, commodities, and related indexes. As described above, the Fund will use derivatives to (i) provide exposure to the Principal Investments, (ii) risk manage the Fund's holdings,[60] and/or (iii) enhance returns, such as through covered call strategies. The Fund will not use derivatives for the purpose of seeking leveraged returns or performance that is the multiple or inverse multiple of a benchmark. The Fund will enter into derivatives only with counterparties that the Fund reasonably believes are financially and operationally able to perform the contract or instrument, and the Fund will collect collateral from the counterparty in accordance with credit considerations and margining requirements under applicable law.[61]

Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. To limit the potential risk (including leveraging risk) associated with such transactions, the Fund will segregate or ''earmark'' assets determined to be liquid by the Manager and/or the Sub-Advisers in accordance with procedures established by the Board and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that transactions of the Fund, including the Fund's use of derivatives, may give rise to additional leverage, causing the Fund to be more volatile than it would have if it had not been leveraged. Because the markets for securities or Debt, or the securities or Debt themselves, may be unavailable, cost prohibitive or tax-inefficient as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

The Manager and the Sub-Advisers believe that derivatives can be an economically attractive substitute for an underlying physical security or Debt that the Fund would otherwise purchase. For example, the Fund could purchase futures contracts on Treasury Securities instead of investing directly in Treasury Securities or could sell credit default protection on a corporate bond instead of buying a physical bond. Economic benefits include potentially lower transactions costs, attractive relative valuation of a derivative versus a physical bond (*e.g.,* differences in yields) or economic exposure without incurring transfer or similar taxes.

The Manager and the Sub-Advisers further believe that derivatives can be used as a more liquid means of adjusting portfolio duration, as well as targeting specific areas of yield curve exposure, with potentially lower transaction costs than the underlying securities or Debt (*e.g.,* interest rate swaps may have lower transaction costs than the physical bonds). Similarly, money market futures can be used to gain exposure to short-term interest rates in order to express views on anticipated changes in central bank policy rates. In addition, derivatives can be used to protect client assets through selectively hedging downside (or ''tail risks'') in the Fund.

The Fund also can use derivatives to increase or decrease credit exposure. Index credit default swaps can be used to gain exposure to a basket of credit risk by ''selling protection'' against default or other credit events, or to hedge broad market credit risk by ''buying protection.'' Single name credit default swaps can be used to allow the Fund to increase or decrease exposure to specific issuers, saving investor capital through lower trading costs. The Fund can use total return swap contracts to obtain the total return of a reference asset or index in exchange for paying financing costs. A total return swap may be more efficient than buying underlying securities or Debt, potentially lowering transaction costs.

The Fund expects to manage foreign currency exchange rate risk by entering into Currency Derivatives.

The Sub-Advisers may use options strategies to meet the Fund's investment objectives. Option purchases and sales can also be used to hedge specific exposures in the portfolio and can provide access to return streams available to long-term investors such as the persistent difference between implied and realized volatility. Options strategies can generate income or improve execution prices (*e.g.,* covered calls).

Investment Restrictions

The Fund may invest up to 30% of its assets in Non-Convertible Preferred Securities, Equity-Related Warrants and Work Out Securities. The Fund will not invest in equity securities other than Principal Investment Equities.[62] Principal Investment Equities consist of (i) Non-Convertible Preferred Securities, Equity-Related Warrants and Work Out Securities, which are subject to the 30% limit noted above and (ii) shares of ETFs that provide exposure to fixed income securities, Debt or other Principal Investments, which are subject to no limits.

While the Fund will invest principally in fixed income securities and Debt that are, at the time of purchase, investment grade, the Fund may invest up to 30% of its assets in below investment grade fixed income securities and Debt. For these purposes, ''investment grade'' is defined as investments with a rating at the time of purchase in one of the four highest rating categories of at least one nationally recognized statistical ratings organization (''NRSRO'') (*e.g.,* BBB—or higher by S&P Global Ratings (''S&P''), and/or Fitch Ratings (''Fitch''), or Baa3 or higher by Moody's Investors Service, Inc. (''Moody's'')).[63] Unrated fixed income securities or Debt may be considered investment grade if, at the time of purchase, and under Normal Market Conditions, the applicable Sub-Adviser determines that such securities

[60] The risk management uses of derivatives will include managing (i) investment-related risks, (ii) risks due to fluctuations in securities prices, interest rates, or currency exchanges rates, (iii) risks due to the credit-worthiness of an issuer, and (iv) the effective duration of the Fund's portfolio.

[61] The Fund will seek, where practicable, to trade with counterparties whose financial status is such that the risk of default is reduced. The Sub-Advisers will monitor the financial standing of counterparties on an ongoing basis. This monitoring may include reliance on information provided by credit agencies or credit analysts employed by the Sub-Advisers. The analysis may include earnings updates, the counterparty's reputation, past experience with the dealer, market levels for the counterparty's debt and equity, credit default swap levels for the counterparty's debt, the liquidity provided by the counterparty and its share of market participation.

[62] Although convertible fixed income securities are deemed to be ''equity securities'' under Section 3(a)(11) of the Act, for purposes of this proposed rule change, they are treated as fixed income securities. The Fund will not invest in convertible preferred securities.

[63] For the avoidance of doubt, if a security or Debt is rated by multiple NRSROs and receives different ratings, the Fund will treat the security or Debt as being rated in the highest rating category received from any one NRSRO. If a security or Debt is not rated, the Fund may determine its rating by reference to other securities issued by the issuer or its affiliates or comparable NRSRO-rated securities.

are of comparable quality based on a fundamental credit analysis of the unrated security or Debt instrument and comparable NRSRO-rated securities.

The Fund may invest in fixed income or equity securities and Debt issued by both U.S. and non-U.S. issuers (including issuers in emerging markets), but the Fund will not invest more than 30% of its total assets directly in fixed income or equity securities or Debt of non-U.S. issuers or more than 25% of its total assets directly in non-U.S. dollar denominated fixed income or equity securities or Debt. For purposes of these 30% and 25% concentration limits only, derivatives, warrants and ETFs traded on U.S. exchanges that provide indirect exposure to fixed income or equity securities or Debt (as applicable) of non-U.S. issuers or to fixed income or equity securities or Debt (as applicable) denominated in currencies other than U.S. dollars will not be counted by the Fund in calculating its holdings in non-U.S. issuers or in non-U.S. dollar denominated securities or Debt.

The Fund will not invest more than 20% of the fixed income portion of the Fund's portfolio [64] in ABS/Private MBS or more than 10% of the Fund's total assets in CDOs.[65] The Fund will also not invest more than 20% of its total assets in Debt that is unsecured and subordinated.

The Fund may not concentrate its investments (*i.e.,* invest more than 25% of the value of its total assets) in Debt of borrowers in any one industry or in fixed income or equity securities of issuers in any one industry as provided in the Registration Statement.[66] The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment),[67] including Rule 144A securities deemed illiquid by the Manager or the Sub-Advisers.[68] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities or other illiquid assets. Illiquid securities and other illiquid assets include those subject to contractual or other restrictions on resale and other instruments or assets that lack readily available markets as determined in accordance with Commission staff guidance.[69]

As noted in ''The Fund's Use of Derivatives,'' the Fund's investments in derivatives will be consistent with the Fund's investment objective and will not be used for the purpose of seeking leveraged returns or performance that is the multiple or inverse multiple of a benchmark (although derivatives have embedded leverage). Although the Fund will be permitted to borrow as permitted under the 1940 Act, it will not be operated as a ''leveraged ETF,'' (*i.e.,* it will not be operated in a manner designed to seek a multiple or inverse multiple of the performance of an underlying reference index). The Fund may engage in frequent and active trading of portfolio securities, Debt, and derivatives to achieve its investment objective.

Under Normal Market Conditions, the Fund will satisfy the following requirements, on a continuous basis measured at the time of purchase: (i) Component fixed income securities and Debt that in the aggregate account for at least 75% of the fixed income weight of the Fund's portfolio each shall have a minimum original principal amount outstanding of $100 million or more; (ii) no fixed income security held in the portfolio (excluding Treasury Securities and GSE-sponsored securities) will represent more than 30% of the fixed income weight of the Fund's portfolio, and the five most heavily weighted portfolio securities (excluding Treasury Securities and GSE-sponsored securities) will not in the aggregate account for more than 65% of the fixed income weight of the Fund's portfolio; and (iii) the Fund's portfolio of fixed income securities (excluding exempted securities) will include a minimum of 13 non-affiliated issuers.[70] Under

[64] The Exchange notes that the terms ''fixed income weight of the portfolio'' and ''weight of the fixed income portion of the portfolio'' are used synonymously in Nasdaq Rule 5735. For purposes of this proposed rule change, these terms include all fixed income securities and Debt held by the Fund as well as derivatives held by the Fund that provide exposure to fixed income securities or Debt.

[65] As discussed above, CDOs would be excluded from the 20% limit on ABS/Private MBS but would be subject to a separate limit of 10%, measured with respect to the total assets of the Fund. *See supra* note 33. The Exchange believes that the 10% limit on the Fund's holdings in CDOs will help to ensure that the Fund maintains a diversified portfolio and will mitigate the risk of manipulation.

[66] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975). For these purposes and as described above, Debt is comprised of loans that do not constitute securities (consistent with applicable case law) whereas fixed income securities would include loans and other fixed income instruments that are characterized as securities under applicable case law. *See supra* note 38.

[67] *See* Rule 22e–4(b)(1)(iv). ''No fund or In-Kind ETF may acquire any illiquid investment if, immediately after the acquisition, the fund or In-Kind ETF would have invested more than 15% of its *net assets* in illiquid investments that are assets.'' (emphasis added).

[68] In reaching liquidity decisions, the Manager or Sub-Advisers (as applicable) may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[69] Long-standing Commission guidelines have required investment companies to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), FN 34; *see also* Investment Company Act Release Nos. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); and 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). The Commission also recently adopted Rule 22e–4 under the 1940 Act, which requires that each registered open-end management investment company, including ETFs but not including money market mutual funds, to establish a liquidity risk management program that includes limitations on illiquid investments. *See* Investment Company Act Release No. 32315 (October 13, 2016), 81 FR 82142 (November 18, 2016). Under Rule 22e–4, a fund's portfolio security is illiquid if it cannot be sold or disposed of in current market conditions in seven calendar days or less without the sale or disposition significantly changing the market value of the investment. *See* 17 CFR 270.22e–4(a)(8).

[70] These requirements are consistent with the ''generic'' listing requirements under Nasdaq Rule 5735(b)(1)(B)(i)–(iii), which require: (i) For fixed income securities, that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each have a minimum principal amount outstanding of $100 million or more (*see* Nasdaq Rule 5735(b)(1)(B)(i)); (ii) for component fixed-income securities (excluding Treasury Securities and GSE-sponsored securities) that no component represent more than 30% of the fixed income weight of the portfolio (*see* Nasdaq Rule 5735(b)(1)(B)(ii)); (iii) that the five most heavily weighted component fixed income securities in the portfolio (excluding Treasury Securities and GSE-sponsored securities) not in the aggregate account for more than 65% of the fixed income weight of the portfolio) (*see* Nasdaq Rule 5735(b)(1)(B)(ii)); and (iv) that an underlying portfolio (excluding exempted securities) that includes fixed income securities include a minimum of 13 non-affiliated issuers (*see* Nasdaq Rule 5735(b)(1)(B)(iii)). Nasdaq Rule 5735(b)(1)(B)(iv) includes the following requirement: component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country. Nasdaq Rule 5735(b)(1)(B)(v) requires: Non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.

Normal Market Conditions, the Fund will also satisfy the following requirements, on a continuous basis measured at the time of purchase: (x) At least 75% of the Fund's investments in fixed income securities issued by emerging market issuers shall have a minimum original principal amount outstanding of $200 million or more; and (y) at least 75% of the Fund's investments in Debt shall be in senior loans with an initial deal size of $100 million or greater.[71]

Those exchange-listed securities and Exchange-Traded Derivatives held by the Fund that are listed and traded on a non-ISG member exchange or an exchange with which the Exchange does not have a comprehensive surveillance sharing agreement are limited to 10% of the Fund's assets.

In addition, the Fund will impose the limits described in the following section, which describes differences between the ''generic'' listing requirements of Nasdaq Rule 5735(b)(1) and those applicable to the Fund.

Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the Fund will not meet all of the ''generic'' listing requirements of Nasdaq Rule 5735(b)(1). The Fund will meet all such requirements except the requirements described below,[72] and the Exchange proposes that the Fund will comply with the alternative limits described below.

(i) The Fund will not comply with the requirements in Nasdaq Rule 5735(b)(1) regarding the use of aggregate gross notional value of derivatives when calculating the weight of such derivatives or the exposure that such derivatives provide to underlying reference assets, including the requirements in Rules 5735(b)(1)(D)(i),[73] 5735(b)(1)(D)(ii),[74] 5735(b)(1)(E)[75] and 5735(b)(1)(F).[76] Instead, the Exchange proposes that for the purposes of any applicable requirements under Nasdaq Rule 5735(b)(1), and any alternative requirements proposed by the Exchange, the Fund will use the mark-to-market value of its derivatives in calculating the weight of such derivatives or the exposure that such derivatives provide to their reference assets.[77]

(ii) The Fund will not comply with the requirement that securities comprising at least 90% of the fixed income weight of the Fund's portfolio meet one of the criteria in Nasdaq Rule 5735(b)(1)(B)(iv) in respect to its investments in ABS/Private MBS. Instead, ABS/Private MBS will be limited to 20% of the weight of the fixed income portion of the Fund's portfolio.[78] Other than ABS/Private MBS, which will not meet the criteria in Nasdaq Rule 5735(b)(1)(B)(iv) but will be subject to the 20% limit on aggregate holdings in ABS/Private MBS, all fixed income securities held by the Fund will satisfy this 90% requirement. As a result, other than ABS/Private MBS, which will not satisfy the 90% requirement, and CDOs, which will be excluded from the requirement in Nasdaq Rule 5735(b)(1)(B)(v) and, instead, be limited to 10% of the total assets of the Fund, all fixed income securities held by the Fund will comply with all of the requirements of Nasdaq Rule 5735(b)(1)(B)(i)–(v).

(iii) The Exchange has classified bank loans as Debt for purposes of this proposed rule change and not as ''fixed income securities'' as they are classified in Nasdaq Rule 5735(b)(1)(B). As a result, the Fund's investments in bank loans will comply with the limitations or restrictions applicable to the Fund's investments in Debt as set forth herein with respect to such holdings and not with the restrictions for fixed income securities set forth in Nasdaq Rule 5735(b)(1)(B)(i)–(v).[79]

(iv) The Fund will not comply with the equity requirements in Nasdaq Rules 5735(b)(1)(A)(i)[80] and

[71] The Exchange notes that Nasdaq Rule 5735(b)(1)(F) provides that, to the extent that derivatives are used to gain exposure to individual fixed income securities or indexes of fixed income securities, the aggregate gross notional value of such exposure shall meet the criteria set forth in Nasdaq Rule 5735(b)(1)(B). The Exchange proposes, however, as further described below, that for the purposes of the requirements in this paragraph and any requirements under Nasdaq Rule 5735(b)(1), the Fund will use the mark-to-market value of its derivatives rather than gross notional value.

[72] The Exchange notes that, while the Fund treats commercial paper having maturities of 360 days or less as cash equivalents for the purposes of its 80% Principal Investments measure, the Fund will comply with the applicable requirements of Nasdaq Rule 5735(b)(1) with respect to all commercial paper held by the Fund. Further, in accordance with Nasdaq Rule 5735(b)(1)(B), to the extent that the Fund holds securities that are convertible into fixed income securities, the fixed income securities into which any such securities are converted shall meet the criteria of Nasdaq Rule 5735(b)(1)(B) after converting.

[73] Nasdaq Rule 5735(b)(1)(D)(i) provides that, at least 90% of the weight of a portfolio's holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options and swaps for which the Exchange may obtain information via the ISG, from other members or affiliates of the ISG, or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement; for the purposes of calculating this limitation, a portfolio's investment in such listed derivatives will be calculated as the aggregate gross notional value of the listed derivatives.

[74] Nasdaq Rule 5735(b)(1)(D)(ii) provides that, the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).

[75] Nasdaq Rule 5735(b)(1)(E) provides that, on both an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in over-the-counter derivatives, including forwards, options, and swaps on commodities, currencies and financial instruments (*e.g.,* stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing; for purposes of calculating this limitation, the Fund's investment in OTC Derivatives will be calculated as the aggregate gross notional value of the OTC Derivatives.

[76] Nasdaq Rule 5735(b)(1)(F) provides that, to the extent that listed or over-the-counter derivatives are used to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or indexes of fixed income securities, the aggregate gross notional value of such exposure shall meet the criteria set forth in Nasdaq Rules 5735(b)(1)(A) and 5735(b)(1)(B), respectively.

[77] Further, as described further below, the Exchange is proposing that the Fund will comply with alternative requirements rather than Rules 5735(b)(1)(D)(i), 5735(b)(1)(D)(ii), and 5735(b)(1)(E).

[78] Nasdaq Rule 5735(b)(1)(B)(iv) provides that, component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

[79] For a listing of such restrictions, *see supra* ''Investment Restrictions.''

[80] Nasdaq Rule 5735(b)(1)(A)(i) provides that, the components stocks of the equity portion of a portfolio that are U.S. Component Stocks (as such term is defined in Nasdaq Rule 5705) shall meet the following criteria initially and on a continuing basis: (a) Component stocks (excluding Exchange Traded Derivative Securities and Linked Securities, as such terms are defined in Nasdaq Rules 5735(c)(6) and 5710, respectively) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Exchange Traded Derivative Securities and Linked Securities, as such terms are defined in Nasdaq Rules 5735(c)(6) and 5710, respectively) each shall have a minimum market value of at least $75 million; (b) Component stocks (excluding Exchange Traded Derivative Securities and Linked Securities, as such terms are defined in Nasdaq Rules 5735(c)(6) and 5710, respectively) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Exchange Traded Derivative Securities and Linked Securities, as such terms are defined in Nasdaq Rules 5735(c)(6) and 5710, respectively) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months; (c) The most heavily weighted component stock (excluding Exchange Traded Derivative Securities and Linked Securities, as such terms are defined in Nasdaq Rules 5735(c)(6) and 5710, respectively) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily

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5735(b)(1)(A)(ii) [81] with respect to the Fund's investment in Non-Convertible Preferred Securities, Work Out Securities and warrants. Instead, the Exchange proposes that (i) the Fund's investments in equity securities other than Non-Convertible Preferred Securities, Work Out Securities and warrants shall comply with the equity requirements in Nasdaq Rule 5735(b)(1)(A) [82] and (ii) the weight of Non-Convertible Preferred Securities, Work Out Securities and Equity-Related Warrants in the Fund's portfolio shall together not exceed 30% of the Fund's assets.

(v) The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(E) that no more than 20% of the assets in the Fund's portfolio may be invested in over-the-counter derivatives. Instead, the Exchange proposes that there shall be no limit on the Fund's investment in Interest Rate and Currency Derivatives, and the weight of all OTC Derivatives other than Interest Rate and Currency Derivatives shall not exceed 10% of the Fund's assets. For purposes of this 10% limit on OTC Derivatives, the weight of such OTC Derivatives will be calculated based on the mark-to-market value of such OTC Derivatives.

(vi) The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(D)(i) that at least 90% of the weight of the Fund's holdings in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options and swaps for which the Exchange may obtain information via the ISG from other members or affiliates of the ISG, or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement. Instead, the Exchange proposes that no more than 10% of the assets of the Fund will be invested in Exchange-Traded Derivatives and exchange-listed securities whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. For purposes of this 10% limit, the weight of such Exchange-Traded Derivatives will be calculated based on the mark-to-market value of such Exchange-Traded Derivatives.

(vii) The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(D)(ii) that the aggregate gross notional value of listed derivatives, based on any five or fewer underlying reference assets, shall not exceed 65% of the weight of the Fund's portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives, based on any single underlying reference asset, shall not exceed 30% of the weight of the Fund's portfolio (including gross notional exposures). Instead, the Exchange proposes that the Fund will comply with the concentration requirements in Nasdaq Rule 5735(b)(1)(D)(ii) except with respect to the Fund's investment in futures and options (including options on futures) referencing eurodollars and sovereign debt issued by the United States (*i.e.,* Treasury Securities) and other ''Group of Seven'' countries [83] where such futures and options contracts are listed on an exchange that is an ISG member or an exchange with which the Exchange has a comprehensive surveillance sharing agreement (''Eurodollar and G–7 Sovereign Futures and Options''). The Fund may maintain significant positions in Eurodollar and G–7 Sovereign Futures and Options, and such investments will not be subject to the concentration limits provided in Nasdaq Rule 5735(b)(1)(D)(ii). For purposes of this requirement, the weight of the applicable Exchange-Traded Derivatives will be calculated based on the mark-to-market value of such Exchange-Traded Derivatives.

The Exchange believes that, notwithstanding that the Fund would not meet a limited number of ''generic'' listing requirements of Nasdaq Rule 5735(b)(1) in order to be able to satisfy its investment objective, the Exchange will be able to appropriately monitor and surveil trading in the underlying investments, including those that do not meet the ''generic'' listing requirements. The Exchange also notes that the parameters around the Fund's portfolio holdings are generally consistent with the parameters approved by the Commission prior to adoption of ''generic'' listing requirements for actively-managed ETFs.[84] In addition,

weighted component stocks (excluding Exchange Traded Derivative Securities and Linked Securities, as such terms are defined in Nasdaq Rules 5735(c)(6) and 5710, respectively) shall not exceed 65% of the equity weight of the portfolio; (d) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Exchange Traded Derivative Securities or Linked Securities, as such terms are defined in Nasdaq Rules 5735(c)(6) and 5710, respectively, constitute, at least in part, components underlying a series of Managed Fund Shares (as defined in Nasdaq Rule 5735), or (ii) one or more series of Exchange Traded Derivative Securities or Linked Securities, as such terms are defined in Nasdaq Rule 5735(c)(6) and 5710, respectively, account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; (e) except as otherwise provided, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act; and (f) American Depositary Receipts (''ADRs'') in a portfolio may be exchange-traded or non-exchange-traded; however, no more than 10% of the equity weight of a portfolio shall consist of non-exchange-traded ADRs.

[81] Nasdaq Rule 5735(b)(1)(A)(ii) provides that, the component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks (as such term is defined in Nasdaq Rule 5705) shall meet the following criteria initially and on a continuing basis: (a) Non-U.S. Component Stocks (as such term is defined in Nasdaq Rule 5705) each shall have a minimum market value of at least $100 million; (b) Non-U.S. Component Stocks (as such term is defined in Nasdaq Rule 5705) each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months; (c) The most heavily weighted Non-U.S. Component Stock (as such term is defined in Nasdaq Rule 5705) shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks (as such term is defined in Nasdaq Rule 5705) shall not exceed 60% of the equity weight of the portfolio; (d) Where the equity portion of the portfolio includes Non-U.S. Component Stocks (as such term is defined in Nasdaq Rule 5705), the equity portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Exchange Traded Derivative Securities or Linked Securities, as such terms are defined in Nasdaq Rules 5735(c)(6) and 5710, respectively, constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Exchange Traded Derivative Securities or Linked Securities, as such terms are defined in Nasdaq Rules 5735(c)(6) and 5710, respectively, account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and (e) Each Non-U.S. Component Stock (as such term is defined in Nasdaq Rule 5705) shall be listed and traded on an exchange that has last-sale reporting.

[82] These other equities will consist of ETFs (including money market ETFs) that provide exposure to fixed income securities, Debt and other Principal Investments. The weight of such ETFs in the Fund's portfolio shall not be limited. As noted above, Fixed-Income Related Warrants are treated as fixed income securities for purposes of this proposed rule change and will be subject to and comply with the generic listing requirements for fixed-income securities, rather than the generic listing requirements for equity securities. *See supra* note 29.

[83] The ''Group of Seven'' or G–7 countries consist of the United States, Canada, France, Germany, Italy, Japan and the United Kingdom.

[84] *See, e.g.,* Securities Exchange Act Release Nos. 76719 (December 21, 2015), 80 FR 80859 (December 28, 2015) (SR–NYSEArca–2015–73) (granting approval for the listing of shares of the Guggenheim Total Return Bond ETF); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (granting approval for the listing of shares of the PIMCO Total Return Exchange Traded Fund (now known as the PIMCO Active Bond Exchange-Traded Fund)); and 72666 (July 24, 2014), 79 FR 44224 (July 30, 2014) (SR–NYSEArca–2013–122) (granting approval to the use of derivatives by the PIMCO Total Return Exchange Traded Fund). The investments of the Guggenheim Total Return Bond ETF include a wide variety of U.S. and foreign fixed income instruments (including Private ABS/MBS), preferred securities, cash equivalents, other ETFs and listed and over-the-counter derivatives and are managed in a manner that appears to be generally

the Fund will be well diversified. For these reasons, the Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange.

As further described in ''Statutory Basis,'' deviations from the generic requirements are necessary for the Fund to achieve its investment objective and efficiently manage the risks associated with its investments, and any possible risks have been fully mitigated and addressed through the alternative limits proposed by the Exchange. In addition, many of the changes requested are generally consistent with previous filings approved by the Commission.[85]

Net Asset Value

The Fund's administrator will calculate the Fund's net asset value (''NAV'') per Share as of the close of regular trading (normally 4:00 p.m., Eastern time (''E.T.'')) on each day the New York Stock Exchange is open for business. NAV per Share will be calculated for the Fund by taking the value of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share (although creations and redemptions will be processed using a price denominated to the fifth decimal point, meaning that rounding to the nearest cent may result in different prices in certain circumstances).

Impact on Arbitrage Mechanism

The Manager and the Sub-Advisers believe there will be minimal, if any, impact on the arbitrage mechanism for the Fund as a result of its use of derivatives. The Manager and the Sub-Advisers understand that market makers and other market participants should be able to value derivatives held by the Fund as long as the Fund's positions are disclosed. The Manager and the Sub-Advisers believe that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability for authorized participants (''APs'') to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Manager and the Sub-Advisers do not believe that there will be any significant impact on the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will typically be substituted with a ''cash in lieu'' amount when the Fund processes purchases or redemptions of creation units in-kind.

Creation and Redemption of Shares

The Fund will issue Shares of the Fund at NAV only to APs and only in aggregations of at least 50,000 shares (each aggregation is called a ''Creation Unit'') or multiples thereof, on a continuous basis through the Distributor, without a sales load, at the NAV next determined after receipt, on any Business Day, of an order in proper form. A ''Business Day'' is defined as any day that the Trust is open for business, including as required by Section 22(e) of the 1940 Act.

Although the Fund reserves the right to issue Creation Units on a partial or fully ''in kind'' basis, the Fund expects that it will primarily issue Creation Units solely for cash. As a result, APs seeking to purchase Creation Units will generally be required to transfer to the Fund cash in an amount equal to the value of the Creation Unit(s) purchased and the applicable transaction fee. To the extent that the Fund elects to issue Creation Units on an ''in-kind'' basis, the applicable AP will be required to deposit with the Fund a designated portfolio of securities and/or instruments (the ''Deposit Securities'') that will conform *pro rata* to the holdings of the Fund (except in the circumstances described in the Fund's Statement of Additional Information (the ''SAI'')) and/or an amount of cash. If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Securities or Redemption Securities (defined below) exchanged for the Creation Unit, the party conveying the instruments with the lower value will pay to the other an amount in cash equal to that difference (the ''Cash Component''). Together, the Deposit Securities and the Cash Component will constitute the ''Fund Deposit,'' which will represent the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

The Fund also expects to effect redemptions of Creation Units primarily on a cash basis, although it reserves the right to effect redemption on a partial or wholly ''in-kind'' basis. In connection with a cash redemption, the AP will be required to transfer to the Fund Creation Units and cash equal to the transaction fee. To the extent that the Fund elects to utilize an ''in-kind'' redemption, it will deliver to the redeeming AP, in exchange for a Creation Unit, securities and/or instruments that will conform *pro rata* to the holdings of the Fund (''Redemption Securities'') plus the Cash Component.

To be eligible to place orders with respect to creations and redemptions of Creation Units, an entity must have executed an agreement with the Distributor, subject to acceptance by the transfer agent, with respect to creations and redemptions of Creation Units. Each

consistent with that proposed for the Fund. Consistent with the requests made in this proposed rule change, the Commission's approval of the listing of shares of the Guggenheim Total Return Bond ETF did not include many of the conditions imposed by the generic listing standards under Nasdaq Rule 5735; the Commission's approval did not impose limits regarding the total notional size of the ETF's investment in over-the-counter derivatives, did not impose concentration limits on the ETF's investment in listed derivatives and did not require compliance with the same criteria as the fixed income criteria in Nasdaq Rule 5735(b)(1)(B). The order approving investments in derivatives by the PIMCO Total Return Exchange Traded Fund described investments in both over-the-counter and listed derivatives, but did not impose limits regarding the total notional size of the ETF's investments in over-the-counter derivatives, did not impose concentration limits on the ETF's investments in listed derivatives, and did not impose limitations on investments in listed derivatives whose principal market is not a member of ISG or is a market with which its listing exchange does not have a comprehensive surveillance sharing agreement.

[85] *See, e.g.,* Securities Exchange Act Release Nos. 80657 (May 11, 2017), 82 FR 22702 (May 17, 2017) (SR–NYSEArca–2017–09) (approving up to 50% of the fund's assets (calculated on the basis of aggregate gross notional value) to be invested in over-the-counter derivatives that are used to reduce currency, interest rate, or credit risk arising from the fund's investments, including forwards, over-the-counter options, and over-the-counter swaps); 78592 (August 16, 2016), 81 FR 56729 (August 22, 2016) (SR–NASDAQ–2016–061) (approving investment of up to 20% of the fund's assets in, among other things, non-exchange-traded equity securities acquired in conjunction with the fund's event-driven strategy, including securities acquired by the fund as a result of certain corporate events including reorganizations); 76719 (December 21, 2015), 80 FR 80859 (December 28, 2015) (SR–NYSEArca–2015–73) (permitting (i) investments in over-the-counter and listed derivatives without imposing limits on the total notional size of the ETF's investments in over-the-counter derivatives and without imposing concentration limits on the ETF's investments in listed derivatives and (ii) permitting investments in a wide variety of fixed income instruments without compliance with the same criteria as the fixed income criteria in Nasdaq Rule 5735(b)(1)(B)); and 72666 (July 24, 2014), 79 FR 44224 (July 30, 2014) (SR–NYSEArca–2013–122) (permitting investments in both over-the-counter and listed derivatives, but without imposing limits regarding the total notional size of the ETF's investments in over-the-counter derivatives, without imposing concentration limits on the ETF's investments in listed derivatives, and without imposing limitations on investments in listed derivatives whose principal market is not a member of ISG or is a market with which its listing exchange does not have a comprehensive surveillance sharing agreement); and 69061 (March 7, 2013), 78 FR 15990 (March 13, 2013) (SR–NYSEArca–2013–01) (approving investments in non-agency commercial MBS and non-agency residential MBS without a fixed limit but consistent with the fund's objective of investing up to 80% of its assets in investment grade fixed-income securities).

such entity (an AP) must be (i) a broker-dealer or other participant in the clearing process through the continuous net settlement system of the National Securities Clearing Corporation (''NSCC'') or (ii) a Depository Trust Company participant.

When the Fund permits Creation Units to be issued principally or partially in-kind, the Fund will cause to be published, through the NSCC, on each Business Day, at or before 9:00 a.m. E.T., the identity and the required principal amount or number of each Deposit Security and the amount of the Cash Component (if any) to be included in the current Fund Deposit (based on information at the end of the previous Business Day).

All orders to create Creation Units must be received by the Distributor within a one-hour window from 9:00 a.m. E.T. to 10:00 a.m. E.T. on a given Business Day in order to receive the NAV determined on the Business Day on which the order was placed.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form on a Business Day and only through an AP. The Fund will not redeem Shares in amounts less than a Creation Unit unless the Fund is being liquidated.

When the Fund permits Creation Units to be redeemed principally or partially in-kind, the Fund will cause to be published, through the NSCC, at or before 9:00 a.m. E.T. on each Business Day, the identity of the Redemption Securities and/or an amount of cash that will be applicable to redemption requests received in proper form on that day. The Redemption Securities will be identical to the Deposit Securities.

In order to redeem Creation Units of the Fund, an AP must submit an order to redeem one or more Creation Units. All such orders must be received by the Distributor within a one-hour window from 9:00 a.m. E.T. to 10:00 a.m. E.T. on a given Business Day in order to receive the NAV determined on the Business Day on which the order was placed.

Availability of Information

The Fund's website (*www.leggmason.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The website will include the Shares' ticker, CUSIP and exchange information, along with additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior Business Day's NAV per share and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV per share (the ''Bid/Ask Price''),[86] and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV per share; and (2) a table showing the number of days of such premium or discount for the most recently completed calendar year, and the most recently completed calendar quarters since that year (or the life of Fund, if shorter).

On each Business Day, before commencement of trading in Shares in the Regular Market Session [87] on the Exchange, the Fund will disclose on its website the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'' as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[88] The Fund's disclosure of derivative positions in the Disclosed Portfolio will include sufficient information for market participants to use to value these positions intraday. On a daily basis, the Fund will disclose on the Fund's website the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding), the identity of the security or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and percentage weighting of the holding in the Fund's portfolio.[89] The website information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's Disclosed Portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the Nasdaq Information LLC proprietary index data service,[90] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendor and broadly displayed at least every 15 seconds during the Regular Market Session. The Intraday Indicative Value will be based on quotes and closing prices provided by a dealer who makes a market in those instruments. Premiums and discounts between the Intraday Indicative Value and the market price may occur. This should not be viewed as a ''real time'' update of the NAV per Share of the Fund, which is calculated only once a day.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the Business Day.

Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the Business Day on brokers' computer screens and other electronic services. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association (''CTA'') plans for the Shares and for the following U.S. securities, to the extent that they are exchange-listed securities: Work Out Securities, Non-Convertible Preferred Securities, warrants, convertible fixed income securities and ETFs. Price information for U.S. exchange-listed options will be available via the Options Price Reporting Authority and for other U.S. Exchange-Traded Derivatives will be available from the applicable listing exchange and from major market data vendors. Price information for TRACE-Eligible Securities [91] sold in transactions

[86] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[87] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m., E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m., E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m., E.T.).

[88] Under accounting procedures to be followed by the Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[89] *See* Nasdaq Rule 5735(c)(2).

[90] Currently, the Nasdaq Global Index Data Service (''GIDS'') is the Nasdaq global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade Nasdaq indexes, listed ETFs, or third-party partner indexes and ETFs.

[91] For the definition of ''TRACE-Eligible Security,'' *see* FINRA Rule 6710(a).

under Rule 144A under the Securities Act will generally be available through FINRA's Trade Reporting and Compliance Engine (''TRACE'') and information regarding transactions in non-TRACE-Eligible Securities or transactions not otherwise subject to TRACE reporting is generally available from major market data vendors and broker-dealers. For most of the U.S. dollar denominated corporate bonds, GSE-sponsored securities, Securitized Products and other U.S. dollar denominated fixed income securities in which the Fund invests, price information will be available from TRACE and EMMA (as defined below).[92] For those instruments for which FINRA does not disseminate price information from TRACE, such as CDOs and fixed income securities denominated in foreign currencies, pricing information will generally be available from major market data vendors and broker-dealers. Money Market Funds are typically priced once each Business Day and their prices will be available through the applicable fund's website or from major market data vendors.

For other exchange-listed securities (to be comprised primarily of ETFs, warrants and structured notes and which may include exchange-listed securities of both U.S. and non-U.S. issuers), equities traded in the over-the-counter market (including Work Out Securities and Non-Convertible Preferred Securities), Exchange-Traded Derivatives (including U.S. or foreign), OTC Derivatives, Debt and fixed income securities (including convertible fixed income securities), and the small number of Securitized Products that are not reported to TRACE,[93] intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable). Price information for such securities and instruments will also be available from feeds from major market data vendors, published or other public sources, or online information services. As noted above, TRACE will be a source of price information for most of the U.S. dollar denominated corporate bonds, GSE-sponsored securities, Securitized Products and other U.S. dollar denominated fixed income securities in which the Fund invests. Intraday and other price information related to foreign government securities, Money Market Funds, and other cash equivalents that are traded over-the-counter and other Non-TRACE Eligible Securities as well as prices for Treasury Securities, CDOs, commercial mortgage-backed securities, or CMOs purchased through transactions that do not qualify for periodic dissemination by FINRA [94] will be available through major market data vendors, such as Bloomberg, Markit, IDC and Thomson Reuters, which can be accessed by APs and other investors. Electronic Municipal Market Access (''EMMA'') will be a source of price information for municipal bonds. Pricing for repurchase transactions and reverse repurchase agreements entered into by the Fund are not publicly reported. Prices are determined by negotiation at the time of entry with counterparty brokers, dealers and banks.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings' disclosure policies, distributions and taxes will be included in the Registration Statement. Investors will also be able to obtain the SAI, the Fund's annual and semi-annual reports (together, ''Shareholder Reports''), and its Form N–CSR and Form N–SAR, filed twice a year, except the SAI, which is filed at least annually. The Fund's SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov*.

Initial and Continued Listing

The Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and continued listing, the Fund must be in compliance with Rule 10A–3 [95] under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m., E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[96] The Exchange

[92] FINRA generally disseminates information on all transactions in TRACE-Eligible Securities, including those effected pursuant to Rule 144A of the Securities Act, immediately upon receipt of the transaction reports. Exceptions to this dissemination schedule are: (i) In respect to CMOs transacted pursuant to Rule 144A under the Securities Act, where the transaction value is $1 million or more and there have been five or more transactions of $1 million or more in the period reported by at least two different market participant identifiers (where FINRA will disseminate information weekly and monthly); (ii) certain transactions with affiliates, certain transfers in connection with mergers and not in furtherance of a trading strategy, and certain primary offerings; (iii) transactions in CDOs, collateralized mortgage backed securities and CMOs, if the transaction value is $1 million or more and does not qualify for periodic dissemination; and (iv) Treasury Securities. *See* FINRA Rule 6750.

[93] Non-TRACE Eligible Securities, which are Securitized Products, in which the Fund may invest, will primarily consist of fixed income securities issued by foreign entities and denominated in foreign currencies. For such securities that are not TRACE-eligible, pricing information will generally be available from major market data vendors and broker-dealers.

[94] *See supra* note 92.

[95] *See* 17 CFR 240.10A–3.

[96] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-listed securities and instruments held by the Fund (including exchange-listed equities and Exchange-Traded Derivatives) with other markets and other entities that are members of ISG[97] and with which the Exchange has comprehensive surveillance sharing agreements,[98] and FINRA and the Exchange both may obtain information regarding trading in the Shares, the exchange-listed securities, derivatives and other instruments held by the Fund from markets and other entities that are members of ISG, which include securities and futures exchanges and swap execution facilities, or with which the Exchange has in place a comprehensive surveillance sharing agreement.[99] Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for most of the fixed income securities held by the Fund through reporting on FINRA's TRACE and, with respect to municipal securities, EMMA.

The majority of the Fund's investments in exchange-listed, equity securities (*i.e.,* Non-Convertible-Preferred Securities, Equity-Related Warrants, and ETFs) will constitute securities that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. Up to 10% of the Fund's assets may be held in exchange-listed securities and Exchange-Traded Derivatives that are listed and traded on markets that are not members of ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's website.

Continued Listing Representations

All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or intraday indicative values, or (d) the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act, 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, and 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 Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both the Exchange and FINRA, on behalf of the Exchange, which are designed to deter and detect violations of Exchange rules and applicable federal securities laws and are adequate to properly monitor trading in the Shares in all trading sessions.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall

[97] Exchange-listed securities and Exchange-Traded Derivatives held by the Fund that are listed and traded on a non-ISG member exchange or on an exchange with which the Exchange does not have a comprehensive surveillance sharing agreement together are limited to 10% of the assets of the Fund.

[98] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[99] As noted above, no more than 10% of the assets of the Fund may be invested in Exchange-Traded Derivatives and exchange-listed securities whose principal market is not a member of ISG or a market with which the Exchange has a comprehensive surveillance sharing agreement.

erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company's portfolio. In addition, paragraph (g) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the investment company's portfolio.

Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment and maintenance of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable investment company's portfolio, not an underlying benchmark index, as is the case with index-based funds. None of the Manager or any of the Sub-Advisers is a broker-dealer, but each is affiliated with the Distributor, a broker-dealer, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.

In addition, personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio. In the event (a) the Manager or any of the Sub-Advisers registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new investment adviser or any new sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Fund's investments, including derivatives, will be consistent with the Fund's investment objectives, applicable legal requirements [100] and will not be used for the purpose of seeking leveraged returns or performance that is the multiple or inverse multiple of a benchmark (although derivatives may have embedded leverage). Although the Fund will be permitted to borrow as permitted under the 1940 Act, it will not be operated as a ''leveraged ETF,'' *i.e.,* it will not be operated in a manner designed to seek leveraged returns or a multiple or inverse multiple of the performance of an underlying reference index.[101] The Fund may engage in frequent and active trading of portfolio investments to achieve its investment objective.

The Exchange believes that, notwithstanding that the Fund would not meet all of the ''generic'' listing requirements of Nasdaq Rule 5735(b)(1), the Fund will not be subject to manipulation, the investments of the Fund will be able to be monitored and surveilled by the Exchange and risks will be mitigated by alternative limits imposed by the Exchange and by the voluntary limits imposed by the Fund (*see supra* ''Investment Restrictions''). As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein. Deviations from the generic requirements are necessary for the Fund to achieve its investment objective in a cost-effective manner that maximizes investors' returns and to manage the risks associated with its investments, and the Exchange proposes that the Fund will be required to comply with alternative requirements that are customized to address the objectives of Section 6(b)(5) of the Act, as described herein. Further, the strategy and investments of the Fund are substantially similar to those of other ETFs previously approved by the Commission, which have operated safely and without disrupting the market for several years.[102]

The Fund will not comply with the requirements in Nasdaq Rule 5735(b)(1) regarding the use of aggregate gross notional value of derivatives when calculating the weight of such derivatives or the exposure that such derivatives provide to underlying reference assets, including the requirements in Rules 5735(b)(1)(D)(i), 5735(b)(1)(D)(ii), 5735(b)(1)(E) and 5735(b)(1)(F). Instead, the Exchange proposes that, except as otherwise provided herein, for the purposes of any applicable requirements under Nasdaq Rule 5735(b)(1), and any alternative requirements proposed by the Exchange, the Fund will use the mark-to-market value of its derivatives in calculating the weight of such derivatives or the exposure that such derivatives provide to their reference assets. The Exchange believes that this alternative requirement is appropriate because the mark-to-market value is a more accurate measurement of the actual exposure incurred by the Fund in connection with a derivatives position.[103]

The Fund will not meet the requirement that at least 90% of the fixed income weight of the Fund's portfolio meet one of the criteria in Nasdaq Rule 5735(b)(1)(B)(iv) [104] because some ABS/Private MBS cannot satisfy the criteria in Nasdaq Rule 5735(b)(1)(B)(iv).[105] The Exchange proposes, in the alternative, to require the Fund to ensure that all of the investments in the fixed income portion of the Fund's portfolio, other than ABS/Private MBS, comply with the 90% requirement in Nasdaq Rule

[100] As noted above, the Fund will limit its investments in illiquid securities or other illiquid assets to an aggregate amount of 15% of its net assets (calculated at the time of investment), as required by the Commission.

[101] As noted above, the Fund will not invest in leveraged, inverse or inverse leveraged ETFs.

[102] *See, e.g.,* Securities Exchange Act Release Nos. 66321 (February 3, 2012) 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (granting approval for the listing of shares of the PIMCO Total Return Exchange Traded Fund); 72666 (July 24, 2014) (granting approval to the use of derivatives by the PIMCO Total Return Exchange Traded Fund); and 76719 (December 21, 2015) (granting approval for the listing of shares of the Guggenheim Total Return Bond ETF).

[103] As previously noted, the mark-to-market approach is consistent with the valuation methodology for derivatives for asset coverage purposes advocated by the Commission in proposed Rule 18f–4 under the 1940 Act. *See* Derivatives Rule Proposing Release. In a white paper published by staff of the Division of Economic and Risk Analysis of the SEC (''DERA'') in connection with the proposal of Rule 18f–4 under the 1940 Act, the staff of DERA noted that a derivative's notional amount does not accurately reflect the risk of the derivative. *See* Daniel Deli, Paul Hanouna, Christof Stahel, Yue Tang and William Yost, *Use of Derivatives by Registered Investment Companies* (December 2015) at 10 (''On the other hand, there are drawbacks to using notional amounts. First, because of differences in expected volatilities of the underlying assets, notional amounts of derivatives across different underlying asset generally do not represent the same unit of risk. For example, the level of risk associated with a $100 million notional of a S&P 500 index futures is not equivalent to the level of risk of a $100 million notional of interest rate swaps, currency forwards or commodity futures.'').

[104] Nasdaq Rule 5735(b)(1)(B)(iv) provides that component securities that in the aggregate account for at least 90% of the fixed income weight of the Fund's portfolio must be either: (a) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

[105] ABS/Private MBS are generally issued by special purpose vehicles, so the criteria in Nasdaq Rule 5735(b)(1)(B)(iv) regarding an issuer's market capitalization and the remaining principal amount of an issuer's securities are typically unavailable with respect to ABS/Private MBS, even though such ABS/Private MBS may own significant assets.

5735(b)(1)(B)(iv).[106] The Exchange believes that this alternative limitation is appropriate because Nasdaq Rule 5735(b)(1)(B)(iv) does not appear to be designed for structured finance vehicles such as ABS/Private MBS, and the overall weight of ABS/Private MBS held by the Fund will be limited to 20% of the fixed income portion of the Fund's portfolio, as described above. As discussed above, although ABS/Private MBS will be excluded for the purposes of compliance with Nasdaq Rule 5735(b)(1)(B)(iv), the Fund's portfolio is consistent with the statutory standard as a result of the diversification provided by the investments and the Sub-Adviser's selection process, which closely monitors investments to ensure maintenance of credit and liquidity standards and relies on the higher investment levels in these instruments during periods of U.S. economic strength.

As discussed above, the Exchange has determined to make an exception solely in respect of the Fund such that CDOs will not be deemed to be included in the definition of ABS for purposes of the limitation in Nasdaq Rule 5735(b)(1)(B)(v) and, as a result, will not be subject to the restriction on aggregate holdings of ABS/Private MBS contained in such Rule, which limits such holdings to no more than 20% of the weight of the fixed income portion of the Fund's portfolio. However, the Fund's holdings in CDOs will be limited such that they do not account, in the aggregate, for more than 10% of the total assets of the Fund. The Exchange believes that the 10% limit on the Fund's holdings in CDOs will help to ensure that the Fund maintains a diversified portfolio and will mitigate the risk of manipulation.

The Exchange has classified bank loans as Debt for purposes of this proposed rule change and not as ''fixed income securities'' as they are classified in Nasdaq Rule 5735(b)(1)(B). As a result, the Fund's investments in bank loans will comply with the limitations or restrictions applicable to the Fund's investments in Debt as set forth herein with respect to such holdings and not with the restrictions for fixed income securities set forth in Nasdaq Rule 5735(b)(1)(B)(i)–(v).[107] The Exchange believes that this approach is appropriate given that the ''generic'' listing requirements in Nasdaq Rule 5735(b)(1)(B) generally appear to be tailored to fixed income instruments that are ''securities,'' as defined in the Act, rather than loans and other debt instruments that are not characterized as ''securities'' under applicable case law.

The Fund will not meet the equity requirements in Nasdaq Rule 5735(b)(1)(A) with respect to Non-Convertible Preferred Securities, Work Out Securities and warrants.[108] Instead, the Exchange proposes that (i) the Fund's investments in equity securities other than Non-Convertible Preferred Securities, Work Out Securities and Equity Related Warrants shall comply with the equity requirements in Nasdaq Rule 5735(b)(1)(A)[109] and (ii) the weight of Non-Convertible Preferred Securities, Work Out Securities and Equity-Related Warrants in the Fund's portfolio shall together not exceed 30% of the Fund's assets. The Exchange believes that these alternative limitations are appropriate in light of the fact that the Non-Convertible Preferred Securities, Equity-Related Warrants and Work Out Securities are providing debt-oriented exposures or are received in connection with the Fund's previous investment in Debt or fixed income securities, and all of the other equity securities held by the Fund will comply with the requirements of Nasdaq Rule 5735(b)(1)(A).[110]

The Fund will not meet the requirement in Nasdaq Rule 5735(b)(1)(E) that no more than 20% of the assets in the Fund's portfolio may be invested in over-the-counter derivatives. The Fund proposes that no limit be placed on Interest Rate and Currency Derivatives, which are necessary and appropriate to allow the Manager and Sub-Advisers to risk manage the Fund, but that the weight of all other OTC Derivatives (*e.g.,* credit default swaps) be limited to 10% of the assets in the Fund's portfolio. For purposes of this 10% limit on OTC Derivatives, the weight of such OTC Derivatives will be calculated based on the mark-to-market value of such OTC Derivatives. The Exchange believes that this exception for Interest Rate and Currency Derivatives, which is generally consistent with the requirement in a previous filing for the listing of an ETF approved by the Commission,[111] is appropriate in light of the fact that Interest Rate and Currency Derivatives are among the most liquid investment instruments (including not only derivatives but also securities) in the market[112] (and the instruments are even more liquid than most non-government or government-guaranteed securities). Based on the data compiled by the Sub-Adviser in respect to its liquidity policy, these derivatives are among the most liquid investment instruments traded. In addition, most Interest Rate Derivatives traded by the Fund are centrally cleared by regulated clearing firms, and Interest Rate and Currency Derivatives are subject to trade reporting,[113] and other robust regulation.[114] Given the size of

[106] For purposes of this requirement, the weight of the Fund's exposure to any fixed income securities referenced in derivatives shall be calculated based on the mark-to-market value of such derivatives. CDOs, in which the Fund invests, would comply with the 90% requirement in Nasdaq Rule 5735(b)(1)(B)(iv) but would be limited in amount to 10% of the Fund's total assets. The Exchange believes that the 10% limit on the Fund's holdings in CDOs will help to ensure that the Fund maintains a diversified portfolio and will mitigate the risk of manipulation.

[107] For a listing of such restrictions, *see supra* ''Investment Restrictions.''

[108] Nasdaq Rule 5735(b)(1)(A)(i)(e) generally requires the U.S. equity securities to be listed on a national securities exchange. The Exchange notes that shares of Money Market Funds are not considered equity securities for the purposes of Nasdaq Rule 5735(b)(1)(A), and that there is no limitation on the percentage of the Fund's portfolio invested in shares of Money Market Funds, in accordance with Nasdaq Rule 5735(b)(1)(C)(i).

[109] These other equities will consist of ETFs (including money market ETFs) that provide exposure to fixed income securities, Debt and other Principal Investments. The weight of such ETFs in the Fund's portfolio shall not be limited.

[110] As noted above, Fixed-Income Related Warrants are treated as fixed income securities for purposes of this proposed rule change and will be subject to and comply with the generic listing requirements for fixed-income securities, rather than the generic listing requirements for equity securities. *See supra* note 29.

[111] *See* Securities Exchange Act Release No. 80657 (May 11, 2017), 82 FR 22702 (May 17, 2017) (SR–NYSEArca–2017–09) (approving up to 50% of the fund's assets (calculated on the basis of aggregate gross notional value) to be invested in over-the-counter derivatives that are used to reduce currency, interest rate, or credit risk arising from the fund's investments, including forwards, over-the-counter options, and over-the-counter swaps).

[112] Trading in foreign exchange markets averaged $5.1 trillion per day in April 2016, and 67% of this trading activity was in derivatives contracts such as currency or foreign exchange forwards, options and swaps (with the other 33% consisting of spot transactions). *See* Bank for International Settlements, *Triennal Central Bank Survey, Foreign Exchange Turnover in April 2016, available at http://www.bis.org/publ/rpfx16fx.pdf (accessed November 2017).* Trading in OTC interest rate derivatives averaged $2.7 trillion per day in April 2016. *See* Bank for International Settlements, *Triennal Central Bank Survey, OTC Interest Rate Derivatives Turnover in April 2016, available at http://www.bis.org/publ/rpfx16ir.pdf (accessed November 2017).*

[113] Transactions in Interest Rate and Currency Derivatives are required to be reported to a swap data repository, and transactions in Interest Rate Derivatives and certain Currency Derivatives (*i.e.,* Currency Derivatives that are not excluded from the definition of a ''swap'', as described below) are also publicly reported pursuant to rules issued by the CFTC. *See* 17 CFR parts 43, 45 and 46. Pursuant to Section 1(a)(47)(E) of the CEA and a related determination by the Department of the Treasury, Excluded Currency Derivatives are excluded from the definition of a ''swap'' under the CEA. *See* Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act, 77 FR 69694 (Nov. 20, 2012). However, as noted above, transactions in such Excluded Currency Derivatives are required to be reported to a swap data repository, but they are not subject to the public reporting requirements.

[114] Interest Rate Derivatives and Currency Derivatives other than Excluded Currency

the trading market and the regulatory oversight of the markets, the Exchange believes that Interest Rate and Currency Derivatives are not readily subject to manipulation. The Exchange also believes that allowing the Fund to risk manage its portfolio through the use of Interest Rate and Currency Derivatives without limit is necessary to allow the Fund to achieve its investment objective and protect investors.

The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(D)(i) that at least 90% of the weight of the Fund's holdings in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the ISG from other members or affiliates of the ISG, or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement. Instead, the Exchange proposes that no more than 10% of the assets of the Fund will be invested in Exchange-Traded Derivatives and exchange-listed securities whose principal market is not a member of ISG or is not a market with which the Exchange has a comprehensive surveillance sharing agreement.[115] The Exchange believes that this alternative limitation is appropriate because the overall limit on Exchange-Traded Derivatives and exchange-listed securities whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement will still be low relative to the overall size of the Fund.

The Fund will not meet the requirement in Nasdaq Rule 5735(b)(1)(D)(ii) that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the Fund's portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the Fund's portfolio (including gross notional exposures) because the Fund may maintain significant positions in Eurodollar and G–7 Sovereign Futures and Options. The Manager has indicated that obtaining exposure to these investments through futures contracts is often the most cost efficient method to achieve such exposure. The Exchange notes that Eurodollar and G–7 Sovereign Futures and Options are highly liquid investments[116] and are not subject to the same concentration risks as Exchange-Traded Derivatives referencing other assets because of such liquidity. Further, the Exchange notes that the significantly diminished risk of Treasury Securities is reflected in their exclusion from the concentration requirements applicable to fixed income securities in Nasdaq Rule 5735(b)(1)(B)(ii). The Exchange proposes that the Fund will comply with the concentration requirements in Nasdaq Rule 5735(b)(1)(D)(ii) except with respect to the Fund's investment in Eurodollar and G–7 Sovereign Futures and Options.[117] The Exchange believes that this alternative limitation is appropriate to provide the Fund with sufficient flexibility and because of the highly liquid and transparent nature of Eurodollar and G–7 Sovereign Futures and Options. Further, as described above, the G–7 Sovereign Futures and Options in which the Fund invests will be listed on an exchange that is an ISG member or an exchange with which the Exchange has a comprehensive surveillance sharing agreement.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily every Business Day that the Fund is traded, and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency.

Derivatives are comprehensively regulated as swaps under the CEA and regulations issued thereunder by the CFTC and other federal financial regulators. *See, e.g.,* 17 CFR part 23 (capital and margin requirements for swap dealers, business conduct standards for swap dealers, and swap documentation requirements); 17 CFR part 50 (clearing requirements for swaps). While Excluded Currency Derivatives are not subject to all swap regulations, they are subject to the ''business conduct standards'' adopted by the CFTC pursuant to the CEA. *See* Section 1(a)(47)(E) of the CEA; Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act, 77 FR 69694 (Nov. 20, 2012).

[115] For purposes of this 10% limit, the weight of such Exchange-Traded Derivatives will be calculated based on the mark-to-market value of such Exchange-Traded Derivatives.

[116] *See* CME Group, Interest Rate Futures Liquidity Metrics Reach New Highs (October 6, 2017), available at *http://www.cmegroup.com/education/interest-rates-liquidity-metrics-reach-new-highs.html (accessed November 2017)* (providing statistics regarding liquidity and open interest in futures and options on eurodollars and Treasury Securities, including that during the first three quarters of 2017, eurodollar futures and options traded through CME Group had an average daily open interest of approximately 53 million contracts and futures and options on Treasury Securities had an average daily open interest of approximately 15 million contracts); The Montreal Exchange, Statistics for Interest Rate Derivatives, Index Derivatives and Equity Derivatives (September 2017), *available at https://www.m-x.ca/f_stat_en/1709_stats_en.pdf (accessed November 2017)* (providing statistics regarding liquidity and open interest in futures and options on Canadian sovereign debt, including that, as of September 2017, the open interest in futures and options on Canadian sovereign debt traded on The Montreal Exchange was approximately 560,000 contracts); Eurex Exchange, Benchmark Fixed Income Derivatives, *available at https://www.eurexchange.com/blob/115654/4c51e4b8bc77355475b3b6f46afc0ef1/data/factsheet_eurex_benchmark_fixed_income_derivatives.pdf (accessed November 2017)* (providing statistics regarding liquidity and open interest in futures and options on German sovereign debt, including that, as of July 2015, the open interest in futures on German sovereign debt traded on Eurex was approximately 3,000,000 contracts and the open interest in options on German sovereign debt futures traded on Eurex was approximately 3,000,000 contracts); Eurex Exchange, Eurex Exchange Euro-BTP Futures, Italian Government Bond Futures, *available at http://www.eurexchange.com/blob/115624/6a1281939d15ddbab960af40da6f11dc/data/factsheet_eurex_euro_btp_futures_on_italian_government_bonds.pdf (accessed November 2017)* (providing statistics regarding liquidity and open interest in futures on Italian sovereign debt, including that the open interest peaks in 2017 for futures on long-term and short-term Italian sovereign debt traded on Eurex was approximately 450,000 and 270,000 contracts, respectively); Eurex Exchange, Euro-OAT Derivatives, French Government Bond Futures and Options, *available at http://www.eurexchange.com/blob/115652/48198ec577f7b3b0ac44d4c5a39ed0de/data/factsheet_eurex_euro_oat_futures_on_french_government_bonds.pdf (accessed November 2017)* (providing statistics regarding liquidity and open interest in futures on French sovereign debt, including that, as of July 2017, the open interest in futures on long-term French sovereign debt traded on Eurex was approximately 600,000 contracts); Intercontinental Exchange, Gilt Futures Overview, *available at https://www.theice.com/publicdocs/futures/Gilt_Futures_Overview.pdf (accessed November 2017)* (providing statistics regarding liquidity and open interest in futures on British sovereign debt, including that, as of the third quarter of 2014, the open interest in futures on long-term British sovereign debt traded on the Intercontinental Exchange was approximately 400,000 contracts); Osaka Exchange, Japanese Government Bond Futures & Options, *available at http://www.jpx.co.jp/english/derivatives/products/jgb/jgb-futures/tvdivq0000003n94-att/JGB_FUT_OP_E.pdf (accessed November 2017)* (providing statistics regarding liquidity and open interest in futures and options on Japanese sovereign debt, including that as of July 2016, the open interest in futures on 10-year Japanese sovereign debt traded on the Osaka Exchange was approximately 80,000 contracts). The Exchange also notes that the Commission has previously granted exemptions under the Act to facilitate the trading of futures on sovereign debt issued by each of the Group of Seven countries (among other countries) and that such exemptions were based in part on the Commission's assessment of the sufficiency of the credit ratings and liquidity of such sovereign debt. *See* 17 CFR 240.3a12–8; Securities Exchange Act Release No. 41453 (May 26, 1999), 64 FR 29550 (June 2, 1999).

[117] For purposes of this requirement, the weight of the applicable derivatives will be calculated based on the mark-to-market value of such derivatives.

Moreover, the Intraday Indicative Value, available on the Nasdaq Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Market Session. On each Business Day, before commencement of trading in the Shares in the Regular Market Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio of the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the Business Day on brokers' computer screens and other electronic services. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the CTA plans for the Shares and for the following U.S. securities, to the extent they are exchange-listed: Work Out Securities, Non-Convertible Preferred Securities, warrants, convertible fixed income securities and ETFs. Price information for U.S. exchange-listed options will be available via the Options Price Reporting Authority and for other U.S. Exchange-Traded Derivatives will be available from the applicable listing exchange and from major market data vendors. Price information for restricted securities will be available from major market data vendors, broker-dealers and trading platforms as well as for most fixed income securities sold in transactions under Rule 144A under the Securities Act, from TRACE and EMMA. Money Market Funds are typically priced once each Business Day and their prices will be available through the applicable fund's website or from major market data vendors.

For other exchange-listed securities (to be comprised primarily of ETFs, warrants and structured notes and which may include exchange-listed securities of both U.S. and non-U.S. issuers), equities traded in the over-the-counter market (including Work Out Securities and Non-Convertible Preferred Securities), Exchange-Traded Derivatives (including U.S. or foreign), OTC Derivatives, Debt and fixed income securities (including convertible fixed income securities) and the small number of Securitized Products that are not reported to TRACE, intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable). TRACE will be a source of price information for most of the U.S. dollar denominated corporate bonds,[118] GSE-sponsored securities, Securitized Products and other U.S. dollar denominated fixed income securities in which the Fund invests.[119] Intraday and other price information related to foreign government securities, Money Market Funds, and other cash equivalents that are traded over-the-counter and other Non-TRACE Eligible Securities as well as prices for Treasury Securities, CDOs, commercial mortgage-backed securities, or CMOs purchased through transactions that do not qualify for periodic dissemination by FINRA [120] will be available through major market data vendors, such as Bloomberg, Markit, IDC and Thomson Reuters, which can be accessed by APs and other investors. EMMA will be a source of price information for municipal bonds. Pricing for repurchase transactions and reverse repurchase agreements entered into by the Fund are not publicly reported. Prices are determined by negotiation at the time of entry with counterparty brokers, dealers and banks.

The Fund's website will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Trading in the Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed ETF that will enhance competition among market participants, to the benefit of investors and the marketplace.

For the above reasons, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed ETF that will enhance competition among market participants, to the benefit of investors and the marketplace.

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. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[121] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act,[122] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

[118] Broker-dealers that are FINRA member firms have an obligation to report transactions in specified debt securities to TRACE to the extent required under applicable FINRA rules. Generally, such debt securities will have at issuance a maturity that exceeds one calendar year. For fixed income securities that are not reported to TRACE, (i) intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable) and (ii) price information will be available from feeds from market data vendors, published or other public sources, or online information services, as described above.

[119] Broker-dealers that are FINRA member firms have an obligation to report transactions in TRACE-Eligible Securities to TRACE. For the definition of ''TRACE-Eligible Security,'' *see* FINRA Rule 6710(a).

[120] *See supra* note 92.

[121] 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).

[122] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

As discussed above, the Fund will not comply with a number of the generic requirements in the initial and continued listing standards for Managed Fund Shares set forth in Nasdaq Rule 5735(b)(1). The Exchange states that it will be able to appropriately monitor and surveil trading in the underlying investments, including those that do not meet the generic listing requirements.[123] The Exchange also states that any risks that may arise due to the Fund not meeting certain of the generic listing requirements are fully mitigated and addressed through alternative limits proposed by the Exchange.[124] In addition, the Exchange states that the Fund will be well diversified.[125]

With respect to its investments in derivatives, the Fund will not comply with the requirements in Nasdaq Rule 5735(b)(1) regarding the use of aggregate gross notional value of derivatives when calculating the weight of such derivatives or the exposure that such derivatives provide to underlying reference assets. Instead, the Exchange proposes that, for the purposes of any applicable requirements under Nasdaq Rule 5735(b)(1) and any alternative requirements proposed by the Exchange, the Fund will use the mark-to-market value of derivatives in calculating the weight of such derivatives or the exposure that such derivatives provide to their reference assets. The Exchange states its belief that mark-to-market value is a more accurate measurement of the actual exposure incurred by the Fund in connection with a derivatives position.[126] In addition, the Exchange states that the proposed mark-to-market methodology for valuing derivatives positions is consistent with other Commission proposals and policies and is the measure on which collateral posting is based under the ISDA Master Agreement.[127]

With respect to its investments in ABS/Private MBS, the Fund will not meet the generic listing requirement that securities comprising at least 90% of the fixed income weight of the Fund's portfolio meet one of the criteria set forth in Nasdaq Rule 5735(b)(1)(B)(iv).[128] The Exchange represents that all fixed income securities held by the Fund other than ABS/Private MBS will comply with the 90% requirement under Nasdaq Rule 5735(b)(1)(B)(iv).[129] In addition, the Exchange notes that the Fund's investment portfolio will be diverse, and that the Sub-Adviser closely monitors investments to ensure maintenance of credit and liquidity standards.[130]

The Exchange states that the Fund's investments in ABS/Private MBS will, in accordance with Nasdaq Rule 5735(b)(1)(B)(v), be limited to 20% of the fixed income portion of the Fund's portfolio,[131] except with respect to CDOs. As discussed above, for purposes of this Fund, the Exchange will exclude CDOs from the definition of ''ABS'' and, as a result, CDOs will not be subject to the 20% limitation on aggregate ABS/Private MBS holdings pursuant to Rule 5735(b)(1)(B)(v). In the alternative, the Exchange represents that the Fund's investments in CDOs will be limited to 10% of the total assets of the Fund. The Exchange states that excluding CDOs from the definition of ''ABS'' and limiting CDO investments to 10% of the Fund's total assets will help to diversify the Fund's portfolio and mitigate the risk of manipulation.[132]

For purposes of this Fund, the Exchange proposes to classify bank loans as Debt rather than ''fixed income securities'' (as they are classified in Nasdaq Rule 5735(b)(1)(B)). As a result, the Fund's investments in bank loans would comply with the proposed limitations applicable to investments in Debt set forth above[133] rather than with the restrictions for fixed income securities set forth in Nasdaq Rule 5735(b)(1)(B)(i)–(v).[134]

The Fund will not comply with the listing requirements related to investments in equities set forth in Nasdaq Rule 5735(b)(1)(A)[135] with respect to its investments in Non-Convertible Preferred Securities, Work Out Securities, and warrants. Instead, the Exchange represents that (1) the Fund's investments in equity securities other than Non-Convertible Preferred Securities, Work Out Securities, and Equity-Related Warrants will comply with the requirements in Nasdaq Rule 5735(b)(1)(A);[136] and (2) the weight of Non-Convertible Preferred Securities, Work Out Securities, and Equity-Related Warrants in the Fund's portfolio in the aggregate will not exceed 30% of the Fund's assets.[137] The Exchange believes this alternative limitation is appropriate because the Non-Convertible Preferred Securities, Equity-Related Warrants, and Work Out Securities will provide debt-oriented exposures or are received in connection with the Fund's previous investments in Debt or fixed income securities.[138]

The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(E) that no more than 20% of the assets in the Fund's portfolio may be invested in over-the-counter derivatives. Instead, the Exchange proposes that there would be no limit on the Fund's investments in Interest Rate and Currency Derivatives, and that the aggregate weight of all OTC Derivatives other than Interest Rate and Currency Derivatives will not exceed 10% of the Fund's assets.[139] The Exchange states

[123] *See supra* ''Application of Generic Listing Requirements.''

[124] *See supra* ''Statutory Basis.''

[125] *See supra* ''Application of Generic Listing Requirements.''

[126] *See supra* note 103 and accompanying text.

[127] *See supra* notes 56–59 and accompanying text.

[128] *See supra* note 78.

[129] *See supra* ''Application of Generic Listing Requirements.'' As discussed above, the Exchange states that for purposes of this requirement, the weight of the Fund's exposure to any fixed income securities referenced in derivatives held by the Fund would be calculated based on the mark-to-market value of such derivatives.

[130] *See supra* ''Statutory Basis.''

[131] In the OIP, the Commission sought comment on whether the Fund's proposed portfolio composition is sufficient to support a determination that the proposal is consistent with the Act. The Commission specifically noted that the Fund would not meet the requirement in Nasdaq Rule 5735(b)(1)(B)(v) that Private ABS/MBS (as defined in the OIP), in the aggregate, account for no more than 20% of the weight of the fixed income portion of the Fund's portfolio, and that, instead, the Exchange proposes to limit Private ABS/MBS to 30% of the weight of the fixed income portion of its portfolio. The Commission asked for commenters' views on this aspect of the proposal. *See* OIP, *supra* note 6, at 15888. The Commission notes that in Amendment No. 3, the Exchange revised this aspect of the proposal, as described above. *See supra* note 8. In addition, the Commission notes that it received no comments in response to the OIP.

[132] *See supra* ''Statutory Basis.''

[133] *See supra* ''Investment Restrictions.''

[134] *See supra* note 70.

[135] *See supra* notes 80–81.

[136] The Exchange states that these other equity investments will consist of ETFs (including money market ETFs). *See supra* note 82. As discussed above, the Exchange states that Fixed-Income Related Warrants are treated as fixed income securities for purposes of the proposed rule change and would be subject to and comply with the generic listing requirements for fixed income securities, rather than the generic listing requirements for equity securities. *See supra* note 29.

[137] In the OIP, the Commission sought comment on whether the Fund's proposed portfolio composition is sufficient to support a determination that the proposal is consistent with the Act. The Commission specifically noted that the Fund's investments in Non-Convertible Preferred Securities, Work Out Securities, and Equity-Related Warrants, which may constitute up to 30% of the Fund's net assets, would not comply with the generic listing requirements for portfolio investments in equity securities set forth in Nasdaq Rule 5735(b)(1)(A). The Commission asked for commenters' views on this aspect of the proposal. *See* OIP, *supra* note 6, at 15888. The Commission notes that it received no comments in response to the OIP.

[138] *See supra* ''Statutory Basis.''

[139] As discussed above, for purposes of this 10% limit on OTC Derivatives, the weight of such OTC Derivatives would be calculated based on the mark-to-market value of such OTC Derivatives.

that allowing the Fund to invest an unlimited amount of its assets in Interest Rate and Currency Derivatives is necessary and appropriate to allow the Fund to risk manage its portfolio.[140] In addition, the Exchange states its belief that Interest Rate and Currency Derivatives are not readily subject to manipulation given the size, liquidity, and regulatory oversight of the trading market for such instruments.[141]

The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(D)(i) that at least 90% of the weight of the Fund's holdings in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the ISG from other members or affiliates of the ISG, or for which the principal market is a market with which the Exchange has a CSSA. Instead, the Exchange proposes that no more than 10% of the net assets of the Fund will be invested in Exchange-Traded Derivatives and exchange-listed securities whose principal market is not a member of ISG or is not a market with which the Exchange has a CSSA.[142] The Exchange believes that this alternative limit is appropriate because, relative to the overall size of the Fund, the Fund's investment in non-ISG/CSSA derivatives and exchange-listed securities will be small.[143]

Finally, the Exchange states that the Fund may maintain significant positions in Eurodollar and G–7 Sovereign Futures and Options, and that as a result, the Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(D)(ii) that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets not exceed 65% of the weight of the Fund's portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset not exceed 30% of the weight of the Fund's portfolio (including gross notional exposures). The Exchange states that Eurodollar and G–7 Sovereign Futures and Options are highly liquid investments and are not subject to the same concentration risks as Exchange-Traded Derivatives referencing other assets because of such liquidity.[144] In addition, the Exchange represents that the G–7 Sovereign Futures and Options in which the Fund will invest will be listed on an exchange that is an ISG member or an exchange with which the Exchange has a CSSA.[145] The Exchange represents that, except with respect to its investments in Eurodollar and G–7 Sovereign Futures and Options, the Fund's investments in Exchange-Traded Derivatives will comply with the concentration requirements in Nasdaq Rule 5735(b)(1)(D)(ii).[146]

Other than as described above, the Fund will meet all the requirements of Nasdaq Rule 5735. For the reasons articulated by the Exchange above, the Commission believes that these proposed initial and continued listing requirements, including the alternative limitations on the Fund's proposed holdings described above, are designed to mitigate the potential for manipulation of the Shares.

The Commission finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[147] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges (''UTP'') and the CTA plans. Further, as required by Nasdaq Rule 5735(d)(2)(A), the Intraday Indicative Value, available on the Nasdaq Information LLC proprietary index data service,[148] will be widely disseminated by one or more major market data vendor at least every 15 seconds during the Exchange's Regular Market Session. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. In addition, the Fund's website will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

Quotation and last sale information for exchange-listed Work Out Securities, Non-Convertible Preferred Securities, warrants, convertible fixed income securities, and ETFs will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the UTP and the CTA Plans. Price information for U.S. exchange listed options will be available via the Options Price Reporting Authority and price information for other U.S. Exchange-Traded Derivatives will be available from the applicable listing exchange and from major market data vendors. Price information for TRACE-Eligible Securities sold in transactions under Rule 144A under the Securities Act will generally be available through TRACE and information regarding transactions in non-TRACE-Eligible Securities or transactions not otherwise subject to TRACE reporting will be available from major market data vendors and broker-dealers. For most of the U.S. dollar denominated corporate bonds, GSE-sponsored securities, Securitized Products, and other U.S. dollar denominated fixed income securities in which the Fund invests, price information will be available from TRACE and EMMA.[149] For those instruments for which FINRA does not disseminate price information from TRACE, such as CDOs and fixed income securities denominated in foreign currencies, pricing information will be available from major market data vendors and broker-dealers. For other exchange-listed securities (to be comprised primarily of ETFs, warrants, and structured notes and which may include exchange-listed securities of both U.S. and non-U.S. issuers), equities traded in the over-the-counter market (including Work Out Securities and Non-Convertible Preferred Securities), Exchange-Traded Derivatives (including U.S. or foreign), OTC Derivatives, Debt, fixed income securities (including convertible fixed income securities), and Securitized Products that are not reported to TRACE, intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable). Price information for such securities and instruments will also be available from feeds from major market data vendors, published or other public sources, or online information services. Intraday and other price information related to

[140] *See supra* ''Statutory Basis.''

[141] *See id.*

[142] As discussed above, for purposes of this 10% limit, the weight of such Exchange-Traded Derivatives will be calculated based on the mark-to-market value of such Exchange-Traded Derivatives.

[143] *See supra* ''Statutory Basis.''

[144] *See supra* note 116 and accompanying text.

[145] *See supra* ''Statutory Basis.''

[146] *See supra* note 117 and accompanying text. As discussed above, for purposes of this requirement, the weight of the applicable Exchange-Traded Derivatives will be calculated based on the mark-to-market value of such Exchange-Traded Derivatives.

[147] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[148] *See supra* note 90.

[149] *See supra* note 92.

foreign government securities, Money Market Funds, and other cash equivalents that are traded over-the-counter, and other Non-TRACE Eligible Securities, as well as prices for Treasury Securities, CDOs, commercial mortgage-backed securities, or CMOs purchased through transactions that do not qualify for periodic dissemination by FINRA will be available through major market data vendors, such as Bloomberg, Markit, IDC, and Thomson Reuters, which can be accessed by APs and other investors. Price information for Money Market Funds will also be available through the applicable fund's website. Pricing information for repurchase transactions and reverse repurchase agreements entered into by the Fund is not publicly reported.

The Commission also believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange states that it will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[150] In addition, the Exchange represents that on each Business Day, before commencement of trading in the Shares in the Regular Market Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio of the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day, and that this website information will be available free of charge. Further, trading in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will also be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of a fund may be halted.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange states that the neither the Manager nor any of the Sub-Advisers is a broker-dealer, but that each is affiliated with a broker-dealer and has implemented, and will maintain, a fire wall with respect to its broker-dealer affiliate regarding access to information concerning proposed changes to the composition and/or changes to the Fund's portfolio prior to implementation. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[151]

In the OIP, the Commission sought public comment on how the cutoff time for redemption requests and creation orders, as originally proposed, would affect the opportunity for and effective and efficient arbitrage process and whether the proposed cutoff time would be consistent with the maintenance of fair and orderly markets and the requirements of Section 6(b)(5) of the Act.[152] The Commission notes that in Amendment No. 3, the Exchange revised the proposed cutoff time for creation orders and redemption requests so that orders to create or redeem Creation Units would be required to be received between 9 a.m., E.T. and 10 a.m., E.T. on a given Business Day in order to receive the NAV determined on the Business Day on which the order is placed.[153] In addition, Amendment No. 3 states that when the Fund permits Creation Units to be issued in-kind, the Fund will cause to be published, through the NSCC, on each Business Day, at or before 9:00 a.m., E.T., the identity and the required principal amount or number of each Deposit Security and the amount of the Cash Component (if any) to be included in the current Fund Deposit. The Commission notes that, as a result of these amendments, a market participant that submits an order to create or redeem Creation Units between 9 a.m., E.T., and 10 a.m., E.T., would know the contents of the deposit/redemption securities that would be applicable to its creation order or redemption request before it makes such request. Further, such market participant would receive the NAV determined on the same Business Day on which its order is placed. The Commission further notes that it received no comments in response to the OIP.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange represents that:

(1) The Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. Other than as described above, the Fund will meet all requirements of Nasdaq Rule 5735(b)(1). The Fund's investments will be subject to the limitations described in Section II.A above.

(2) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

(3) Trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA on behalf of the Exchange, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-listed securities and instruments held by the Fund with other markets and other entities that are members of ISG and with which the Exchange has CSSAs, and FINRA and the Exchange both may obtain information regarding trading in the Shares, the exchange-listed securities, derivatives, and other instruments held by the Fund from markets and other entities that are members of ISG, which include securities and futures exchanges and swap execution facilities, or with which the Exchange has in place a CSSA. FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for most of the fixed income securities held by the Fund through reporting on TRACE and, with respect to municipal securities, EMMA.

(5) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss: (i) The procedures for

[150] *See* Nasdaq Rule 5735(d)(1)(B).

[151] *See* Nasdaq Rule 5735(d)(2)(B)(ii). The term ''Reporting Authority'' is defined in Nasdaq Rule 5735(c)(4).

[152] *See* OIP, *supra* note 6, at 15888. As originally proposed, all redemption requests and creation orders for Creation Units of the Fund would have been required to be received by the Distributor within one hour after the closing time of the regular trading session on the Exchange (ordinarily between 4:00 p.m., E.T., and 5:00 p.m., E.T.) in order to receive the NAV on the next Business Day immediately following the date the order was placed. As proposed, the Exchange would cause to be published, through the NSCC, on each Business Day, prior to the opening of trading on the Exchange (currently, 9:30 a.m., E.T.), the identity and the required number (as applicable) of deposit/redemption securities and the amount of cash applicable to creation orders and redemption requests received in proper form. In the OIP, the Commission noted that market participants that submit redemption requests or creation orders on a given Business Day would not know the contents of the deposit/redemption securities that would be applicable to their request until the following Business Day and would receive the following Business Day's NAV. *See id.*

[153] *See supra* note 8.

purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (ii) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (iv) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information.

(6) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(7) For initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.[154]

(8) The Fund's investments, including derivatives, will be consistent with the Fund's investment objectives, and will not be used to seek leveraged returns or performance that is the multiple or inverse multiple of a benchmark (although derivatives may have embedded leverage). Although the Fund will be permitted to borrow as permitted under the 1940 Act, it will not be operated in a manner designed to seek leveraged returns or a multiple or inverse multiple of the performance of an underlying reference index.

The Exchange represents that all statements and representations made in the filing regarding: (1) The description of the portfolio or reference assets; (2) limitations on portfolio holdings or reference assets; (3) dissemination and availability of the reference asset or Intraday Indicative Values; or (4) the applicability of Exchange listing rules specified in the rule filing constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendment No. 3.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act [155] and Section 11A(a)(1)(C)(iii) of the Act [156] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 3 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2017–128 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–128. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–128, and should be submitted on or before October 3, 2018.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the **Federal Register**. The Commission notes that Amendment No. 3 clarifies the proposed investments of the Fund, including any limitations on such investments. Amendment No. 3 also provides other clarifications and additional information to the proposed rule change.[157] The changes and additional information in Amendment No. 3 assists the Commission in finding that the proposal is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[158] to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[159] that the proposed rule change (SR–NASDAQ–2017–128), as modified by Amendment No. 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[160]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19774 Filed 9–11–18; 8:45 am]

BILLING CODE 8011–01–P

[154] *See* 17 CFR 240.10A–3.

[155] 15 U.S.C. 78f(b)(5).

[156] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[157] *See supra* note 8.

[158] 15 U.S.C. 78s(b)(2).

[159] *Id.*

[160] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Investment Company Act Release No. 33220; 812–14928 Broadstone Real Estate Access Fund and Broadstone Asset Management, LLC

September 7, 2018.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees, early withdrawal charges (''Early Withdrawal Charges''), and early repurchase fees.

APPLICANTS: Broadstone Real Estate Access Fund (the ''Initial Fund''), and Broadstone Asset Management, LLC (the ''Adviser'').

FILING DATES: The application was filed on July 11, 2018. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 27, 2018, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: Broadstone Asset Management, Inc., 800 Clinton Square, Rochester, NY 14604.

FOR FURTHER INFORMATION CONTACT: Stephan N. Packs, Senior Counsel, at (202) 551–6853, or David J. Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Initial Fund is a newly-formed Delaware statutory trust that is registered under the Act as a continuously offered, non-diversified, closed-end management investment company.

2. The Adviser, a New York limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to the Initial Fund.

3. The applicants seek an order to permit the Funds (as defined below) to issue multiple classes of shares, each having its own fee and expense structure and to impose Early Withdrawal Charges, asset-based distribution and/or service fees with respect to certain classes.

4. Applicants request that the order also apply to any continuously-offered registered closed-end management investment company, existing now or in the future, for which the Adviser, or any entity controlling, controlled by, or under common control with the Adviser, or any successor in interest to any such entity,[1] acts as investment adviser and which operates as an interval fund pursuant to rule 23c–3 under the Act or provides periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Securities Exchange Act of 1934 (''Exchange Act'') (each, a ''Future Fund'' and together with the Initial Fund, the ''Funds'').[2]

5. The Initial Fund intends to make a continuous public offering of its shares upon a declaration of effectiveness of its registration statement. Applicants state that additional offerings by any Fund relying on the order may be on a private placement or public offering basis. Shares of the Funds are not expected to be listed on any securities exchange nor quoted on any quotation medium and the Funds do not expect there to be a secondary trading market for their shares.

6. If the requested relief is granted, the Initial Fund intends to continuously offer Class W Shares and Class I Shares, with each class having its own fee and expense structure. Because of the different distribution fees, services, and any other class expenses that may be attributable to the Class W and Class I Shares, the net income attributable to, and the dividends payable on, each class of shares may differ from each other.

7. Applicants state that, from time to time, the Initial Fund may create additional classes of shares, the terms of which may differ from Class W and Class I Shares in the following respects: (i) The amount of fees permitted by different distribution plans or different service fee arrangements; (ii) voting rights with respect to a distribution plan of a class; (iii) different class designations; (iv) the impact of any class expenses directly attributable to a particular class of shares allocated on a class basis as described in the application; (v) any differences in dividends and net asset value resulting from differences in fees under a distribution plan or in class expenses; (vi) any Early Withdrawal Charge or other sales load structure; and (vii) exchange or conversion privileges of the classes as permitted under the Act.

8. Applicants state that the Initial Fund has adopted a fundamental policy to repurchase a specified percentage of its shares (no less than 5% and no more than 25%) at net asset value on a quarterly basis. Such repurchase offers will be conducted pursuant to rule 23c–3 under the Act. Each of the other Funds will likewise adopt fundamental investment policies in compliance with rule 23c–3 and make quarterly repurchase offers to its shareholders, or provide periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Exchange Act.[3] Any repurchase offers made by the Funds will be made to all holders of shares of each such Fund.

9. Applicants represent that any asset-based service and/or distribution fees for each class of shares of the Funds will comply with the provisions of FINRA Rule 2341 (''FINRA Sales Charge

[1] A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

[3] Applicants submit that rule 23c–3 and Regulation M under the Exchange Act permit an interval fund to make repurchase offers to repurchase its shares while engaging in a continuous offering of its shares pursuant to Rule 415 under the Securities Act of 1933, as amended.

Rule'').[4] Applicants also represent that each Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N–1A.[5] As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and describe any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.[6] In addition, applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge funds.[7]

10. Each of the Funds will comply with any requirements that the Commission or FINRA may adopt regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements, as if those requirements applied to the Fund. In addition, each Fund will contractually require that any distributor of the Fund's shares comply with such requirements in connection with the distribution of such Fund's shares.

11. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect the expenses associated with the distribution plan of that class, service fees, and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

12. Applicants state that each Fund may impose an Early Withdrawal Charge on shares submitted for repurchase that have been held less than a specified period and may waive the Early Withdrawal Charge for certain categories of shareholders or transactions to be established from time to time. Applicants state that each Fund will apply the Early Withdrawal Charge (and any waivers or scheduled variations of the Early Withdrawal Charge) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act as if the Funds were open-end investment companies.

13. Applicants state that shares of a Fund may be subject to an early repurchase fee (''Early Repurchase Fee'') at a rate of no greater than 2% of the aggregate net asset value of a shareholder's shares repurchased by the Fund if the interval between the date of purchase of the shares and the valuation date with respect to the repurchase of those shares is less than 90 days. Any Early Repurchase Fees will apply equally to all classes of shares of a Fund, consistent with section 18 of the Act and rule 18f–3 thereunder. To the extent a Fund determines to waive, impose scheduled variations of, or eliminate any Early Repurchase Fee, it will do so consistently with the requirements of rule 22d–1 under the Act as if the Early Repurchase Fee were a contingent deferred sales load (defined below) and as if the Fund were an open-end investment company and the Fund's waiver of, scheduled variation in, or elimination of, any such Early Repurchase Fee will apply uniformly to all shareholders of the Fund regardless of class. Applicants state that the Initial Funds do not intend to impose an Early Repurchase Fee.

14. Each Fund operating as an interval fund pursuant to rule 23c–3 under the Act may offer its shareholders an exchange feature under which the shareholders of the Fund may, in connection with the Fund's periodic repurchase offers, exchange their shares of the Fund for shares of the same class of (i) registered open-end investment companies or (ii) other registered closed-end investment companies that comply with rule 23c–3 under the Act and continuously offer their shares at net asset value, that are in the Fund's group of investment companies (collectively, ''Other Funds''). Shares of a Fund operating pursuant to rule 23c–3 that are exchanged for shares of Other Funds will be included as part of the amount of the repurchase offer amount for such Fund as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act, as if the Fund were an open-end investment company subject to rule 11a–3. In complying with rule 11a–3, each Fund will treat an Early Withdrawal Charge as if it were a contingent deferred sales load.

Applicants' Legal Analysis:

Multiple Classes of Shares

1. Section 18(a)(2) of the Act provides that a closed-end investment company may not issue or sell a senior security that is a stock unless certain requirements are met. Applicants state that the creation of multiple classes of shares of the Funds may violate section 18(a)(2) because the Funds may not meet such requirements with respect to a class of shares that may be a senior security.

2. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c), as a class may have priority over another class as to payment of dividends because shareholders of different classes would pay different fees and expenses.

3. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(a)(2), 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

5. Applicants submit that the proposed allocation of expenses relating to distribution and/or services and voting rights among multiple classes is equitable and will not discriminate

[4] Any reference in the application to the FINRA Sales Charge Rule includes any successor or replacement to the FINRA Sales Charge Rule.

[5] In all respects other than class by class disclosure, each Fund will comply with the requirements of Form N–2.

[6] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[7] Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). *See also* Rules 12d1–1, *et seq.* of the Act.

against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its shares and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company shall purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits a registered closed-end investment company (an ''interval fund'') to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase. A Fund will not impose a repurchase fee on investors who purchase and tender their shares.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c–3 to the extent necessary for the Funds to impose Early Withdrawal Charge on shares of the Funds submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the Early Withdrawal Charges they intend to impose are functionally similar to contingent deferred sales loads imposed by open-end investment companies under rule 6c–10 under the Act. Rule 6c–10 permits open-end investment companies to impose contingent deferred sales loads, subject to certain conditions. Applicants note that rule 6c–10 is grounded in policy considerations supporting the employment of contingent deferred sales loads where there are adequate safeguards for the investor and state that the same policy considerations support imposition of Early Withdrawal Charges in the interval fund context. In addition, applicants state that Early Withdrawal Charges may be necessary for the distributor to recover distribution costs. Applicants represent that any Early Withdrawal Charge imposed by the Funds will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. The Funds will disclose Early Withdrawal Charges in accordance with the requirements of Form N–1A concerning contingent deferred sales loads.

Asset-Based Distribution and/or Service Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit the Fund to impose asset-based distribution and/or service fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based distribution and/or service fees.

For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based distribution and/or service fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition:

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1, and, where applicable, 11a–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the FINRA Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19837 Filed 9–11–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33219; 812–14767]

PIMCO Flexible Credit Income Fund, et al.

September 6, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from

sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees and early withdrawal charges (''EWCs'').

APPLICANTS: PIMCO Flexible Credit Income Fund (the ''Credit Fund'') and PIMCO Flexible Municipal Income Fund (the ''Municipal Fund'') (the Credit Fund and the Municipal Fund together the ''Initial Funds''), Pacific Investment Management Company LLC (the ''Investment Manager'') and PIMCO Investments LLC (the ''Distributor'').

FILING DATES: The application was filed on April 25, 2017 and amended on December 4, 2017 and August 20, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 1, 2018, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: PIMCO Flexible Credit Income Fund, PIMCO Flexible Municipal Income Fund, Pacific Investment Management Company LLC and PIMCO Investments LLC, c/o David C. Sullivan, Esq., Ropes & Gray LLP, 800 Boylston St., Boston, MA 02199 .

FOR FURTHER INFORMATION CONTACT: Rachel Loko, Senior Counsel or Aaron Gilbride, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at or by calling (202) 551–8090.

Applicants' Representations

1. The Credit Fund is a Massachusetts business trust that is registered under the Act as a non-diversified, closed-end management investment company. The Credit Fund seeks to provide attractive risk-adjusted returns and current income. The Credit Fund seeks to achieve its investment objectives by investing, under normal circumstances, at least 80% of its net assets (plus any borrowings for investment purposes) in a portfolio of debt instruments of varying maturities. The Municipal Fund is a Massachusetts business trust registered under the Act as a non-diversified, closed-end management investment company. The Municipal Fund seeks to provide high current income exempt from federal income tax. Capital appreciation is a secondary objective. The Municipal Fund seeks to achieve these objectives by investing at least 80% of its net assets (plus any borrowings for investment purposes) in a portfolio of municipal bonds and other municipal securities, the interest from which, in the opinion of bond counsel for the issuer at the time of issuance (or on the basis of other authority believed by PIMCO to be reliable), is exempt from federal income tax. To a lesser extent, the Municipal Fund also expects to invest in a full range of preferred securities, with an emphasis on preferred securities that, at the time of issuance, are eligible to pay dividends that qualify for certain favorable federal income tax treatment.

2. The Investment Manager is registered as an investment adviser under the Investment Advisers Act of 1940, as amended. The Investment Manager serves as investment adviser to the Initial Funds.

3. The applicants seek an order to permit the Initial Funds to issue multiple classes of shares and to impose asset-based distribution and/or service fees and EWCs.

4. Applicants request that the order also apply to any continuously offered registered closed-end management investment company that has been previously organized or that may be organized in the future for which the Investment Manager or Distributor, or any entity controlling, controlled by, or under common control with the Investment Manager or Distributor, or any successor in interest to any such entity,[1] acts as investment manager, adviser or principal underwriter and which operates as an interval fund pursuant to rule 23c–3 under the Act or provides periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Securities Exchange Act of 1934 (''Exchange Act'') (each, a ''Future Fund'' and together with the Initial Funds, the ''Funds'').[2]

5. The Credit Fund continuously offers, and the Municipal Fund will continuously offer, common shares to the public. Applicants state that additional offerings by any Fund relying on the order may be on a private placement or public offering basis. Shares of the Funds will not be listed on any securities exchange nor quoted on any quotation medium. The Funds do not expect there to be a secondary trading market for their shares.

6. If the requested relief is granted, the Credit Fund intends to commence a continuous offering of one or more additional classes of shares. If the relief requested herein is granted, it is currently expected that the Municipal Fund will initially offer two share classes. It is currently expected that one share class will not be subject to a front-end sales load, a distribution fee or a service fee. The other share class may be subject to a front-end sales load, a distribution fee and/or a service fee. The Funds may in the future offer additional classes of shares and/or another sales charges structure. Because of the different distribution fees, services and any other class expenses that may be attributable to the each class of shares, the net income attributable to, and the dividends payable on, each class of shares may differ from each other.

7. Applicants state that, from time to time, the Funds may create additional classes of shares, the terms of which may differ from the initial class in the following respects: (i) The amount of fees permitted by different distribution plans or different service fee arrangements; (ii) voting rights with respect to a distribution plan of a class; (iii) different class designations; (iv) any differences in dividends and net asset value resulting from differences in fees under a distribution or service fee arrangement or in class expenses; (v) any EWC or other sales load structure; and (vi) exchange or conversion privileges of the classes as permitted under the Act.

[1] A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

8. Applicants state that the Initial Funds have each adopted a fundamental policy to repurchase a specified percentage of its shares (no less than 5%) at net asset value on a quarterly basis. Such repurchase offers will be conducted pursuant to rule 23c–3 under the Act. Each of the other Funds will likewise adopt fundamental investment policies and make periodic repurchase offers to its shareholders in compliance with rule 23c–3 or will provide periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Exchange Act.[3] Any repurchase offers made by the Funds will be made to all holders of shares of each such Fund.

9. Applicants represent that any asset-based service and/or distribution fees for each class of shares of the Funds will comply with the provisions of FINRA Rule 2341(d) (''FINRA Sales Charge Rule'').[4] Applicants also represent that each Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N–1A. As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and describe any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.[5] In addition, applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge funds.[6]

10. Each of the Funds will comply with any requirements that the Commission or FINRA may adopt regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements, as if those requirements applied to the Fund. In addition, each Fund will contractually require that any distributor of the Fund's shares comply with such requirements in connection with the distribution of such Fund's shares.

11. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of that Fund attributable to each class, except that the net asset value and expenses of each class will reflect the expenses associated with the distribution plan of that class, service fees attributable to that class (if any), including transfer agency fees, and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

12. Applicants state that each Fund may impose an EWC on shares submitted for repurchase that have been held less than a specified period and may waive the EWC for certain categories of shareholders or transactions to be established from time to time. Applicants state that each Fund will apply the EWC (and any waivers or scheduled variations, or elimination of the EWC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act as if the Funds were open-end investment companies.

13. Each Fund operating as an interval fund pursuant to rule 23c–3 under the Act may offer its shareholders an exchange feature under which the shareholders of the Fund may, in connection with such Fund's periodic repurchase offers, exchange their shares of the Fund for shares of the same class of (i) registered open-end investment companies or (ii) other registered closed-end investment companies that comply with rule 23c–3 under the Act or Rule 13e–4 under the Exchange Act and continuously offer their shares at net asset value, that are in the Fund's group of investment companies (collectively, ''Other Funds''). Shares of a Fund operating pursuant to rule 23c–3 that are exchanged for shares of Other Funds will be included as part of the amount of the repurchase offer amount for such Fund as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act, as if the Fund were an open-end investment company subject to rule 11a–3. In complying with rule 11a–3, each Fund will treat an EWC as if it were a contingent deferred sales load (''CDSL'').

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(a)(2) of the Act provides that a closed-end investment company may not issue or sell a senior security that is a stock unless certain requirements are met. Applicants state that the creation of multiple classes of shares of the Funds may violate section 18(a)(2) because the Funds may not meet such requirements with respect to a class of shares that may be a senior security.

2. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c), as a class may have priority over another class as to payment of dividends because shareholders of different classes would pay different fees and expenses.

3. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(a)(2), 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

5. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its securities and provide

[3] Applicants submit that rule 23c–3 and Regulation M under the Exchange Act permit an interval fund to make repurchase offers to repurchase its shares while engaging in a continuous offering of its shares pursuant to Rule 415 under the Securities Act of 1933, as amended.

[4] Any reference to the FINRA Sales Charge Rule includes any successor or replacement to the FINRA Sales Charge Rule.

[5] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[6] Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). See also Rules 12d1–1, *et seq.* of the Act.

investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company shall purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits an ''interval fund'' to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c–3 to the extent necessary for the Funds to impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the EWCs they intend to impose are functionally similar to CDSLs imposed by open-end investment companies under rule 6c–10 under the Act. Rule 6c–10 permits open-end investment companies to impose CDSLs, subject to certain conditions. Applicants note that rule 6c–10 is grounded in policy considerations supporting the employment of CDSLs where there are adequate safeguards for the investor and state that the same policy considerations support imposition of EWCs in the interval fund context. In addition, applicants state that EWCs may be necessary for the distributor to recover distribution costs. Applicants represent that any EWC imposed by the Funds will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. The Funds will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSLs.

Asset-Based Distribution and/or Service Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit the Fund to impose asset-based distribution and/or service fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based distribution fees.

3. For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based distribution and/or service fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1, and, where applicable, 11a–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the FINRA Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19765 Filed 9–11–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84049; File No. SR–NYSEArca–2018–38]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Continued Listing Criteria Applicable to the Shares of the iShares California AMT Free Muni Bond ETF and iShares New York AMT-Free Muni Bond ETF

September 6, 2018.

I. Introduction

On May 21, 2018, 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 modify the continued listing criteria applicable to the shares (''Shares'') of the iShares California

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

AMT-Free Muni Bond ETF (''CA Fund'') and iShares New York AMT-Free Muni Bond ETF (''NY Fund'' and, together with the CA Fund, ''Funds''). The proposed rule change was published for comment in the **Federal Register** on June 11, 2018.[3] On July 24, 2018, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 5, 2018, the Exchange filed Amendment No. 1 to the proposed rule change,[6] which superseded the proposed rule change as originally filed. The Commission received no comment letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change [7]

Blackrock Fund Advisors (''Adviser'') is the investment adviser for the Funds. Under normal market conditions, the CA Fund invests at least 90% of its assets in the component securities of the S&P California AMT-Free Muni Bond Index (''CA Index''), which measures the performance of the investment-grade segment of the California municipal bond market.[8] Similarly, under normal market conditions, the NY Fund invests at least 90% of its assets in the component securities of the S&P New York AMT-Free Muni Bond Index (''NY Index'' and, together with CA Index, ''Indexes''), which measures the performance of the investment-grade segment of the New York municipal bond market.[9]

Currently, the Exchange lists and trades the Shares under NYSE Arca Rule 5.2–E(j)(3), which governs the listing and trading of Investment Company Units, and pursuant to an order approving the Exchange's proposal to list and trade the Shares.[10] The representations made by the Exchange in support of that proposed rule change constitute continued listing requirements for the Shares.[11] The Exchange, with this filing, now proposes to amend the continued listing requirements applicable to the Shares.

Currently, for the Exchange to list and trade shares of the CA Fund, each bond in the CA Index must: (1) Be a constituent of an offering where the original offering amount of the constituent bonds in the aggregate was at least $100 million; (2) have a total minimum par amount of $25 million; and (3) maintain a total minimum par amount greater than or equal to $25 million as of the next rebalancing date. Further, the CA Index must include at least 500 component securities.

The Exchange proposes to amend the continued listing requirements for the shares of the CA Fund such that: (1) At least 90% of the weight of the CA Index must consist of securities that have an outstanding par value of at least $15 million and were issued as part of a transaction of at least $100 million; and (2) the CA Index must contain at least 500 component securities.

Currently, for the Exchange to list and trade shares of the NY Fund, each bond in the NY Index must: (1) Be a constituent of an offering where the original offering amount of the constituent bonds in the aggregate was at least $100 million; (2) have a minimum total par amount of $25 million; and (3) maintain a minimum total par amount greater than or equal to $25 million as of the next rebalancing date. Further, the NY Index must include at least 500 component securities.

The Exchange proposes to amend the continued listing requirements for the shares of the NY Fund such that: (1) At least 90% of the weight of the NY Index must consist of securities that have an outstanding par value of at least $5 million and were issued as part of a transaction of at least $20 million; and (2) the NY Index must contain at least 500 component securities.

The Exchange represents that, except for Commentary .02(a)(2) to NYSE Arca Rule 5.2–E(j)(3), the CA Index and NY Index each will continue to satisfy all of the requirements under NYSE Arca Rule 5.2–E(j)(3).[12]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[14] 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, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed minimum outstanding par value and transaction size requirements for constituents of the Indexes are consistent with those approved by the Commission for similar products.[15] Moreover, there is no change to the current continued listing criterion that each Index includes at least 500 component securities. Further, the Exchange represents that the CA Index and NY Index each will continue to satisfy all of the requirements under NYSE Arca Rule 5.2–E(j)(3) except for Commentary .02(a)(2) to NYSE Arca

[3] *See* Securities Exchange Act Release No. 83381 (June 5, 2018), 83 FR 27042 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 83694, 83 FR 36641 (July 30, 2018). The Commission designated September 9, 2018, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] In Amendment No. 1, the Exchange (1) eliminated an issuer concentration requirement from the proposed continued listing criteria applicable to the Shares, (2) deleted the condition that would have required a change to the index methodology before the proposed continued listing criteria would apply, (3) modified its justification as to why the proposed rule change is consistent with the Act, and (4) made other technical changes. Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-nysearca-2018-38/srnysearca201838-4307304-173215.pdf.*

[7] Additional information regarding the Shares, Funds, and their underlying indexes is available in Amendment No. 1, *supra* note 6.

[8] With respect to the remaining 10% of its assets, the CA Fund may invest in short-term debt instruments issued by state governments, municipalities or local authorities, cash, exchange-traded U.S. Treasury futures, and municipal money market funds, as well as municipal bond securities not included in the CA Index, but which the Adviser believes will help the CA Fund track the CA Index.

[9] With respect to the remaining 10% of its assets, the NY Fund may invest in short-term debt instruments issued by state governments, municipalities or local authorities, cash, exchange-traded U.S. Treasury futures, and municipal money market funds, as well as municipal bond securities not included in the NY Index, but which the Adviser believes will help the NY Fund track the NY Index.

[10] *See* Securities Exchange Act Release No. 82295 (December 12, 2017), 82 FR 60056 (December 18, 2017) (File No. SR–NYSEArca–2017–56) (''Listing Approval Order'').

[11] *See* NYSE Arca Rule 5.2–E(j)(3).

[12] *See* Amendment No. 1, *supra* note 6.

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* Listing Approval Order, *supra* note 10 (approving the listing and trading of shares of the VanEck Vectors—AMT-Free Long Municipal Index and VanEck Vectors—High Yield Municipal Index ETFs, among other funds).

Rule 5.2–E(j)(3).[16] The Commission notes that the Exchange proposes no other changes to the Funds. Accordingly, the Commission believes that the proposed continued listing requirements are adequately designed to help deter manipulation of the Shares.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Sections 6(b)(5) and 11A of the Act and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2018–38 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–NYSEArca–2018–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of this filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–38 and should be submitted on or before October 3, 2018.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the **Federal Register**. Amendment No. 1 supplements the proposal by, among other things, eliminating an issuer concentration requirement from the proposed continued listing criteria applicable to the Shares and deleting the condition that would require a change to the index methodology before the proposed continued listing criteria would apply. The changes and additional information in Amendment No. 1 raise no novel issues and assist the Commission in finding that the proposal is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[17] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSEArca–2018–38), as modified by Amendment No. 1 thereto, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19772 Filed 9–11–18; 8:45 am]

BILLING CODE 8011–01–P

[16] *See supra* note 12 and accompanying text.

[17] 15 U.S.C. 78s(b)(2).

[18] 15 U.S.C. 78f(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84045; File No. SR–CBOE–2018–062]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 6.2, Interpretation and Policy .01 Concerning Strategy Orders

September 6, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 24, 2018, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Options proposes a rule change to amend and clarify the definition of a strategy order, clarify other definitions related to the modified HOSS procedure, and permit the entry of orders that offset imbalances after the strategy order cut-off time.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 6.2. Hybrid Opening (and Sometimes Closing) System (''HOSS'')

(a)–(h) No change.

. . . *Interpretations and Policies:*

.01 Modified Opening Procedure for Series Used to Calculate the Exercise[/] *or* Final Settlement Value[s] of *Expiring* Volatility Index[es] *Derivatives.*

(a) Definitions. For purposes of this Interpretation and Policy .01, the following terms have the meanings below:

Volatility Index Derivatives

The term ''volatility index derivatives'' means volatility index options listed for trading on the Exchange (as determined under Rule 24.9(a)(5) and (6)), (security) futures

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

listed for trading on an affiliated designated contract market, or over-the-counter derivatives overlying a volatility index whose exercise or final settlement values, as applicable, are calculated pursuant to, or by reference to, as applicable, the modified opening procedure described in this Interpretation and Policy .01.

Exercise Settlement Value Determination Day

The term ''exercise settlement value determination day'' means a day on which the Exchange determines the exercise or final settlement value, as applicable, of expiring volatility index derivatives.

Constituent Option Series

The term ''constituent option series'' means all option series listed on the Exchange that are used to calculate the exercise or final settlement value, as applicable, of expiring volatility index derivatives.

Strategy Order

The Exchange deems individual orders (considered collectively) a market participant submits for participation in the modified opening procedure to be a ''strategy order,'' based on related facts and circumstances considered by the Exchange, only if the orders:

(1) Relate to the market participant's positions in expiring volatility index derivatives;

(2) are for option series with the expiration that the Exchange will use to calculate the exercise or final settlement value, as applicable, of the applicable volatility index derivative;

(3) are for option series with strike prices approximating the range of series that are later determined to constitute the constituent option series for the applicable expiration;

(4) are for put (call) options with strike prices equal to or less (greater) than the ''at-the-money'' strike price; and

(5) have quantities approximating the weighting formula used to determine the exercise or final settlement value, as applicable, in accordance with the applicable volatility index methodology.

Non-Strategy Order

The term ''non-strategy order'' means any order (including an order in a constituent option series) *a market participant submits for participation in the modified opening procedure that is not a strategy order (or a change to or cancellation of a strategy order). Examples of non-strategy orders include, but are not limited to:*

(1) A buy (sell) order in a constituent options series if an EOI disseminated no more than two minutes prior to the time a market participant submitted the order included a sell (buy) imbalance and the size of the order is no larger than the size of the imbalance in the EOI, regardless of whether the market participant previously submitted a strategy order or has positions in expiring volatility index derivatives; or

(2) a Market-Maker bid or offer in a constituent option series, as set forth in paragraph (e) below.

(b) Use of Modified Opening Procedure. [All provisions set forth in Rule 6.2 remain in effect unless superseded or modified by this Interpretation and Policy .01.] On [the dates on which the] exercise [and final] settlement value *determination day*s [are calculated for options (as determined under Rule 24.9(a)(5) or (6)) or (security) futures contracts on a volatility index (*i.e.,* expiration and final settlement dates)], the Exchange [utilizes]*uses* the [modified] opening procedure described *in Rule 6.2, as modified by this Interpretation and Policy .01, for constituent option series*[below for all series used to calculate the exercise/final settlement value of the volatility index for expiring options and (security) futures contracts (these option series referred to as ''constituent options'')].

([a]*c*) *Strategy Order[s] Cut-Off Time.* [All orders for participation in the modified opening procedure that are related to positions in, or a trading strategy involving, expiring volatility index options or (security) futures (''strategy orders'')]*Market participants must submit strategy orders (which orders must be entered into the Exchange by a Trading Permit Holder),* and [any] change*s* to or cancellation*s* of [any such]*strategy* order*s, prior to the strategy order cut-off time. Market participants*[:]

[(i) must be received prior to the applicable strategy order cut-off time for the constituent option series (as determined by the Exchange on a class-by-class basis), which may be no earlier than 8:00 a.m. and no later than the opening of trading in the series. The Exchange will announce all determinations regarding changes to the applicable strategy order cut-off time at least one day prior to implementation.

(ii)] may not [be cancelled or changed]*change or cancel strategy orders after the strategy order cut-off time, unless the market participant submits the change or cancellation:*

(1) [after the applicable strategy order cut-off time, unless the strategy order is not executed in the modified opening procedure and the cancellation or change is submitted] after the [modified opening procedure is concluded]*series is open for trading; or*

(2) [(provided that any such strategy order may be changed or cancelled after the applicable strategy order cut-off time and] prior to the [applicable] non-strategy order cut-off time in order to correct a legitimate error, in which case the [Trading Permit Holder]*market participant* submitting the change or cancellation [will]*must* prepare and maintain a memorandum setting forth the circumstances that resulted in the change or cancellation and [will file]*submit* a copy of the memorandum [with]*to* the Exchange no later than the next business day in a form and manner prescribed by the Exchange[)].

The Exchange determines the strategy order cut-off time on a class-by-class basis, which may be no earlier than 8:00 a.m. Chicago time and no later than the opening of trading in a series. The Exchange will announce any changes to the strategy order cut-off time at least one day prior to implementation.

[In general, the Exchange will consider orders to be strategy orders for purposes of this Rule 6.2.01 if the orders possess the following three characteristics:

(A) The orders are for option series with the expiration that will be used to calculate the exercise or final settlement value of the applicable volatility index option or futures contract.

(B) The orders are for option series spanning the full range of strike prices for the appropriate expiration for option series that will be used to calculate the exercise or final settlement value of the applicable volatility index option or futures contract, but not necessarily every available strike price.

(C) The orders are for put options with strike prices less than the ''at-the-money'' strike price and for call options with strike prices greater than the ''at-the-money'' strike price. The orders may also be for put and call options with ''at-the-money'' strike prices.

Whether orders are strategy orders for purposes of this Rule 6.2.01 depends upon specific facts and circumstances. The Exchange may also deem order types other than those provided above as strategy orders if the Exchange determines that to be the case based upon the applicable facts and circumstances.]

([b]*d*) *Non-Strategy Order[s] Cut-Off Time.* [All other orders for participation in the modified opening procedure (''non-strategy orders''), and any change to or cancellation of any such order, must be received]*Market participants must submit non-strategy orders (which*

orders must be entered into the Exchange by a Trading Permit Holder) prior to the [applicable]*non-strategy order* cut-off time. [(as determined by t]*T*he Exchange *determines the non-strategy order cut-off time* on a class-by-class basis[) in order to participate at the opening price for the applicable series], which may be no earlier than 8:25 a.m. and no later than the opening of trading in [the option]*a* series. The Exchange will announce [all determinations regarding]*any* changes to the [applicable] non-strategy order cut-off time at least one day prior to implementation.

([c]*e*) *Market-Makers.* A Market-Maker with an appointment in a class with constituent option series may submit bids and offers in those series for bona fide market-making purposes in accordance with Rule 8.7 and the Exchange Act for its market-maker account prior to the open of trading for participation in the modified opening procedure. The Exchange will deem these bids and offers to be non-strategy orders, and will not deem them to be changes to or cancellations of previously submitted strategy orders, if:

(i) the Trading Permit Holder with which the Market-Maker is affiliated has established, maintains, and enforces reasonably designed written policies and procedures (including information barriers, as applicable), taking into consideration the nature of the Trading Permit Holder's business and other facts and circumstances, to prevent the misuse of material nonpublic information (including the submission of strategy orders); and

(ii) when submitting these bids and offers, the Market-Maker has no actual knowledge of any previously submitted strategy orders.

* * * * *

(b) Not applicable.

(c) Not applicable.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Cboe Options and Cboe Futures Exchange, LLC (''CFE'') list options and futures, respectively, on different volatility indexes that are calculated using prices of options traded on Cboe Options.[3] The exercise settlement value for these volatility index derivatives is determined on the morning of their expiration date through a special opening quotation (''SOQ'') of the volatility index using the opening prices of a portfolio of options (for example, the exercise settlement value of VIX options and futures uses the opening prices of a portfolio of S&P 500 Index options (''SPX options'') that expire approximately 30 days later). On the days when the exercise settlement values for these volatility index derivatives are determined, Cboe Options opens the constituent options[4] for these volatility indexes using the modified Hybrid Opening System (''HOSS'') procedure.[5] The main feature of the modified HOSS procedure used to calculate the exercise settlement value for expiring volatility index options and (security) futures that distinguishes it from the normal opening procedure used on all other days is a cutoff time for the entry of strategy orders.[6] By providing market participants with a mechanism to buy and sell constituent options at prices used to calculate the exercise settlement value of the volatility index derivatives, the volatility index settlement process is ''tradable.''

The volatility index settlement process is patterned after the process used to calculate the exercise settlement value of SPX options. On the days SPX options expire, S&P calculates an SOQ of the S&P 500 Index using the opening prices of the component stocks in their primary markets. Market participants can replicate the exposure of their expiring SPX options by entering orders to buy and sell the component stocks of the S&P 500 Index at their opening prices. If they are successful, market participants can effectively construct a portfolio that matches the value of the SOQ. At this point, the derivatives and cash markets converge.

In a very similar way, the exercise settlement value for volatility index derivatives is an SOQ of the volatility index using opening prices of the constituent options used to determine the value of the index. With respect to VIX, the VIX exercise settlement value is calculated using the opening prices of SPX options that expire approximately 30 days later. Analogous to the settlement process for SPX options, market participants can replicate the exposure of their expiring VIX derivatives by entering buy and sell orders in constituent SPX options. If they are successful, market participants can effectively construct a portfolio of SPX options whose value matches the value of the VIX SOQ. By doing so, market participants may make or take delivery of the SPX options that will be used to calculate the exercise settlement value of their VIX derivatives.

A tradable settlement creates the opportunity to convert the exposure of an expiring VIX derivative into the portfolio of SPX options that will be used to calculate the exercise settlement

[3] These volatility indexes include the Cboe Volatility Index (''VIX'') and the Russell 2000 Volatility Index (''RVX''). Options expire on an expiration date and settle to an exercise settlement value, and futures settle on a final settlement date to a final settlement value. For ease of reference, the Exchange will use the options terminology throughout this filing when referring to the ''expiration/final settlement date'' and ''expiration/final settlement value'' for volatility index derivatives.

[4] ''Constituent options'' are the series used to calculate the exercise/final settlement value of the volatility index for expiring options and (security) futures contracts.

[5] *See* Rule 6.2, Interpretation and Policy .01.

[6] Currently, strategy orders are defined as all orders (defined in Rule 1.1(ooo) as a firm commitment to buy or sell option contracts) for participation in the modified opening procedure that are related to positions in, or a trading strategy involving, volatility index options or (security) futures (as discussed below, the proposed rule change is adding ''expiring'' to this definition). In general, the Exchange currently considers orders to be strategy orders if they are for (a) option series with the expiration that will be used to calculate the exercise or final settlement value of the applicable volatility index option or futures contract; (b) option series spanning the full range of strike prices for the appropriate expiration for option series that will be used to calculate the exercise or final settlement value of the applicable volatility index option or futures contract (not necessarily every available strike price); and (c) put options with strike prices at or less than the ''at-the-money'' strike price and for call options with strike prices greater than or at the ''at-the-money'' strike price. Whether orders are strategy orders depends upon specific facts and circumstances. The Exchange may also deem order types other than those provided above as strategy orders if the Exchange determines that to be the case based upon the applicable facts and circumstances. The strategy order cut-off time may be no earlier than 8:00 a.m. and no later than the opening of trading in the series, and is currently 8:20 a.m. Chicago time. *See* Rule 6.2, Interpretation and Policy .01.

value of the expiring contract. Specifically, some market participants may desire to maintain the vega, or volatility, risk exposure of expiring VIX derivatives. Since VIX derivatives expire 30 days prior to the SPX options used to calculate their settlement value, a market participant may have a vega risk from its portfolio of index positions that the participant wants to continue to hedge after the participant's VIX derivatives expire. To continue that vega coverage following expiration of a VIX derivative, a market participant may determine to trade the portfolio of SPX options used to calculate the exercise settlement value of an expiring VIX derivative, since those SPX options still have 30 more days to expiration. This trade essentially replaces the uncovered vega exposure ''hole'' created by an expiring VIX derivative.

Since the VIX settlement value converges with the value of the portfolio of SPX options used to calculate that VIX settlement value, trading this SPX option portfolio mitigates settlement risk.[7] This is because, if done properly, the vega exposure obtained in the SPX option portfolio will replicate the vega exposure of the expiring VIX derivative. Because a market participant is converting vega exposure from one instrument (expiring VIX derivative) to another (portfolio of SPX options expiring in 30 days), the market participant is likely to be indifferent to the settlement price received for the expiring VIX derivative. Importantly, trading the next VIX derivative expiration (*i.e.,* rolling) will not accomplish the conversion of vega exposure since that VIX derivative contract would necessarily cover a different period of expected volatility and would be based on an entirely different portfolio of SPX options.

To replicate expiring volatility index derivatives on their expiration dates with portfolios of constituent options, market participants generally submit strategy orders to participate in the modified HOSS procedure on exercise settlement value determination dates. The Exchange understands that the entry of strategy orders may lead to order imbalances in the option series being used to determine the exercise settlement value. To the extent (1) market participants seeking to replicate an expiring VIX derivative position are on one side of the market (*e.g.,* strategy order to buy SPX options) and (2) those market participants' orders predominate over other orders during the modified HOSS procedure, those trades may contribute to an order imbalance prior to the open.

To provide market participants with time to enter additional orders and quotes to offset any such imbalances prior to the opening of these series, the Exchange established a strategy order cut-off time.[8] The time period after this cut-off time also permits market participants to, among other things, update prices of orders and quotes (except, as discussed below, changes to or cancellations of non-strategy orders may not be submitted after this cut-off time) in response to changing market conditions until the open of trading.[9] Generally, if a series (1) has a market order imbalance, or (2) is at a price that is outside the Exchange prescribed opening width (as described in Rule 6.2(d)), the series will not open for trading. Prior to the open, the Exchange disseminates messages to market participants indicating the expected opening price for a series or imbalance information for that series (as applicable) to further encourage market participants to enter orders and quotes to offset any imbalances and to promote a fair and orderly opening.

The proposed rule change first moves all defined terms in Interpretation and Policy .01 to proposed paragraph (a), adds certain defined terms, and revises and clarifies existing defined terms as each is used in Interpretation and Policy .01. Cboe Options proposes to add and modify the following defined terms in Interpretation and Policy .01 with respect to the modified HOSS procedure:

- *Volatility Index Derivatives:* The proposed term ''volatility index derivatives'' means volatility index options listed for trading on the Exchange (as determined under Rule 24.9(a)(5) and (6)), (security) futures listed for trading on an affiliated designated contract market, or over-the-counter (''OTC'') derivatives overlying a volatility index whose exercise or final settlement values, as applicable, are calculated pursuant to, or by reference to, as applicable, the modified opening procedure described in Interpretation and Policy .01. The current introductory paragraph to Interpretation and Policy .01 states the modified opening procedure is used on the dates on which the exercise and final settlement values are calculated for options (as determined under Rule 24.9(a)(5) or (6)) or (security) futures contracts on a volatility index (*i.e.,* expiration and final settlement dates), which is consistent with the proposed definition. Additionally, the proposed definition includes OTC derivatives overlying a volatility index, as these derivatives often reference the exercise settlement value the Exchange determines using the modified HOSS procedure.
- *Exercise Settlement Value Determination Day:* The proposed term ''exercise settlement value determination day'' means a day on which the Exchange determines the exercise or final settlement value, as applicable, of expiring volatility index derivatives. This proposed definition is consistent with the current introductory paragraph in Interpretation and Policy .01, which refers to the date on which the exercise and final settlement values are calculated for options (as determined under Rule 24.9(a)(5) or (6)) or (security) futures contracts on a volatility index (*i.e.,* expiration and final settlement dates) as the dates on which the Exchange uses the modified HOSS procedure set forth in Interpretation and Policy .01.
- *Constituent Option Series:* The proposed term ''constituent option series'' means all option series listed on the Exchange that are used to calculate the exercise or final settlement value, as applicable, of expiring volatility index derivatives. The current definition of ''constituent options'' in the current introductory paragraph to Interpretation and Policy .01 is all series used to calculate the exercise/final settlement value of the volatility index for expiring options and (security) futures contracts, which is consistent with the proposed definition. The proposed definition makes nonsubstantive changes to the definition and incorporates new defined terms.

[7] In the absence of a tradeable settlement, settlement risk refers to the difference between the exercise settlement value of the expiring volatility index derivatives and the value of the portfolio of the option series used to calculate the exercise settlement value. The potential disparity between the exercise settlement value for expiring volatility index derivatives and the value of the replicating portfolio of constituent options series is referred to as ''slippage.'' A tradeable settlement provides convergence between the value of the exercise settlement value and the value of the portfolio of option series used to calculate the exercise settlement value (*i.e.,* eliminates slippage). With respect to expiring VIX derivatives, for example, while it is possible to construct a replicating portfolio of SPX options, it is highly unlikely that traders would be able to trade constituent SPX options at prices that would match the final settlement price.

[8] *See* Securities Exchange Act Release Nos. 52367 (August 31, 2005), 70 FR 53401 (September 8, 2005) (SR–CBOE–2004–86) (established initially for rapid opening system procedure, which is no longer used). The Commission stated it believed that the proposed rule change may serve the intended benefits of the strategy order cut-off time without imposing an undue burden on market participants. *Id.* at 53402.

[9] Pursuant to Rule 6.2, Interpretation and Policy .01(b), the Exchange may determine a non-strategy order cut-off time, which may be no earlier than 8:25 a.m. and no later than the opening of trading. The current non-strategy order cut-off time is the opening of trading.

• *Strategy Orders:* Pursuant to the proposed rule change, the Exchange will deem individual orders (considered collectively) a market participant submits for participation in the modified opening procedure to be a ''strategy order,'' based on related facts and circumstances [10] considered by the Exchange, only if the orders:

○ Relate to the market participant's positions in expiring volatility index derivatives;

○ are for option series with the expiration that the Exchange will use to calculate the exercise or final settlement value, as applicable, of the applicable volatility index derivative;

○ are for option series with strike prices approximating the range of series that are later determined to constitute the constituent option series for the applicable expiration;

○ are for put (call) options with strike prices equal to or less (greater) than the ''at-the-money'' strike price; and

○ have quantities approximating the weighting formula used to determine the exercise or final settlement value, as applicable, in accordance with the applicable volatility index methodology.

Current paragraph (a) defines strategy orders as all orders for participation in the modified opening procedure that are related to positions in, or a trading strategy involving, expiring volatility index options or (security) futures. The current rule also says, in general, the Exchange will consider orders to be strategy orders for purposes of Rule 6.2, Interpretation and Policy .01 if the orders possess three characteristics:

• The orders are for option series with the expiration that will be used to calculate the exercise or final settlement value of the applicable volatility index option or futures contract;

• the orders are for option series spanning the full range of strike prices for the appropriate expiration for option series that will be used to calculate the exercise or final settlement value of the applicable volatility index option or futures contract, but not necessarily every available strike; and

• the orders are for put options with strike prices less than the ''at-the-money'' strike price and for call options with strike prices greater than the ''at-the-money'' strike price. The orders may also be for put and call options with ''at-the-money'' strike prices. The current rule also states whether orders are strategy orders for purposes of Rule 6.2, Interpretation and Policy .01 depends upon specific facts and circumstances. Currently, the Exchange may also deem order types other than those provided above as strategy orders if the Exchange determines that to be the case based upon the applicable facts and circumstances.

When the definition of strategy order was adopted, volatility index derivatives had only just begun trading. The Exchange believed some flexibility within the rules regarding what constituted a strategy order was appropriate to permit market participants to submit strategy orders in a manner consistent with their businesses. Additionally, flexibility within the rule provided the Exchange with the ability to gain experience in monitoring trading in these products and evaluating the use of strategy orders.[11] However, the Exchange understands this flexibility has created some confusion among market participants regarding what orders constitute a strategy order. As a result of this confusion, the Exchange understands certain market participants may hesitate to submit orders in the modified opening procedure out of concern that such orders could be deemed either a new strategy order or a modification to or cancellation of an existing strategy order. This perceived risk may lead to reduced liquidity and may increase the time it takes to open a series at a competitive price.[12]

The proposed definition of strategy order limits strategy orders to strips of orders in constituent options series submitted by a market participant that contain the characteristics of orders that would replicate the exposure of the market participant's expiring volatility index derivatives. This is consistent with how market participants use strategy orders, as discussed above, and is also consistent with the initial purpose of the strategy order cut-off time.[13] The rule specifies that a group of orders must contain the five specific characteristics to be deemed a strategy order. The first characteristic in the proposed strategy order definition, which requires orders to be related to the market participant's positions in expiring volatility index derivatives, is a factor under the current rule for orders to be deemed a strategy order.[14] Similarly, under the current rule, if orders possess the second through fourth characteristics in the proposed definition of strategy order, the Exchange will generally consider those orders to be strategy orders for purposes of Rule 6.2, Interpretation and Policy .01.[15] The fifth characteristic in the proposed definition of strategy orders is not listed in the current rule as a requirement for orders to be deemed strategy orders. However, currently, the Exchange generally looks for orders to be in quantities that approximate the weighting formula used in the volatility index methodology when determining whether orders are strategy orders. In order for groups of orders in constituent options series to replicate the vega exposure of related expiring volatility index derivatives, the orders in constituent options series would need to possess these quantities.

The proposed rule change deletes the provision stating that the Exchange may also deem order types other than those provided in the rule as strategy orders if the Exchange determines it to be the cased based upon the applicable facts and circumstances. Ultimately, based on the Exchange's experience of monitoring trading in volatility index derivatives and the modified opening procedure used on exercise settlement value determination days, orders intending to replicate the vega of expiring volatility index derivatives (or to liquidate a hedge) possess the five specified

[10] The Exchange will evaluate facts and circumstances to determine whether the five criteria are satisfied. For example, the Exchange will consider whether orders are for option series with strike prices approximating the range of series that are later determined to constitute the constituent option series for the applicable expiration based on facts and circumstances. Approximate range includes not only the beginning and end points of the range, but also the population of strikes within the range.

[11] *See* note 6.

[12] *See* Rule 6.2(d).

[13] *See* Securities Exchange act Release No. 52367 (August 31, 2005), 70 FR 53401 (September 8, 2005) (SR–CBOE–2004–86) (order approving modified ROS opening procedure).

[14] *See* current Rule 6.2, Interpretation and Policy .01(a). The proposed rule change deletes the concept of being related to a trading strategy, as that is a broad term, and ultimately, as described in this rule filing, strategy orders relate specifically to positions in expiring volatility index derivatives, thus making the term ''trading strategy'' unnecessary.

[15] *See* current Rule 6.2, Interpretation and Policy .01(A)–(C). The Exchange notes the proposed rule change modifies the characteristic in current .01(B) to provide that the orders must approximate the range of series that later are determined to constitute the constituent option series rather than be for the full range. The purpose of this change is to account for the fact that, while many market participants can determine what the full range and population of strike prices will be, they may not be exact. Bids and offers of series may change in response to market conditions between the strategy order cut-off time and the opening of trading, which may impact which series ultimately constitute the constituent option series. For example, with respect to VIX, participants may not have certainty prior to the strategy order cut-off time regarding which series will have zero-bid prices and thus be excluded from the settlement calculation. *See* VIX methodology at *http://www.cboe.com/micro/vix/vix-index-rules-and-methodology.pdf.* Additionally, this will ensure that market participants cannot purposefully not enter an order for one strike within the range to avoid their orders being subject to the strategy order cut-off time. As the current rule provides the Exchange with significant flexibility to determine what constitutes a strategy order, this flexibility is consistent with the current rules.

characteristics,[16] and thus orders intended to be strategy orders would possess the proposed characteristics.[17] The Exchange believes the proposed definition provides market participants with more clarity with respect to what constitutes strategy orders. The Exchange believes this added clarity may increase liquidity on volatility settlement dates, as it provides more certainty with respect to which orders they need to submit prior to the strategy order cut-off time and which orders they may submit after that time.

• *Non-Strategy Orders:* The proposed term ''non-strategy order'' means any order (including an order in a constituent option series) a market participant submits for participation in the modified opening procedure that is not a strategy order (or a change to or cancellation of a strategy order). Examples of non-strategy orders include, but are not limited to:

○ A buy (sell) order in a constituent options series if an expected opening information message (''EOI'') [18] is disseminated no more than two minutes prior to the time a market participant submitted the order included a sell (buy) imbalance and the size of the order is no larger than the size of the imbalance in the EOI, regardless of whether the market participant previously submitted a strategy order or has positions in expiring volatility index derivatives; or

○ a Market-Maker bid or offer in a constituent option series, as set forth in proposed paragraph (e) (current paragraph (c)).

As discussed above, the Exchange understands the entry of strategy orders may create imbalances in the constituent option series. To provide market participants with time to enter additional orders and quotes to offset any such imbalances prior to the opening of these series, the Exchange established a strategy order cut-off time.[19] Imbalances may prevent a series from opening, such as if it is a market order imbalance (as described in Rule 6.2(d)). Prior to the open, the Exchange disseminates EOIs to market participants indicating, among other things, imbalance information for series to further encourage market participants to enter orders to offset any imbalances and promote a fair and orderly opening.[20] However, Rule 6.2 currently does not permit market participants that submitted strategy orders prior to the cut-off time to submit orders that would address order imbalances after the strategy order cut-off time in series used to calculate the exercise settlement value.

However, if a market participant enters a strategy order prior to the strategy order cut-off time, the Exchange understands such market participant may refrain from entering orders to offset imbalances because of the perceived risk that such an order may be deemed to be a new strategy order or a change to the existing strategy order, which is activity the current rule does not permit. This perceived risk may reduce liquidity at the opening on exercise settlement value determination days and may increase the risk that some series do not open because of an imbalance.[21]

In order to promote a fair and orderly opening process, the Exchange seeks to encourage all market participants to enter orders following the strategy order cut-off time for the purpose of offsetting imbalances in constituent option series until the opening of trading., [sic] Accordingly, the Exchange proposes to add to the definition of non-strategy orders a buy (sell) order in a constituent options series if an EOI disseminated no more than two minutes prior to the time a market participant submitted the order included a sell (buy) imbalance and the size of the order is no larger than the size of the imbalance in the EOI,[22] regardless of whether the market participant previously submitted a strategy order or has positions in expiring volatility derivatives.

The purpose of permitting market participants to enter orders to offset order imbalances is not to permit them to modify strategy orders, but rather to encourage them to respond to EOIs that indicate an imbalance in a series exists. The Exchange believes explicitly permitting market participants to offset order imbalances in response to EOIs, as set forth in the proposed definition of non-strategy orders, may increase liquidity in series, including in constituent option series, which would contribute to a fair and orderly opening in those series. The Exchange disseminates these messages for the purpose of encouraging submission of orders to address order imbalances. Therefore, the Exchange does not believe such orders are ''related to'' expiring volatility index derivatives, and thus would not constitute a strategy order under the current or proposed definition, as discussed above. The Exchange believes the proposed rule change is consistent with the definition of strategy order because the proposed rule explicitly excludes orders submitted for this imbalance offsetting purpose from falling within the strategy order definition.

The remainder of the proposed definition, including subparagraphs (1) and (3), is consistent with the current definition of non-strategy orders in current paragraph (b), and just clarifies examples of non-strategy orders that exist in the current rule. The proposed definition also makes nonsubstantive changes and incorporates new defined terms.

Proposed paragraph (b) provides that, on exercise settlement value determination days, the Exchange uses the opening procedure described in Rule 6.2, as modified by Interpretation and Policy .01, for constituent option series. This clarifies that the opening procedure the Exchange uses for constituent option series on exercise settlement value determination days is the same as the opening procedure used for all option series on all other days, except as set forth in Interpretation and Policy .01. This proposed provision is consistent with the current introductory paragraph, and makes nonsubstantive changes and incorporates new defined terms.

Proposed paragraph (c) states market participants must submit strategy orders, and changes to or cancellations of strategy orders, prior to the strategy order cut-off time (which the Exchange has currently set as 8:20 a.m. Chicago time). Market participants may not change or cancel strategy orders after the strategy order cut-off time, unless the market participant submits the change or cancellation (1) after the modified opening procedure is concluded; or (2) to correct a legitimate error, in which case the market participant submitting the change or cancellation must prepare and maintain a memorandum setting forth the

[16] For example, the VIX methodology describes how a portfolio of options may provide a constant exposure to the variance of an asset, which is what strategy orders attempt to do. *See http://www.cboe.com/micro/vix/vix-index-rules-and-methodology.pdf.*

[17] As discussed above, the proposed rule retains some flexibility pursuant to which the Exchange may consider facts and circumstances to determine whether orders possess the five proposed criteria for what constitutes a strategy order, and a modification of a strategy order.

[18] *See* Rule 6.2(a)(ii).

[19] *See* Securities Exchange Act Release Nos. 52367 (August 31, 2005), 70 FR 53401 (September 8, 2005) (SR–CBOE–2004–86) (established initially for rapid opening system procedure, which his no longer used).

[20] *See* Rule 6.2(a)(ii).

[21] *See* Rule 6.2(d).

[22] Currently, EOIs are disseminated every five seconds. Therefore, for example, if an EOI disseminated at 8:27:00 indicated a sell order imbalance of 500 contracts, a market participant's submission of a buy order of 100 contracts at 8:28 would not be a strategy order or modification of a previously submitted strategy order. The two-minute time period is intended to provide market participants with sufficient time to manually enter an order in response to an EOI message.

circumstances that resulted in the change or cancellation and submit a copy of the memorandum to the Exchange no later than the next business day in a form and manner prescribed by the Exchange. The Exchange determines the strategy order cut-off time on a class-by-class basis, which may be no earlier than 8:00 a.m. Chicago time and no later than the opening of trading in a series. The Exchange has currently set the strategy order cut-off time as 8:20 a.m. Chicago time. The Exchange will announce any changes to the strategy order cut-off time at least one day prior to implementation. Proposed paragraph (c) is substantively the same as information in current paragraph (a), and makes nonsubstantive changes and incorporates defined terms. Proposed paragraph (c) also excludes the description of what constitutes a strategy order, which was included in current paragraph (a) and has been moved to proposed paragraph (a) as a defined term, as discussed above.

Proposed paragraph (d) states market participants must submit non-strategy orders prior to the non-strategy order cut-off time. The Exchange determines the non-strategy order cut-off time on a class-by-class basis, and it may be no earlier than 8:25 a.m. Chicago time and no later than the opening of trading in a series. The Exchange has currently set the non-strategy order cut-off time to be the opening of trading. The Exchange will announce any changes to the non-strategy order cut-off time at least one day prior to implementation. Proposed paragraph (d) is substantively the same as current paragraph (b), and makes nonsubstantive changes and incorporates defined terms. Proposed paragraph (d) also excludes the description of what constitutes a non-strategy order, which is currently included in current paragraph (a) and has been moved to proposed paragraph (a) as a defined term, as discussed above.

The proposed rule change makes additional nonsubstantive changes, including revising the heading for Interpretation and Policy .01 and updating the paragraph lettering.

The Exchange notes the proposed rule change would not impact a Trading Permit Holder's requirements to abide by Exchange Rules 4.1 (Just and Equitable Principles of Trade), 4.7 (Manipulation), and 4.18 (Prevention of the Misuse of Material, Nonpublic Information). The Exchange believes the proposed rule change may contribute to additional liquidity during the modified HOSS procedure, and thus a fair and orderly opening on exercise settlement value determination days. A fair and orderly opening in these series benefits all market participants who trade in the volatility index derivatives and the constituent series. The Exchange will continue to conduct surveillance procedures to monitor trading in the constituent option series, including but not limited to compliance with the strategy order cut-off time (in accordance with the proposed rule change).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[23] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [24] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [25] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed definition of a strategy order provides market participants with additional clarity regarding what orders constitute strategy orders, and the Exchange believes this added clarity benefits investors and promotes just and equitable principles of trades. The proposed rule change with respect to the definition of strategy orders is consistent with the current definition of strategy orders and the Exchange's view of what orders constitute a strategy order, as well as the legitimate purposes of strategy orders, because orders submitted for the purposes of constituting a strategy order generally possess the five specified characteristics (four of which are in current Rule 6.2, Interpretation and Policy .01(a)).

Additionally, the proposed definition of non-strategy order provides market participants with additional clarity regarding orders that do not constitute strategy orders (and thus that may be submitted after the strategy-order cut-off time and prior to the non-strategy order cut-off time). The Exchange believes explicitly permitting market participants to enter orders to offset order imbalances in response to EOIs that indicate an imbalance in a series exists will encourage entry of orders when there is an imbalance in a series, even if market participants previously submitted strategy orders. This proposed rule change allows the maximum number of participants to address order imbalances during the opening process for the constituent option series while executing their investment and hedging strategies. The Exchange believes these changes may increase liquidity in series, including in constituent option series, to offset imbalances. This result would contribute to a fair and orderly opening process and would benefit all market participants who trade in the volatility index derivatives or the constituent option series. The Exchange also believes these changes are consistent with the original purpose of the strategy order cut-off time. The Exchange believes this additional clarity with respect to what is and is not a strategy order will provide market participants with more certainty with respect to which orders constitute strategy orders, and thus which orders need to be submitted prior to the strategy order cut-off time. It also clarifies for market participants the activity in which they may engage after the strategy order cut-off time. The Exchange believes the proposed reorganization of Interpretation and Policy .01, including defining all relevant terms at the beginning of Interpretation and Policy .01, also benefits market participants by providing additional clarity with respect to all defined terms for the modified HOSS procedure.

The Exchange notes the proposed rule change would not impact a Trading Permit Holder's requirements to abide by Exchange Rules 4.1 (Just and Equitable Principles of Trade), 4.7 (Manipulation), and 4.18 (Prevention of the Misuse of Material, Nonpublic Information). The Exchange believes the proposed rule change may contribute to additional liquidity during the modified HOSS procedure, and thus to a fair and orderly opening in constituent option series on exercise settlement value determination days. A fair and orderly opening in these series benefits all market participants who trade in the volatility index derivatives and the

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] *Id.*

constituent series. The Exchange will continue to conduct surveillance procedures to monitor trading in the constituent option series, including but not limited to compliance with the strategy order cut-off time (in accordance with the proposed rule change).

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe 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. The proposed rule change applies in the same manner to all market participants who submit orders to the Exchange in constituent option series on exercise settlement value determination days. The proposed rule change, and the proposed definition of strategy order in particular, provides market participants with clarity for market participants with respect to what constitutes a strategy order and is generally consistent with the current rules and the Exchange's view of what orders constitute a strategy order. Additionally, the proposed definition of non-strategy order, particularly the explicit permission to enter orders in response to EOIs that indicate an imbalance in a series, is consistent with the original intent of the strategy order cut-off time.[26] The proposed rule change has no impact on intermarket competition, as it applies to orders submitted for participation in the Exchange's modified opening procedure used to calculate settlement values for expiring volatility index derivatives. The Exchange believes the proposed rule change provides market participants with more certainty with respect to which orders they need to submit prior to the strategy order cut-off time and which orders they may be submit after that time, which may increase liquidity in constituent option series on volatility settlement dates.

Cboe Options believes that the proposed rule change will relieve any burden on, or otherwise promote, competition. The Exchange believes the proposed rule change may contribute to liquidity in constituent option series during the modified HOSS procedure, and thus a fair and orderly opening on exercise settlement value determination days. A fair and orderly opening in these series benefits all market participants who trade in the volatility index derivatives and the constituent option series.

[26] *See supra* note 8.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission 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–CBOE–2018–062 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2018–062. 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–CBOE–2018–062 and should be submitted on or before October 3, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–19773 Filed 9–11–18; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Docket No. SBA–2018–0008]

Community Advantage Pilot Program

AGENCY: U.S. Small Business Administration.

ACTION: Notice of extension of and changes to Community Advantage Pilot Program; and request for comments.

SUMMARY: The Community Advantage (''CA'') Pilot Program is a pilot program to increase SBA-guaranteed loans to small businesses in underserved areas. The Small Business Administration (''SBA'') continues to refine and improve the design of the Community Advantage Pilot Program. To support SBA's commitment to expanding access to capital for small businesses and entrepreneurs in underserved markets, SBA is issuing this Notice to extend the term of the CA Pilot Program, to mitigate risks of the program by placing a moratorium on accepting new CA Lender applications, to limit fees that can be collected from an applicant for a CA loan, and to revise other program requirements.

DATES: The moratorium on accepting applications from lenders for participation in the CA Pilot Program and all other changes identified in this Notice will be effective on October 1,

2018. The CA Pilot Program will remain in effect until September 30, 2022.

Comment Date: Comments must be received on or before November 13, 2018.

ADDRESSES: You may submit comments, identified by SBA docket number SBA–2018–0008, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/.* Follow the instructions for submitting comments.
- *Mail:* Daniel Upham, Acting Director, Office of Economic Opportunity, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416 or Dianna Seaborn, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.
- *Hand Delivery/Courier:* Daniel Upham, Acting Director, Office of Economic Opportunity, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; or Dianna Seaborn, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on *https://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *https://www.regulations.gov,* please submit the information to Daniel Upham, Acting Director, Office of Economic Opportunity, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; or Dianna Seaborn, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416 or send an email to *communityadvantage@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination as to whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Daniel Upham, Acting Director, Office of Economic Opportunity, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416, (202) 205–7001, *daniel.upham@sba.gov*; or Dianna Seaborn, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416, (202) 205–3645, *dianna.seaborn@sba.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

On February 18, 2011, SBA issued a notice and request for comments introducing the CA Pilot Program (76 FR 9626). The CA Pilot Program was introduced to increase the number of SBA-guaranteed 7(a) loans made to small businesses in underserved markets. The February 18, 2011 notice provided an overview of the CA Pilot Program requirements and, pursuant to the authority provided to SBA under 13 CFR 120.3 to suspend, modify or waive certain regulations in establishing and testing pilot loan initiatives, SBA modified or waived as appropriate certain regulations which otherwise apply to 7(a) loans for the CA Pilot Program.

Subsequent notices have made changes to the CA Pilot Program to improve the program experience for participants, improve their ability to deliver capital to underserved markets, and appropriately manage risk to the Agency. These notices were issued on the following dates: September 12, 2011 (76 FR 56262), February 8, 2012 (77 FR 6619), November 9, 2012 (77 FR 67433), and December 28, 2015 (80 FR 80872). In the December 28, 2015 notice, SBA stated that it would evaluate the CA Pilot Program to refine the program and to determine whether it should be made permanent, with evaluation criteria including, but not limited to, whether the pilot is achieving its objective(s), impact on job creation and retention, impact on business creation and/or business expansion, whether the costs (including losses) of the pilot are within an acceptable range, and portfolio performance as it relates to other 7(a) programs. SBA recently conducted an analysis to compare the performance of CA loans to other relevant groups of 7(a) loans and to the entire 7(a) portfolio, and found that CA loans exhibit more risk than other 7(a) loans. As discussed further below, the analysis found that the CA loan portfolio had a higher early problem loan rate, higher early default rate, and the last 12 month default rate is trending higher than other similar 7(a) loans and the overall 7(a) portfolio. In an effort to mitigate this risk and in order to ensure that SBA's Office of Credit Risk Management (''OCRM'') continues to be able to properly oversee lenders participating in the CA Pilot Program, SBA is issuing this Notice to place a moratorium on the acceptance of new Community Advantage Lender Participation Applications (''CA Lender Applications'') and to further revise program requirements, as described more fully below.

The CA Pilot Program is currently set to expire March 31, 2020. With this Notice, SBA is extending the pilot program until September 30, 2022. This extension will allow for additional time to evaluate the pilot, and if warranted, begin the process for it to be made permanent.

2. Comments

Although the moratorium on accepting applications for new CA Lenders and all other changes are effective October 1, 2018, comments are solicited from interested members of the public on all aspects of the CA Pilot Program. Comments must be submitted on or before the deadline for comments listed in the **DATES** section. SBA will consider these comments and the need for making any revisions as a result of these comments.

3. Changes to the Community Advantage Pilot Program

a. Moratorium on Acceptance of New CA Lender Applications

As a pilot loan program, the CA Pilot Program is intended to be available to a limited number of lenders to allow the Agency to test new methods for expanding access to capital for small businesses in underserved markets. The limited scope of the program allows SBA to evaluate its effectiveness without unduly increasing risk to the Agency. Since its inception in 2011, the CA Pilot Program has grown to 113 CA Lenders across 39 states, 99 of which are actively making and servicing CA loans. SBA has determined that there is a sufficient number and geographical diversity of CA Lenders to evaluate the pilot; therefore, it is unnecessary to further increase the number of lenders participating in the CA Pilot Program at this time.

In addition, while almost all 7(a) Lenders have a primary Federal financial regulator or a state financial regulator, all CA Lenders are classified as ''SBA Supervised Lenders,'' as defined in 13 CFR 120.10, and as a result, oversight of CA Lenders is more resource-intensive for SBA than oversight of other 7(a) Lenders.

Furthermore, a recent SBA analysis found that CA loans exhibit more risk than other 7(a) loans. (See *https://www.sba.gov/document/support-community-advantage-pilot-program-analysis.*) Specifically, SBA compared CA loans to non-CA 7(a) loans of $250,000 or less, non-CA 7(a) loans of $250,000 or less made to underserved businesses,[1] and to the entire 7(a)

[1] For purposes of the analysis, underserved businesses included loans to minorities, veterans,

portfolio. The analysis found that the CA loan portfolio had a higher early problem loan rate,[2] higher early default rate,[3] and the last 12 month default rate [4] is trending higher than the other 7(a) loan groups and the overall 7(a) portfolio. The credit quality of the CA portfolio, as measured by the Small Business Risk Portfolio Solution (''SBPS'') Score,[5] is also lower than the other 7(a) loan groups and the overall 7(a) portfolio. In addition, the credit quality of the CA Loan portfolio has declined since 2015 while the credit quality of the rest of the 7(a) portfolio has increased. Finally, the cumulative purchase rate [6] of CA loans is consistently higher than the cumulative purchase rates in the other 7(a) loan groups and the overall 7(a) portfolio. For example, the cumulative purchase rate of CA loans for cohort 2013 is 7.9%, over three times greater than the cumulative purchase rate for cohort 2013 for the 7(a) portfolio (2.2%).

Given the increased risk of CA loans as compared to other 7(a) loans, the need for more resource-intensive oversight of CA Lenders, and the fact that the CA Pilot Program already includes a sufficient number of geographically dispersed CA Lenders, SBA has decided to place a moratorium on acceptance of new CA Lender applications. Effective October 1, 2018, SBA will no longer accept CA Lender Applications (SBA Form 2301). Completed CA Lender Applications that are received before October 1, 2018 will be fully evaluated, and a decision whether to allow the applicant to participate in the CA Pilot Program will be made based on the criteria in Appendix C of Version 4.0 of the Community Advantage Participant Guide, which is the version in effect at the time of receipt of such applications. Any CA Lender Applications that have been submitted to SBA but are incomplete as of October 1, 2018 will not be processed.

b. Expanded Underserved Market Definition

The original February 18, 2011 notice introducing the CA Pilot Program defined underserved markets to include: Low-to-moderate income communities (''LMI''); Empowerment Zones and Enterprise Communities; HUBZones; New businesses; Businesses eligible for Patriot Express, including Veteran-owned businesses; and Firms where more than 50% of their full time workforce is low-income or resides in LMI census tracts. In the December 28, 2015 notice, SBA revised this program definition to include designated Promise Zones as an underserved market. In the December 28, 2015 update to the Community Advantage Participant Guide, SBA again updated the definition of underserved market to remove ''Businesses eligible for Patriot Express'' and replace it with ''Businesses eligible for SBA Veterans Advantage,'' as the Patriot Express Pilot Initiative expired on December 31, 2013.

SBA is now further revising the definition of underserved markets to include Opportunity Zones and Rural Areas. An Opportunity Zone is an economically distressed community that has been nominated by the state and certified by the Secretary of the U.S. Treasury as a community in which new investments, under certain conditions, may be eligible for preferential tax treatment. More information and a list of Opportunity Zones for all states are available at *https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx.* A Rural Area, for purposes of the CA Pilot Program, is a county that the U.S. Census Bureau has defined as ''Mostly Rural'' or ''Completely Rural'' in its most recent decennial census report. More information on Rural Areas, including the 2010 County Classification Lookup Table, is available at *https://www.sba.gov/about-sba/sba-initiatives/sba-rural-lending-initiative* and on the Welcome Screen for the Capital Access Financial System (''CAFS'') at *https://caweb.sba.gov/cls/dsp_login.cfm.* In order to accomplish this change, SBA is waiving the definition of ''Rural Area'' in 13 CFR 120.10, ''Definitions'', for purposes of the CA Pilot Program.

c. Debt Refinancing

Currently, all debt refinancing in the CA Pilot Program must meet the requirements for refinancing set forth in the version of SOP 50 10 in effect at the time of loan approval, with two modifications. First, the CA Lender must demonstrate either (a) a 10 percent improvement in cash flow; or (b) that the CA loan exceeds the amount being refinanced by at least $5,000 or 25 percent, whichever is greater. Second, a CA Lender seeking to refinance non-SBA guaranteed, same institution debt must include a transcript showing the due dates and when payments were received for the most recent six month period. If there are any late payments in the most recent six month period, the debt may not be refinanced with a CA loan. Late payments are defined as any payment made beyond 29 days of the due date.

SBA is modifying the requirements for refinancing non-SBA guaranteed, same institution debt to require a transcript showing the due dates and when payments were received for the most recent 12 month period, rather than six months. If there are any late payments in the most recent 12 month period, the debt may not be refinanced with a CA loan. In addition, debts on the CA Lender's books for less than 12 months may not be refinanced with a CA loan.

d. Delegated Authority

OCRM evaluates all CA applicants for delegated authority eligibility at the time of application to become a CA Lender. Currently, if a prospective lender is not determined to be eligible for delegated authority at the time of approval as a CA Lender, it must wait until after it has participated in the CA Pilot Program for six months before it can request another determination. SBA is revising the eligibility requirements applicable to CA Lenders applying for delegated authority by extending the waiting period from six months to 12 months.

In addition, under current requirements, a CA Lender that is determined to be eligible for delegated authority may not process loans using its delegated authority until (i) it closes and makes an initial disbursement on five non-delegated CA loans, and (ii) OCRM determines, in consultation with the Loan Guaranty Processing Center (''LGPC''), that it has satisfactory knowledge of SBA Loan Program Requirements. SBA is increasing the number of CA loans that must be initially disbursed before a CA Lender may receive approval to process

or women-owned businesses, as reported by the borrowers.

[2] Early problem loan rate means the gross approval amount of young loans (36 months on book or less) that have had either a deferred, delinquent (60 or more days past due), liquidated, purchased, or charged off status within 18 months of disbursement, divided by the gross approval amount of young loans.

[3] Early default rate means the gross balance at default of young loans (36 months on book or less) that experienced a default event (liquidation or purchase) within the first 18 months of disbursement, divided by the gross approval amount of young loans.

[4] Last 12 month default rate means the default amount (gross outstanding balance at purchase or liquidation) of all loans that have defaulted over the last 12 months, divided by the average active balance over the last 12 months plus the default amounts of the last 12 months.

[5] The SBPS score is an indication of the relative credit quality of the businesses and predicts a business's propensity to become severely delinquent in debt in the next 12 to 24 months.

[6] Cumulative purchase rate means all purchases from loans approved in the same fiscal year, divided by all disbursement dollars of loans approved in the same fiscal year.

applications under delegated authority. Effective October 1, 2018, the number of loans is increased to seven.

e. Minimum Credit Score

SBA is increasing the minimum acceptable credit score for CA loans. As further described in the Community Advantage Participant Guide, all CA loan applications receive a credit score at the time of submission of the application for guaranty to SBA. A credit score at or above the minimum acceptable credit score satisfies the need to consider several required underwriting criteria, including part of the analysis to determine reasonable assurance of repayment from cash flow. If a CA Lender believes there are mitigating issues to justify a loan, despite an unacceptable credit score, the Lender may contact the LGPC with a full credit write-up for consideration.[7] Applications with credit scores below the minimum may not be processed under a CA Lender's delegated authority.

SBA recently compared default rates [8] of CA loans with credit scores ranging from 120 (the current minimum) to 139, and CA loans with credit scores of 140 or greater. The analysis showed that CA loans with credit scores of less than 140 had much higher default rates, sometimes as much as three times higher than CA loans with credit scores greater than or equal to 140. Accordingly, SBA is increasing the minimum acceptable credit score for the CA Pilot Program from 120 to 140.

f. Loan Loss Reserve Requirements

CA Lenders are required to create a Loan Loss Reserve Account (''LLRA'') to cover potential losses arising from defaulted loans. The reserve fund is to cover both losses from the unguaranteed portion of defaulted loans as well as possible repairs and denials associated with SBA's guaranty on CA loans sold into SBA's secondary market. In the November 9, 2012 notice, SBA reduced the LLRA requirement from 15 percent of the outstanding amount of the unguaranteed portion of a CA Lender's CA loan portfolio to five percent. In that notice, SBA also established an additional reserve requirement for CA Lenders with secondary market authority. The additional reserve requirement was set at three percent of the outstanding amount of the guaranteed portion of each CA loan sold in the secondary market.

Given the increased risk of CA loans as compared to other 7(a) loans, SBA has determined that the current reserve requirements are insufficient with respect to CA loans sold in the secondary market. SBA is at higher risk on defaulted loans in the secondary market because SBA must make payment to the secondary market investor before it can attempt to recover any denials or repairs from the CA Lender. To address this risk, for each CA loan approved on or after October 1, 2018, a reserve of five percent of the outstanding amount of the guaranteed portion must be deposited in the LLRA if the loan is sold in the secondary market. All other requirements regarding the creation and maintenance of the LLRA stated in the February 18, 2011 notice and all subsequent notices remain unchanged, including the five percent reserve requirement on the unguaranteed portion of CA loans. Failure to maintain the LLRA as required may result in removal from the CA Pilot Program, the imposition of additional controls or reserve amounts, and/or other action permitted by SBA regulation or otherwise by law. Based on the risk characteristics or performance of a CA Lender, OCRM in its discretion and in consultation with the Director of the Office of Financial Assistance may require additional amounts to be included in the LLRA.

In the November 9, 2012 notice, SBA also modified its regulation at 13 CFR 120.660 to allow the Director, Office of Credit Risk Management instead of the Director, Office of Financial Assistance to suspend secondary market authority for CA Lenders under that regulation. Effective September 20, 2017, however, SBA amended this regulation with respect to all 7(a) Lenders to provide that suspensions and revocations under 13 CFR 120.660 would be taken by the Director, Office of Financial Assistance together with the Director, Office of Credit Risk Management. Thus, SBA's 2012 modification of 13 CFR 120.660 for purposes of the CA Pilot Program to permit the Director, Office of Credit Risk Management to take action under this regulation is no longer necessary.

g. Limitation on Fees a CA Lender May Charge

Currently, 13 CFR 120.221(a) permits a lender to charge an applicant reasonable fees (customary for similar lenders in the geographic area where the loan is being made) for packaging and other services. Under the current regulation, SBA permits lenders to charge an applicant a reasonable fee to assist the applicant with the preparation of the application and supporting materials. However, SBA does not permit lenders to charge an applicant a commitment, broker, referral, or similar fee.

For purposes of the CA Pilot Program, SBA is modifying 13 CFR 120.221(a) to limit the total fees an applicant can be charged by a CA Lender for assistance in obtaining a CA loan. Regardless of what the fee is called (*e.g.,* a packaging fee, application fee, etc.), the CA Lender is permitted to collect a fee from the applicant that is no more than $2,500. With the exception of necessary out-of-pocket costs such as filing or recording fees permitted in § 120.221(c), this is the only fee that a CA Lender may collect directly or indirectly from an applicant for assistance with obtaining a CA loan. In addition, the CA Lender may not split a loan into two loans for the purpose of charging an additional fee to an applicant.

SBA considers a fee of no more than $2,500 to be reasonable for the services provided by a CA Lender to an applicant for assistance with obtaining a CA loan. SBA will monitor this fee and, if adjustments are necessary, SBA may revise this amount by publishing a notice with request for comment in the **Federal Register**.

If the CA Lender charges the applicant a fee for assistance with obtaining a CA loan, the CA Lender must disclose the fee to the applicant and SBA by completing the Compensation Agreement (SBA Form 159) in accordance with the regulation at § 103.5 and the procedures set forth in SOP 50 10.

The remaining sections of 13 CFR 120.221 (sections (b) through (e)) remain unchanged. Thus, in appropriate circumstances as set forth in current §§ 120.221(b) through (e) and further clarified in SOP 50 10, a CA Lender may charge an applicant or borrower extraordinary servicing fees, out of pocket expenses, a late payment fee, and for legal services charged on an hourly basis.

h. Compensation and Fee Limitations Applicable to Lender Service Providers and Other Agents

In the February 8, 2012 notice, SBA modified the CA Pilot Program requirements to allow CA Lenders to contract with Lender Service Providers (''LSPs''), as defined at 13 CFR 103.1(d). SBA will continue to allow CA Lenders to contract with LSPs, but is modifying some of the requirements applicable to LSPs, including total fee limits and

[7] See Community Advantage Participant Guide for further details. The requirements for a full credit write-up are set forth in SOP 50 10.

[8] The analysis looked at last 12 month default rate, which means the default amount (gross outstanding balance at purchase or liquidation) of all loans that have defaulted over the last 12 months, divided by the average active balance over the last 12 months plus the default amounts of the last 12 months.

limitations on receiving compensation from both the CA Lender and the applicant in connection with the same loan application.

SBA is modifying 13 CFR 103.4(g), which permits a limited exception to the ''two master'' prohibition when an Agent [9] acts as a Packager [10] and is compensated by the applicant for packaging services, and the same Agent also acts as a Referral Agent [11] and is compensated by the lender for those activities in connection with the same loan application. SBA believes there is, at a minimum, an appearance of a conflict of interest when an Agent represents both the applicant and the CA Lender on the same loan application. Further, when conducting lender oversight activities, SBA has observed numerous instances where applicants have been erroneously charged for services that were provided for a lender, not the applicant. In order to prevent any conflicts of interest from arising and to ensure the applicants are not improperly charged for services provided to the CA Lender, SBA is modifying 13 CFR 103.4(g) to eliminate the exception to the ''two master prohibition.'' Thus, for purposes of the CA Pilot Program, an Agent, including an LSP, may not provide services to both the applicant and the CA Lender and be compensated by both parties in connection with the same loan application.

The regulation at 13 CFR 103.5 sets forth, among other things, the requirement for all Agents to disclose to SBA the compensation received for services provided to an applicant and requires that fees charged must be considered reasonable by SBA. In an effort to clarify what SBA considers reasonable and to prevent applicants from being overcharged by Agents, SBA is modifying this regulation to limit the total fees that an Agent or Agents may charge an applicant in connection with obtaining a CA loan. An Agent or Agents may charge a maximum of up to 2.5% of the CA loan amount, or $7,000, whichever is less.

If an Agent provides more than one service to an applicant (*e.g.,* packaging and referral services), only one fee is permitted for all services performed by the Agent. Further, if more than one Agent (*e.g.,* a Packager and a Referral Agent) provides assistance to the applicant in obtaining the CA loan, the amount of all fees that the applicant is required to pay must be combined to meet the maximum allowable fee set by SBA. (However, a fee charged to the applicant by the CA Lender in accordance with modified 13 CFR 120.221(a), as described above, will not be counted toward the maximum allowable fee for an Agent or Agents.) These maximum limits apply regardless of whether the Agent's fee is based on a percentage of the loan amount or on an hourly basis.

SBA considers a fee of the lesser of 2.5% of the guaranteed loan amount or $7,000 to be reasonable for the services provided by an Agent or Agents to an applicant in connection with obtaining a CA loan. SBA will monitor this fee and, if adjustments are necessary, SBA may revise this amount from time to time by publishing a notice with request for comments in the **Federal Register**.

Finally, SBA is also modifying the last sentence in 13 CFR 103.5(c) to remove the word ''directly.'' This change clarifies that compensation paid by the CA Lender to a Lender Service Provider may not be charged to the applicant, either directly or indirectly.

4. General Information

The changes in this Notice are limited to the CA Pilot Program only. All other SBA guidelines and regulatory waivers or modifications related to the CA Pilot Program remain unchanged. The regulatory waiver and modifications described in this Notice are authorized by 13 CFR 120.3, which provides that the SBA Administrator may suspend, modify or waive rules for a limited period of time to test new programs or ideas. These modifications apply only to loans made under the CA Pilot Program and will last only for the duration of the pilot, which expires September 30, 2022.

SBA has provided more detailed guidance in the form of a Participant Guide which is being updated to reflect these changes and will be available on SBA's website at *http://www.sba.gov.* SBA may provide additional guidance, through SBA notices, which may also be published on SBA's website at *http://www.sba.gov/category/lender-navigation/forms-notices-sops/notices.* Questions regarding the CA Pilot Program may be directed to the Lender Relations Specialist in the local SBA district office. The local SBA district office may be found at *http://www.sba.gov/about-offices-list/2.*

Authority: 15 U.S.C. 636(a)(25) and 13 CFR 120.3.

Dated: September 4, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–19885 Filed 9–11–18; 8:45 am]

BILLING CODE 8025–01–P

[9] Agent is defined in 13 CFR 103.1(a) as an authorized representative, including an attorney, accountant, consultant, packager, lender service provider, or any other person representing an applicant or participant by conducting business with SBA.

[10] Packager is defined in 13 CFR 103.1(e) as an Agent who is employed and compensated by an Applicant or lender to prepare the Applicant's application for financial assistance from SBA. SBA determines whether or not one is a ''Packager'' on a loan-by-loan basis.

[11] Referral Agent is defined in 13 CFR 103.1(f) as a person or entity who identifies and refers an Applicant to a lender or a lender to an Applicant. The Referral Agent may be employed and compensated by either an Applicant or a lender.

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15676 and #15677; Nebraska Disaster Number NE–00072]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Nebraska

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–4387–DR), dated 08/27/2018.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 06/17/2018 through 07/01/2018.

DATES: Issued on 08/27/2018.

Physical Loan Application Deadline Date: 10/26/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 05/27/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/27/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cedar, Colfax, Cuming, Dakota, Dixon, Harlan, Logan, Thomas, Thurston, Wayne

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 156766 and for economic injury is 156770.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–19751 Filed 9–11–18; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 10541]

Certification Pursuant to Sections 7045(a)(3)(A) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018

By virtue of the authority vested in me as the Secretary of State, including pursuant to section 7045(a)(3)(A) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018 (Div. K, Pub. L. 115–141) (SFOAA), I hereby certify that the central government of Guatemala is:

- Informing its citizens of the dangers of the journey to the southwest border of the United States;
- combating human smuggling and trafficking;
- improving border security, including preventing illegal migration, human smuggling and trafficking, and trafficking of illicit drugs and other contraband; and
- cooperating with United States Government agencies and other governments in the region to facilitate the return, repatriation, and reintegration of illegal migrants arriving at the southwest border of the United States who do not qualify for asylum, consistent with international law.

This certification shall be published in the **Federal Register** and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated: August 11, 2018.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2018–19777 Filed 9–11–18; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice: 10540]

Certification Pursuant to Sections 7045(a)(3)(A) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018

By virtue of the authority vested in me as the Secretary of State, including pursuant to section 7045(a)(3)(A) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018 (Div. K, Pub. L. 115–141) (SFOAA), I hereby certify that the central government of El Salvador is:

- Informing its citizens of the dangers of the journey to the southwest border of the United States;
- combatting human smuggling and trafficking;
- improving border security, including preventing illegal migration, human smuggling and trafficking, and trafficking of illicit drugs and other contraband; and
- cooperating with United States Government agencies and other governments in the region to facilitate the return, repatriation, and reintegration of illegal migrants arriving at the southwest border of the United States who do not qualify for asylum, consistent with international law.

This certification shall be published in the **Federal Register** and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated: August 11, 2018.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2018–19776 Filed 9–11–18; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice: 10542]

Certification Pursuant to Sections 7045(a)(3)(A) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018

By virtue of the authority vested in me as the Secretary of State, including pursuant to section 7045(a)(3)(A) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018 (Div. K, Pub. L. 115–141) (SFOAA), I hereby certify that the central government of Honduras is:

- Informing its citizens of the dangers of the journey to the southwest border of the United States;
- combating human smuggling and trafficking;
- improving border security, including preventing illegal migration, human smuggling and trafficking, and trafficking of illicit drugs and other contraband; and
- cooperating with United States Government agencies and other governments in the region to facilitate the return, repatriation, and reintegration of illegal migrants arriving at the southwest border of the United States who do not qualify for asylum, consistent with international law.

This certification shall be published in the **Federal Register** and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated: August 11, 2018.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2018–19775 Filed 9–11–18; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2018–72]

Petition for Exemption; Summary of Petition Received; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 2, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0746 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier*: Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax*: Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy*.

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

FOR FURTHER INFORMATION CONTACT: Mark Forseth, AIR–673, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, phone and fax 206–231–3179, email *mark.forseth@faa.gov;* or Alphonso Pendergrass, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, phone 202–267–4713, email *Alphonso.Pendergrass@faa.gov*.

This notice is published pursuant to 14 CFR 11.85.

Issued in Renton, Washington.

Victor Wicklund,

Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA–2018–0746.

Petitioner: The Boeing Company.

Section(s) of 14 CFR Affected: Special Conditions No. 25–626A–SC.

Description of Relief Sought: The Boeing Company seeks 18 months' relief from the requirements of Special Conditions No. 25–626A–SC, as it relates to dynamic test requirements on the Model 787–9 airplane for single-occupant oblique seats with or without airbags and 3-point restraints.

[FR Doc. 2018–19792 Filed 9–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Funding Opportunity for Positive Train Control Systems Grants Under the Consolidated Rail Infrastructure and Safety Improvements Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Funding Opportunity (NOFO or notice).

SUMMARY: This NOFO details the application procedures and requirements to obtain remaining grant funding for eligible positive train control (PTC) system projects of the Consolidated Rail Infrastructure and Safety Improvements (CRISI) Program as provided by the Consolidated Appropriations Act, 2018, (2018 Appropriation). The funding in this NOFO remains from the 2018 Appropriation after DOT selected applications submitted in response to an initial NOFO for PTC systems deployment published on May 18, 2018. The opportunity described in this notice is made available under Catalog of Federal Domestic Assistance (CFDA) number 20.325, ''Consolidated Rail Infrastructure and Safety Improvements.''

DATES: Applications under this solicitation are due no later than 5 p.m. EDT, October 12, 2018. Applications for funding or supplemental material in support of such an application received after 5 p.m. EDT on October 12, 2018 will not be considered for funding. Incomplete applications will not be considered for funding. See Section D of this notice for additional information on the application process.

ADDRESSES: Applications must be submitted via *www.Grants.gov.* Only applicants who comply with all submission requirements described in this notice and submit applications through *www.Grants.gov* will be eligible for award. For any supporting application materials that an applicant is unable to submit via *www.Grants.gov* (such as oversized engineering drawings), an applicant may submit an original and two (2) copies to Ms. Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are advised to use other means of conveyance (such as courier service) to assure timely receipt of materials before the application deadline.

FOR FURTHER INFORMATION CONTACT: For further information in this notice, please contact Ms. Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590; email: *amy.houser@dot.gov;* phone: 202–493–0303.

SUPPLEMENTARY INFORMATION:

Notice to applicants: FRA recommends that applicants read this notice in its entirety prior to preparing application materials. A list providing the definitions of key terms used throughout the NOFO is in Section A(2) below. These key terms are capitalized throughout the NOFO. There are several administrative prerequisites and specific eligibility requirements described herein that applicants must comply with to submit an application. Additionally, applicants should note that the required Project Narrative component of the application package may not exceed 25 pages in length.

Table of Contents

A. Program Description

1. Overview

The purpose of this notice is to solicit applications for competitive PTC system project funding authorized under Section 11301 of the Fixing America's Surface Transportation (FAST) Act, Public Law 114–94 (2015); 49 U.S.C. 24407 and funded in the 2018 Appropriation. Together with the FAST Act, the 2018 Appropriation provides funding made available under this NOFO to fund the deployment of PTC system technology for Intercity Passenger Rail Transportation, freight rail transportation and/or Commuter Rail Passenger Transportation. Projects selected under this NOFO for Commuter Rail Passenger Transportation may be transferred to the Federal Transit Administration for grant administration. Projects selected for Intercity Passenger Rail Transportation and freight rail transportation will be administered by the FRA.

A railroad must fully implement a PTC system on all required route miles by December 31, 2018, unless a railroad qualifies for and obtains FRA approval

of an alternative schedule (*i.e.,* a deadline no later than December 31, 2020) under the Positive Train Control Enforcement and Implementation Act of 2015 (PTCEI Act). The PTCEI Act authorizes, and requires, FRA to approve a railroad's alternative schedule only if the railroad demonstrates in a written notification that it has met all statutory criteria for an alternative schedule, including that it has: (1) Installed, by December 31, 2018, all PTC system hardware consistent with the governing PTC Implementation Plan (PTCIP); (2) acquired, by December 31, 2018, all spectrum necessary to implement its PTC system consistent with the governing PTCIP, and (3) made sufficient progress on employee training, revenue service demonstration, and other criteria as specified under 49 U.S.C. 20157(a)(3)(B)(i)–(vii).

2. Definitions of Key Terms

a. ''Benefit-Cost Analysis'' (''BCA'' or ''Cost-Benefit Analysis'') is a systematic, data driven, and transparent analysis comparing monetized project benefits and costs, using a no-build baseline and properly discounted present values, including concise documentation of the assumptions and methodology used to produce the analysis; a description of the baseline, data sources used to project outcomes, and values of key input parameters; basis of modeling including spreadsheets, technical memos, etc.; and presentation of the calculations in sufficient detail and transparency to allow the analysis to be reproduced and sensitivity of results evaluated by FRA. Please refer to the Benefit-Cost Analysis Guidance for Discretionary Grant Programs prior to preparing a BCA at *https://www.transportation.gov/office-policy/transportation-policy/benefit-cost-analysis-guidance.* In addition, please also refer to the BCA FAQs on FRA's website for some rail specific examples of how to apply the BCA Guidance for Discretionary Grant Programs to CRISI applications.

b. ''Commuter Rail Passenger Transportation'' means short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple ride, and commuter tickets and morning and evening peak period operations. See 49 U.S.C. 24102(3).

c. ''Construction'' means the production of fixed works and structures or substantial alterations to such structures or land and associated costs.

d. ''Final Design'' (''FD'') means design activities following Preliminary Engineering, and at a minimum, includes the preparation of final Construction plans, detailed specifications, and estimates sufficiently detailed to inform project stakeholders (designers, reviewers, contractors, suppliers, etc.) of the actions required to advance the project from design through completion of Construction.

e. ''Intercity Rail Passenger Transportation'' means rail passenger transportation, except Commuter Rail Passenger Transportation. See 49 U.S.C. 24401(3). In this notice, ''Intercity Passenger Rail Service'' and ''Intercity Passenger Rail Transportation'' are equivalent terms to ''Intercity Rail Passenger Transportation.''

f. ''National Environmental Policy Act'' (''NEPA'') is a Federal law that requires Federal agencies to assess the environmental impacts of a proposed action in consultation with appropriate federal, state, and local authorities, and with the public. The NEPA class of action depends on the nature of the proposed action, its complexity, and the potential impacts. For purposes of this NOFO, NEPA also includes all related Federal laws and regulations including Section 4(f) of the Department of Transportation Act, Section 7 of the Endangered Species Act, and Section 106 of the National Historic Preservation Act. (See FRA's Environmental Procedures at: *https://www.fra.dot.gov/eLib/details/L02561.*)

g. ''Positive Train Control system'' (''PTC system'') is defined by 49 CFR 270.5 to mean a system designed to prevent train-to-train collisions, overspeed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position, as described in 49 CFR part 236, subpart I.

h. ''Preliminary Engineering'' (''PE'') means engineering design to: (1) Define a project, including identification of all environmental impacts, design of all critical project elements at a level sufficient to assure reliable cost estimates and schedules, (2) complete project management and financial plans, and (3) identify procurement requirements and strategies. The PE development process starts with specific project design alternatives that allow for the assessment of a range of rail improvements, specific alignments, and project designs—to be used concurrent with NEPA and related analyses. PE occurs prior to FD and Construction.

i. ''Rail Carrier'' means a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation. See 49 U.S.C. 10102(5).

j. ''Rural Project'' means a project in which all or the majority of the project (determined by the geographic location or locations where the majority of the project funds will be spent) is located in a Rural Area.

k. ''Rural Area'' is defined in 49 U.S.C. 24407(g)(2) to mean any area not in an urbanized area as defined by the Census Bureau. The Census Bureau defines ''Urbanized Area'' (''UA'') as an area with a population of 50,000 or more people.[1] Updated lists of UAs as defined by the Census Bureau are available on the Census Bureau website at *http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/.*

B. Federal Award Information

1. Available Award Amount

The total funding available for awards under this NOFO is $46,301,702 for eligible PTC system projects under 49 U.S.C. 24407(c)(1). Should FRA identify additional funding available under the 2018 Appropriation after the release of this NOFO, FRA may elect to award such additional funds to projects submitted under this NOFO. At least 25 percent of CRISI funding made available in the 2018 Appropriation will be available for Rural Projects as required in 49 U.S.C. 24407(g).

2. Award Size

There are no predetermined minimum or maximum dollar thresholds for awards. FRA anticipates making multiple awards with the available funding. FRA may not be able to award grants to all eligible applications, nor even to all applications that meet or exceed the stated evaluation criteria (see Section E, Application Review Information). Projects may require more funding than is available. FRA encourages applicants to propose projects or components of projects that have operational independence that can be completed and implemented with the level of funding available together with other sources.

FRA strongly encourages applicants to identify and include other state, local, public, or private funding or financing to support the proposed project.

3. Award Type

FRA will make awards for projects selected under this notice through grant agreements and/or cooperative agreements. Grant agreements are used when FRA does not expect to have

[1] See 74 FR 53030, 53043 (August 24, 2011) available at *https://www2.census.gov/geo/pdfs/reference/fedreg/fedregv76n164.pdf*

substantial Federal involvement in carrying out the funded activity. Cooperative agreements allow for substantial Federal involvement in carrying out the agreed upon investment, including technical assistance, review of interim work products, and increased program oversight. The funding provided under these grant agreements and cooperative agreements will be made available to recipients on a reimbursable basis. Applicants must certify that their expenditures are allowable, allocable, reasonable, and necessary to the approved project before seeking reimbursement from FRA. Additionally, the recipient is expected to expend matching funds at the required percentage alongside Federal funds throughout the life of the project. See an example of standard terms and conditions for FRA grant awards at: *https://www.fra.dot.gov/eLib/Details/L19057.*

4. Concurrent Applications

As DOT and FRA are concurrently soliciting applications for transportation infrastructure projects for several financial assistance programs, applicants may submit applications requesting funding for a particular project to one or more of these programs. In the application for PTC system project funding, applicants must indicate the other programs to which they submitted or plan to submit an application for funding the entire project or certain project components, as well as highlight new or revised information in the PTC system project application that differs from the application(s) for other federal financial assistance programs.

C. Eligibility Information

This section of the notice explains applicant eligibility, cost sharing and matching requirements, project eligibility, and project component operational independence. Applications that do not meet the requirements in this section will be ineligible for funding. Instructions for submitting eligibility information to FRA are detailed in Section D of this NOFO.

1. Eligible Applicants

The following entities are eligible applicants:

a. A State;

b. A group of States;

c. An Interstate Compact;

d. A public agency or publicly chartered authority established by one or more States; [2]

e. A political subdivision of a State;

f. Amtrak or another Rail Carrier that provides Intercity Rail Passenger Transportation (as defined in 49 U.S.C. 24102);

g. A Class II railroad or Class III railroad (as those terms are defined in 49 U.S.C. 20102);

h. Any Rail Carrier or rail equipment manufacturer in partnership with at least one of the entities described in paragraph (a) through (e);

i. The Transportation Research Board together with any entity with which it contracts in the development of rail-related research, including cooperative research programs;

j. A University transportation center engaged in rail-related research; or

k. A non-profit labor organization representing a class or craft of employees of Rail Carriers or Rail Carrier contractors.

Applications must identify an eligible applicant as the lead applicant. The lead applicant serves as the primary point of contact for the application, and if selected, as the recipient of the PTC system grant award. Eligible applicants may reference entities that are not eligible applicants in an application as a project partner.

2. Cost Sharing or Matching

The Federal share of total costs for projects funded under this notice will not exceed 80 percent, though FRA will provide selection preference to applications where the proposed Federal share of total project costs is 50 percent or less. The estimated total cost of a project must be based on the best available information, including engineering studies, studies of economic feasibility, environmental analyses, and information on the expected use of equipment and/or facilities. Additionally, in preparing estimates of total project costs, applicants should refer to FRA's cost estimate guidance documentation, ''Capital Cost Estimating: Guidance for Project Sponsors,'' which is available at: *https://www.fra.dot.gov/Page/P0926.*

The minimum 20 percent non-Federal match may be comprised of public sector (*e.g.,* state or local) and/or private sector funding. FRA will not consider any Federal financial assistance, nor any non-Federal funds already expended (or otherwise encumbered) that do not comply with 2 CFR 200.458 toward the matching requirement. FRA is limiting the first 20 percent of the non-Federal match to cash contributions only. FRA will not accept ''in-kind'' contributions for the first 20 percent in matching funds. Eligible in-kind contributions may be accepted for any non-Federal matching beyond the first 20 percent. In-kind contributions, including the donation of services, materials, and equipment, may be credited as a project cost, in a uniform manner consistent with 2 CFR 200.306.

Amtrak or another Rail Carrier may use ticket and other non-Federal revenues generated from its operations and other sources as matching funds. Applicants must identify the source(s) of its matching and other funds, and must clearly and distinctly reflect these funds as part of the total project cost.

Before applying, applicants should carefully review the principles for cost sharing or matching in 2 CFR 200.306. See Section D(2)(a)(iii) for required application information on non-Federal match and Section E for further discussion of FRA's consideration of matching funds in the review and selection process. FRA may approve pre-award costs for reimbursement and matching contributions consistent with 2 CFR 200.458, as applicable. See Section D(6).

3. Other

a. Project Eligibility

Projects eligible for funding under this NOFO must be used to deploy PTC systems technology for Intercity Passenger Rail Transportation, freight rail transportation, and/or Commuter Rail Passenger Transportation. Eligible projects include: Back office systems; wayside, communications and onboard hardware equipment; software; equipment installation; spectrum; any component, testing and training for the implementation of PTC systems; and interoperability. Maintenance and operating expenses incurred after a PTC system is placed in revenue service are ineligible. Applicants considering more comprehensive projects that include both PTC elements and other passenger/freight improvements are directed to request only the PTC element under this NOFO or submit applications for the more comprehensive project under the subsequent NOFO, which FRA will soon be issuing for the remainder of the 2018 CRISI funding. Applicants are not limited in the number of projects for which they seek funding.

Applicants must complete all necessary Planning, PE and NEPA requirements for projects funded under this NOFO. Projects for FD must:

[2] See Section D(2)(a)(iv) for supporting documentation required to demonstrate eligibility under this eligibility category.

Resolve remaining uncertainties or risks associated with changes to design scope; address procurement processes; and update and refine plans for financing the project or program to reflect accurately the expected year-of-expenditure costs and cash flow projections. Applicants selected for funding under this NOFO must demonstrate the following to FRA's satisfaction:

i. PE is completed for the proposed project, resulting in project designs that are reasonably expected to conform to all regulatory, safety, security, and other design requirements, including those under the Americans with Disabilities Act (ADA);

ii. NEPA is completed for the proposed project;

iii. Signed agreements with key project partners, including infrastructure-owning entities; and

iv. A project management plan is in-place for managing the implementation of the proposed project, including the management and mitigation of project risks.

b. Project Component Operational Independence

If an applicant requests funding for a project that is a component or set of components of a larger project, the project component(s) must be attainable with the award amount, together with other funds as necessary, obtain operational independence, and must comply with all eligibility requirements described in Section C.

In addition, the component(s) must be capable of independent analysis and decision making, as determined by FRA, under NEPA (*i.e.,* have independent utility, connect logical termini, if applicable, and not restrict the consideration of alternatives for other reasonably foreseeable rail projects.)

c. Rural Project

FRA will consider a project to be in a Rural Area if all or the majority of the project (determined by geographic location(s) where the majority of the project funds will be spent) is located in a Rural Area. However, in the event FRA elects to fund a component of the project, then FRA will reexamine whether the project is in a Rural Area.

D. Application and Submission Information

Required documents for the application are outlined in the following paragraphs. Applicants must complete and submit all components of the application. See Section D(2) for the application checklist. FRA welcomes the submission of additional relevant supporting documentation, such as planning, engineering and design documentation, and letters of support from partnering organizations that will not count against the Project Narrative 25-page limit.

1. Address To Request Application Package

Applicants must submit all application materials for PTC system projects in their entirety through *www.Grants.gov* no later than 5:00 p.m. EDT, on October 12, 2018. FRA reserves the right to modify this deadline. General information for submitting applications through *Grants.gov* can be found at: *https://www.fra.dot.gov/Page/P0270.*

For any supporting application materials that an applicant cannot submit via *Grants.gov*, such as oversized engineering drawings, an applicant may submit an original and two (2) copies to Ms. Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, FRA advises applicants to use other means of conveyance (such as courier service) to assure timely receipt of materials before the application deadline. Additionally, if documents can be obtained online, providing instructions to FRA on how to access files on a referenced website may also be sufficient.

2. Content and Form of Application Submission

FRA strongly advises applicants to read this section carefully. Applicants must submit all required information and components of the application package to be considered for funding. Additionally, applicants selected to receive funding must generally satisfy the grant readiness checklist requirements on *https://www.fra.dot.gov/Page/P0268* as a precondition to FRA issuing a grant award, as well as the requirements in 49 U.S.C. 24405 explained in part at *https://www.fra.dot.gov/page/P0185.* If a project is selected for PTC systems in Commuter Rail Passenger Transportation under 49 U.S.C. 24407(c)(1) and such funds are transferred in the Secretary's discretion, applicants will be required to comply with chapter 53 of Title 49 of the United States Code.

Required documents for an application package are outlined in the checklist below.

i. Project Narrative (see D.2.a)
ii. Statement of Work (see D.2.b.i)
iii. Benefit-Cost Analysis (see D.2.b.ii)
iv. SF424—Application for Federal Assistance
v. Either: SF 424A—Budget Information for Non-Construction projects or SF 424C—Budget Information for Construction
vi. Either: SF 424B—Assurances for Non-Construction projects or SF 424D—Assurances for Construction
vii. FRA's Additional Assurances and Certifications
viii. SF LLL—Disclosure of Lobbying Activities

a. Project Narrative

This section describes the minimum content required in the Project Narrative of the grant application. The Project Narrative must follow the basic outline below to address the program requirements and assist evaluators in locating relevant information.

I. Cover Page	See D.2.a.i.
II. Project Summary	See D.2.a.ii.
III. Project Funding	See D.2.a.iii.
IV. Applicant Eligibility	See D.2.a.iv.
V. Project Eligibility	See D.2.a.v.
VI. Detailed Project Description	See D.2.a.vi.
VII. Project Location	See D.2.a.vii.
VIII. Evaluation and Selection Criteria	See D.2.a.viii.
IX. Project Implementation and Management	See D.2.a.ix.
X. PTC Readiness	See D.2.a.x.
XI. Environmental Readiness	See D.2.a.xi.

The above content must be provided in a narrative statement submitted by the applicant. The Project Narrative may not exceed 25 pages in length (excluding cover pages, table of contents, and supporting

documentation). FRA will not review or consider for award applications with Project Narratives exceeding the 25-page limitation. If possible, applicants should submit supporting documents via website links rather than hard copies. If supporting documents are submitted, applicants must clearly identify the page number(s) of the relevant portion in the Project Narrative supporting documentation. The Project Narrative must adhere to the following outline.

i. *Cover Page:* Include a cover page that lists the following elements in a table:

Project Title.	
Lead applicant.	
Was a Federal grant application previously submitted for this project?	Yes/no.
If yes, state the name of the Federal grant program and title of the project in the previous application	Federal Grant Program: Project Title:
Is this a Rural Project? What percentage of the project cost is based in a Rural Area?	Yes/no. Percentage of total project cost:
City(ies), State(s) where the project is located.	
Urbanized Area where the project is located.	
Population of Urbanized Area.	

ii. *Project Summary:* Provide a brief 4–6 sentence summary of the proposed project and what the project will entail. Include challenges the proposed project aims to address, and summarize the intended outcomes and anticipated benefits that will result from the proposed project.

iii. *Project Funding:* Indicate in table format the amount of Federal funding requested, the proposed non-Federal match, identifying contributions from the private sector if applicable, and total project cost. Describe the non-Federal funding arrangement. Include funding commitment letters outlining funding agreements, as attachments or in an appendix. Identify any specific project components that the applicant proposes for partial project funding. If all or a majority of a project is located in a Rural Area, identify the Rural Area(s) and estimated percentage of project costs that will be spent in the Rural Area. Identify any previously incurred costs, as well as other sources of Federal funds committed to the project and any pending Federal requests. Also, note if the requested Federal funding under this NOFO or other programs must be obligated or spent by a certain date due to dependencies or relationships with other Federal or non-Federal funding sources, related projects, law, or other factors. If applicable, provide the type and estimated value of any proposed in-kind contributions, and demonstrate how the in-kind contributions meet the requirements in 2 CFR 200.306.

Example Project Funding Table:

Task No.	Task name/project component	Cost	Percentage of total cost
1			
2			
Total Project Cost			
Federal Funds Received from Previous Grant			
Federal Funding Request			
Non-Federal Funding/Match		Cash: In-Kind:	
Portion of Non-Federal Funding from the Private Sector			
Portion of Total Project Costs Spent in a Rural Area			
Pending Federal Funding Requests			

iv. *Applicant Eligibility:* Explain how the applicant meets the applicant eligibility criteria outlined in Section C of this notice, including references to creation or enabling legislation for public agencies and publicly chartered authorities established by one or more States.

v. *Project Eligibility:* Explain how the project meets the project eligibility criteria.

vi. *Detailed Project Description:* Include a detailed project description that expands upon the brief project summary. This detailed description should provide, at a minimum, background on the challenges the project aims to address; the expected users and beneficiaries of the project, including all railroad operators; the specific components and elements of the project; and any other information the applicant deems necessary to justify the proposed project. If applicable, explain how the project will benefit communities in Rural Areas. Applicants must also:

(A) Document submission of a revised Positive Train Control Implementation Plan (PTCIP) to FRA as required by 49 U.S.C. 20157(a);

(B) Document that it is a tenant on one or more host railroads that submitted a revised PTCIP to FRA as required by 49 U.S.C. 20157(a), which states the tenant railroad is equipping its rolling stock with a PTC system and provides all other information required under 49 CFR 236.1011 regarding the tenant railroad; or

(C) Document why the applicant is not required to submit a revised PTCIP as required by 49 U.S.C. 20157(a), and whether the proposed project will assist in the deployment (*i.e.,* installation and/or full implementation) of a PTC system required under 49 U.S.C. 20157.

For all projects, applicants must provide information about proposed performance measures, as discussed in Section F(3)(c) and required in 2 CFR 200.301 and 49 U.S.C. 24407(f).

vii. *Project Location:* Include geospatial data for the project, as well as a map of the project's location. On the map, include the Rural Area boundaries, if applicable, in which the project will take place.

viii. *Evaluation and Selection Criteria:* Include a thorough discussion of how the proposed project meets all the evaluation criteria and selection criteria, as outlined in Section E of this notice. If an application does not sufficiently address the evaluation and selection criteria, it is unlikely to be a competitive application.

ix. *Project Implementation and Management:* Describe proposed project implementation and project management arrangements. Include descriptions of the expected arrangements for project contracting, contract oversight, change-order management, risk management, and conformance to Federal requirements for project progress reporting (see *https://www.fra.dot.gov/Page/P0274*). Describe past experience in managing and overseeing similar projects.

x. *PTC Readiness:* If the railroad is subject to the statutory PTC mandate or if the railroad is a tenant railroad that operates on PTC-equipped territory and must equip its locomotives and other controlling rolling stock under 49 CFR 236.1006(a), provide a brief summary about the railroad's current progress toward fully implementing a PTC system under 49 CFR part 236, subpart I. For such railroads and for any other railroad, provide information about the railroad's progress towards completing all hardware installation required for implementation of a PTC system, testing the PTC system (including field testing and revenue service demonstration), training personnel under 49 CFR 236.1041–236.1049, conducting interoperability testing with any other railroads that operate on the same main line, and operating an FRA-certified PTC system in revenue service. In addition, and if applicable, applicants may refer to their most recent Quarterly PTC Progress Report (FRA Form F 6180.165) to provide additional details.

xi. *Environmental Readiness:* If the NEPA process is complete, an applicant should indicate the date of completion, and provide a website link or other reference to the documents demonstrating compliance with NEPA, which might include a final CE, Finding of No Significant Impact, or Record of Decision. If the NEPA process is not yet underway or is underway, but is not complete, the application should detail the type of NEPA review underway, where the project is in the process, and indicate the anticipated date of completion of all NEPA and related milestones. If the last agency action with respect to NEPA documents occurred more than three years before the application date, the applicant should describe why the project has been delayed and include a proposed approach for verifying, and if necessary, updating this information in accordance with applicable NEPA requirements. Additional information regarding FRA's environmental processes and requirements are located at *https://www.fra.dot.gov/eLib/Details/L05286*.

b. Additional Application Elements

Applicants must submit:

i. A Statement of Work (SOW) addressing the scope, schedule, and budget for the proposed project if it were selected for award. The SOW must contain sufficient detail so FRA, and the applicant, can understand the expected outcomes of the proposed work to be performed and monitor progress toward completing project tasks and deliverables during a prospective grant's period of performance. Applicants must use FRA's standard SOW template to be considered for award. The SOW template is located at *https://www.fra.dot.gov/eLib/Details/L18661*. When preparing the budget as part of the SOW, the total cost of a project must be based on the best available information as indicated in cited references that include engineering studies, studies of economic feasibility, environmental analyses, and information on the expected use of equipment or facilities.

ii. A Benefit-Cost Analysis (BCA), as an appendix to the Project Narrative for each project submitted by an applicant. The BCA must demonstrate in economic terms the merits of investing in the proposed project. The project narrative should summarize the project's benefits.

Benefits may apply to existing and new rail users, as well as users of other modes of transportation. In some cases, benefits may be applied to populations in the general vicinity of the project area. Improvements to shared-use rail corridors may benefit all users involved. All benefits claimed for the project must be clearly tied to the expected outcomes of the project. Please refer to the Benefit-Cost Analysis Guidance for Discretionary Grant Programs prior to preparing a BCA at *https://www.transportation.gov/office-policy/transportation-policy/benefit-cost-analysis-guidance*. In addition, please also refer to the BCA FAQs on FRA's website for some rail specific examples of how to apply the Benefit-Cost Analysis Guidance for Discretionary Grant Programs to CRISI applications.

iii. SF 424—Application for Federal Assistance;

iv. SF 424A—Budget Information for Non-Construction or SF 424C—Budget Information for Construction;

v. SF 424B—Assurances for Non-Construction or SF 424D—Assurances for Construction;

vi. FRA's Additional Assurances and Certifications; and

vii. SF LLL—Disclosure of Lobbying Activities.

Forms needed for the electronic application process are at *www.Grants.gov.*

c. Post-Selection Requirements

See subsection F(2) of this notice for post-selection requirements.

3. Unique Entity Identifier, System for Award Management (SAM), and Submission Instructions

To apply for funding through *Grants.gov*, applicants must be properly registered. Complete instructions on how to register and submit an application can be found at *www.Grants.gov*. Registering with *Grants.gov* is a one-time process; however, it can take up to several weeks for first-time registrants to receive confirmation and a user password. FRA recommends that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application package by the application deadline. Applications will not be accepted after the due date. Delayed registration is not an acceptable justification for an application extension.

FRA may not make a grant award to an applicant until the applicant has complied with all applicable Data Universal Numbering System (DUNS) and SAM requirements. (Please note that if a Dun & Bradstreet DUNS number must be obtained or renewed, this may take a significant amount of time to complete.) Late applications that are the result of a failure to register or comply with *Grants.gov* applicant requirements in a timely manner will not be considered. If an applicant has not fully complied with the requirements by the submission deadline, the application will not be considered. To submit an application through *Grants.gov*, applicants must:

a. Obtain a DUNS Number

A DUNS number is required for *Grants.gov* registration. The Office of Management and Budget requires that all businesses and nonprofit applicants for Federal funds include a DUNS number in their applications for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for the government in identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, recipients, and sub-recipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity. Applicants may obtain a DUNS number by calling 1–866–705–5711 or by applying online at *http://www.dnb.com/us.*

b. Register With the SAM at *www.SAM.gov*

All applicants for Federal financial assistance must maintain current registrations in the SAM database. An applicant must be registered in SAM to successfully register in *Grants.gov*. The SAM database is the repository for standard information about Federal financial assistance applicants, recipients, and sub recipients. Organizations that have previously submitted applications via *Grants.gov* are already registered with SAM, as it is a requirement for *Grants.gov* registration. Please note, however, that applicants must update or renew their SAM registration at least once per year to maintain an active status. Therefore, it is critical to check registration status well in advance of the application deadline. If an applicant is selected for an award, the applicant must maintain an active SAM registration with current information throughout the period of the award. Information about SAM registration procedures is available at *www.sam.gov.*

c. Create a *Grants.gov* Username and Password

Applicants must complete an Authorized Organization Representative (AOR) profile on *www.Grants.gov* and create a username and password. Applicants must use the organization's DUNS number to complete this step. Additional information about the registration process is available at: *https://www.grants.gov/web/grants/applicants/organization-registration.html.*

d. Acquire Authorization for Your AOR From the E-Business Point of Contact (E-Biz POC)

The E-Biz POC at the applicant's organization must respond to the registration email from *Grants.gov* and login at *www.Grants.gov* to authorize the applicant as the AOR. Please note there can be more than one AOR for an organization.

e. Submit an Application Addressing All Requirements Outlined in This NOFO

If an applicant experiences difficulties at any point during this process, please call the *Grants.gov* Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and instructions on each of these processes, please see instructions at: *http://www.grants.gov/web/grants/applicants/apply-for-grants.html.*

Note: Please use generally accepted formats such as .pdf, .doc, .docx, .xls, .xlsx and .ppt, when uploading attachments. While applicants may embed picture files, such as .jpg, .gif, and .bmp, in document files, applicants should not submit attachments in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

4. Submission Dates and Times

Applicants must submit complete applications for PTC system projects to *www.Grants.gov* no later than 5:00 p.m. EDT, October 12, 2018. FRA reviews *www.Grants.gov* information on dates/times of applications submitted to determine timeliness of submissions. Late applications will be neither reviewed nor considered. Delayed registration is not an acceptable reason for late submission. In order to apply for funding under this announcement, all applicants are expected to be registered as an organization with *Grants.gov*. Applicants are strongly encouraged to apply early to ensure all materials are received before this deadline.

To ensure a fair competition of limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the *Grants.gov* registration process before the deadline; (2) failure to follow *Grants.gov* instructions on how to register and apply as posted on its website; (3) failure to follow all instructions in this NOFO; and (4) technical issues experienced with the applicant's computer or information technology environment.

5. Intergovernmental Review

Executive Order 12372 requires applicants from State and local units of government or other organizations providing services within a State to submit a copy of the application to the State Single Point of Contact (SPOC), if one exists, and if this program has been selected for review by the State. Applicants must contact their State SPOC to determine if the program has been selected for State review.

6. Funding Restrictions

Consistent with 2 CFR 200.458, as applicable, FRA will only approve pre-award costs if such costs are incurred pursuant to the negotiation and in anticipation of the grant agreement and if such costs are necessary for efficient and timely performance of the scope of work. Under 2 CFR 200.458, grant recipients must seek written approval from the administering agency for pre-award activities to be eligible for reimbursement under the grant. Activities initiated prior to the execution of a grant or without written approval are not eligible for reimbursement and will not be counted toward a recipient's matching contribution.

7. Other Submission Requirements

If an applicant experiences difficulties at any point during this process, please call the *Grants.gov* Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and instructions on each of these processes, please see instructions at: *http://www.grants.gov/web/grants/applicants/apply-for-grants.html.*

E. Application Review Information

1. Criteria

a. Eligibility and Completeness Review

FRA will first screen each application for applicant and project eligibility (eligibility requirements are outlined in Section C of this notice), completeness (application documentation and submission requirements are outlined in Section D of this notice), and the 20 percent minimum match in determining whether the application is eligible.

FRA will then consider the applicant's past performance in developing and delivering similar projects and previous financial contributions, and previous competitive grant technical evaluation ratings that the proposed project received under previous competitive grant programs administered by the DOT if applicable.

b. Evaluation Criteria

FRA subject-matter experts will evaluate all eligible and complete applications using the evaluation criteria outlined in this section to determine project benefits and technical merit.

i. Project Benefits: FRA will evaluate the Benefit-Cost Analysis of the proposed project for the anticipated private and public benefits relative to the costs of the proposed project and the summary of benefits provided in response to subsection D(2)(a)(ii) including—

(A) Effects on system and service performance;

(B) Effects on safety, competitiveness, reliability, trip or transit time, and resilience;

(C) Efficiencies from improved integration with other modes; and

(D) Ability to meet existing or anticipated demand.

ii. Technical Merit: FRA will evaluate application information for the degree to which—

(A) The tasks and subtasks outlined in the SOW are appropriate to achieve the expected outcomes of the proposed project.

(B) Applications indicate strong project readiness and meet project requirements.

(C) The technical qualifications and experience of key personnel proposed to lead and perform the technical efforts, and the qualifications of the primary and supporting organizations to fully and successfully execute the proposed project within the proposed timeframe and budget are demonstrated.

(D) The proposed project's business plan considers potential private sector participation in the financing, construction, or operation of the proposed project.

(E) The applicant has, or will have the legal, financial, and technical capacity to carry out the proposed project; satisfactory continuing control over the use of the equipment or facilities; and the capability and willingness to maintain the equipment or facilities.

(F) If applicable, the proposed project is consistent with planning guidance and documents set forth by DOT, including those required by law or State rail plans developed under Title 49, United States Code, Chapter 227.

c. Selection Criteria

In addition to the eligibility and completeness review and the evaluation criteria outlined in this subsection, the FRA Administrator will select projects applying the following selection criteria:

i. The FRA Administrator will give preference to projects for which the:

(A) Proposed Federal share of total project costs is 50 percent or less; and

(B) Net benefits of the grant funds will be maximized considering the BCA, including anticipated private and public benefits relative to the costs of the proposed project, and factoring in the other considerations in 49 U.S.C. 24407(e).

ii. After applying the above preferences, the FRA Administrator will take into account the following key Departmental objectives:

(A) Supporting economic vitality at the national and regional level;

(B) Leveraging Federal funding to attract other, non-Federal sources of infrastructure investment, as well as accounting for the life-cycle costs of the project;

(C) Using innovative approaches to improve safety and expedite project delivery; and,

(D) Holding grant recipients accountable for their performance and achieving specific, measurable outcomes identified by grant applicants.

2. Review and Selection Process

FRA will conduct a three-part application review process, as follows:

a. Screen applications for completeness and eligibility;

b. Evaluate eligible applications (completed by technical panels applying the evaluation criteria); and

c. Select projects for funding (completed by the FRA Administrator applying the selection criteria).

Prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, FRA is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313). An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM. FRA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.205.

F. Federal Award Administration Information

1. Federal Award Notice

FRA will announce applications selected for funding in a press release and on the FRA website after the application review periods. FRA will contact applicants with successful applications after announcement with information and instructions about the award process. This notification is not an authorization to begin proposed project activities. A formal cooperative agreement or grant agreement signed by both the recipient and the FRA, including an approved scope, schedule, and budget, is required before the award is obligated and complete.

For all projects, obligation occurs when a selected applicant and FRA enter a written project specific cooperative agreement or grant agreement and is after the applicant has satisfied applicable requirements. For FD/Construction projects, these requirements may include transportation planning, PE and environmental reviews.

2. Administrative and National Policy Requirements

Due to funding limitations, projects that are selected for funding may receive less than the amount originally requested. In those cases, applicants must be able to demonstrate the proposed projects are still viable and can be completed with the amount awarded.

Recipients and entities receiving funding from the recipient, must comply with all applicable laws and regulations. Examples of administrative and national policy requirements include: 2 CFR part 200; procurement standards; compliance with Federal civil rights laws and regulations; requirements for disadvantaged business enterprises, debarment and suspension requirements, and drug-free workplace requirements; FRA's and OMB's Assurances and Certifications; Americans with Disabilities Act; safety requirements including those applicable to PTC projects; NEPA; environmental justice requirements; performance measures under 49 U.S.C. 24407(f); 49 U.S.C. 24405, including the Buy America requirements and the provision deeming operators rail carriers and employers for certain purposes. Grants for PTC system projects selected under 49 U.S.C. 24407(c)(1) for Commuter Rail Passenger Transportation, if transferred to FTA, must comply with the requirements of chapter 53 of Title 49.

See an example of standard terms and conditions for FRA grant awards at

https://www.fra.dot.gov/eLib/Details/L19057.

3. Reporting

a. Progress Reporting on Grant Activity

Each applicant selected for a grant will be required to comply with all standard FRA reporting requirements, including quarterly progress reports, quarterly Federal financial reports, and interim and final performance reports, as well as all applicable auditing, monitoring and close out requirements. Reports may be submitted electronically.

b. Performance Reporting

Each applicant selected for funding must collect information and report on the project's performance using measures mutually agreed upon by FRA and the recipient to assess progress in achieving strategic goals and objectives.

G. Federal Awarding Agency Contacts

For further information regarding this notice and the grants program, please contact Ms. Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590; email: *amy.houser@dot.gov;* phone: 202–493–0303.

H. Other Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that is accepted by industry practice and standards, to the extent possible. If the application includes information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI)''; (2) mark each affected page ''CBI''; and (3) highlight or otherwise denote the CBI portions.

DOT protects such information from disclosure to the extent allowed under applicable law. In the event DOT receives a Freedom of Information Act (FOIA) request for the information, DOT will follow the procedures described in its FOIA regulations at 49 CFR 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

Issued in Washington, DC.

Ronald Louis Batory,

Administrator.

[FR Doc. 2018–19740 Filed 9–11–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Pilot Program for Expedited Project Delivery

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice; request for expressions of interest to participate.

SUMMARY: The Federal Transit Administration (FTA) is soliciting expressions of interest for the Expedited Project Delivery Pilot Program (Pilot Program) authorized by the Fixing America's Surface Transportation Act (FAST). The Pilot Program is aimed at expediting delivery of new fixed guideway capital projects, small starts projects, or core capacity improvement projects that utilize public-private partnerships, are planned to be operated and maintained by employees of an existing public transportation provider, and have a Federal share not exceeding 25 percent of the project cost. It is also aimed at increasing innovation, improving efficiency and timeliness of project implementation, and encouraging new revenue streams. The law specifies that not more than eight projects can be awarded grants under the Pilot Program. FTA intends to work with selected project sponsors to further define the steps that must be completed before a construction grant can be awarded under the Pilot Program, including expedited FTA reviews of technical capacity, local financial commitment, and project justification. This announcement is available on the FTA's website at: *www.transit.dot.gov/funding/grants/expedited-project-delivery-capital-investment-grants-pilot-3005b.*

DATES: Expressions of interest to become one of the participants in the Pilot Program for Expedited Project Delivery must be submitted to FTA by mail, email or facsimile by 11:59 p.m. EDT November 13, 2018.

ADDRESSES: Mail submission must be addressed to the Office of Planning and Environment, Federal Transit Administration, 1200 New Jersey Avenue SE, Room E45–119, Washington, DC 20590 and postmarked no later than November 13, 2018. Email submissions must be sent to *ExpeditedProjectDelivery@dot.gov* by 11:59 p.m. EDT on November 13, 2018. Facsimile submissions must be submitted to the attention of Expedited Project Delivery Pilot Program at 202–493–2478 by 11:59 p.m. EDT ON November 13, 2018. If there are insufficient candidate projects that FTA determines meet the requirements of the Pilot Program, FTA may conduct additional requests for expressions of interest in the future.

FOR FURTHER INFORMATION CONTACT: Susan Eddy, FTA Office of Planning and Environment, telephone (202) 366–5499 or email *Susan.Eddy@dot.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

FTA, together with its transit industry partners, invests billions of dollars in capital projects designed to improve public transportation by reinvesting in existing assets to expand capacity or by increasing the extent and quality of public transportation service by making new investments. These projects take considerable time to plan, develop, design, approve, and deploy. While it is important for FTA to ensure that it selects only well-conceived projects that are implemented in the most efficient and effective manner, a lengthy process delays the delivery of the intended benefits to the riding public.

2. Pilot Program

Section 3005(b) of the FAST Act, Public Law 114–94 (December 4, 2015), authorizes the Pilot Program for FTA to make not more than eight grants for new fixed guideway capital projects, small starts projects, or core capacity improvement projects that have not yet entered a construction grant agreement with the FTA. The law defines these types of eligible projects for the Pilot Program in a manner similar to, but not entirely the same as, the CIG program. Thus, FTA encourages project sponsors to review closely the definitions found in Section 3005(b) to ensure the project's eligibility.

Eligible applicants to the Pilot Program are state or local government authorities. Proposed projects must utilize public-private partnerships; be operated and maintained by employees of an existing provider of fixed guideway or bus rapid transit public transportation in the service area of the project, or if none exists, by employees of an existing public transportation provider in the service area; and have a Federal share not exceeding 25 percent of the net capital project cost. Project sponsors also must have financial advisors providing guidance to them on the terms and structure of the project that are independent from investors in the project. Sponsors must further certify that the existing public transportation system is in a state of good repair as defined by law. (See Pub. L. 114–94, 129 STAT. 1458; 49 U.S.C. 5302; 49 U.S.C. 5326(b)(1); 49 CFR 625.5.)

The Pilot Program requires FTA to use an expedited technical capacity review process for sponsors that have recently and successfully completed at least one new fixed guideway capital project, small start project, or core capacity improvement project, if the sponsor achieved budget, cost, and ridership outcomes for the project that are consistent with or better than projections and the applicant demonstrates that it continues to have staff expertise and other resources to implement a new project.

While not all of the following are required with the expression of interest submission, project sponsors should understand that prior to being considered for a grant agreement, Section 3005(b) requires that project sponsors requesting a construction grant under the Pilot Program must meet all requirements of Section 3005(B) and submit: (1) Information identifying the proposed eligible project; (2) a schedule and finance plan for the construction and operation of the project; (3) an analysis of the efficiencies of the proposed eligible project development and delivery methods and innovative financing arrangement for the eligible project. This submission must include documents related to the public-private partnership and justification of the project based on mobility improvements attributable to the project; environmental benefits associated with the project; congestion relief associated with the project; economic development effects derived as a result of the project; and estimated ridership projections; (4) a certification that the project sponsor's existing public transportation system is in a state of good repair, or, in the event that the applicant does not operate a public transportation system, the public transportation system to which the proposed project will be attached, is in a state of good repair. Alternatively, with respect to the state of good repair certification, for core capacity improvement projects, a sponsor may include a description of how the eligible project will allow it to make substantial progress in achieving a state of good repair. FTA may not award a construction grant agreement until after the project sponsor has completed necessary planning and activities required under the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.,* and the recipient has demonstrated the necessary legal, technical, and financial capacity to successfully complete the project. Project sponsors must also demonstrate an acceptable degree of local financial commitment and show evidence of stable and dependable financing sources. Part of FTA's consideration includes, but is not limited to, an analysis of the private contributions, management of the transfer of project risk, financial partnering, and other strategies included in the public-private partnership.

The law also requires participants in the program to develop a Before and After Study Report that describes and analyzes the impacts of the project on public transportation services and ridership, describes and analyzes the consistency of predicted and actual benefits and costs of the innovative project development and delivery or innovative financing, and identifies reasons for any differences between the predicted and actual outcomes. The law requires the project sponsor to submit the Before and After Study Report to FTA not later than two years after the initiation of revenue service of the project.

All projects that receive a grant through the Pilot Program are expected to be constructed and enter revenue service. Therefore, Section 3005(b) specifies that a sponsor must repay all Federal funds plus interest and penalty charges if the project is not completed. This provision is intended to ensure that all Federal interest is protected if a public-private partnership fails to deliver a project.

At present, $5 million has been appropriated by Congress in Fiscal Year 2016 and $20 million in Fiscal Year 2017 for the Pilot Program. The FY 2018 Consolidated Appropriations Act did not provide funding for the Pilot Program; and the President's FY 2019 budget proposal to Congress did not recommend any funding for the Pilot Program.

If selected for the Pilot Program, project sponsors will be invited to propose alternative ways that FTA might satisfy the requirements established by law for Pilot projects. For example, FTA expects that it will be necessary to establish the cost, scope, and schedule for Pilot projects to a reasonable level of confidence, which could be accomplished in a number of ways, in particular to address the requirement in law for an expedited technical capacity review process for sponsors with successful past performance. Project sponsors selected for the Pilot Program may suggest alternate approaches to any aspect of the statutory evaluation process that the sponsor believes will save time and effort, while still assuring compliance with the Pilot Program requirements outlined in law. FTA is particularly interested in receiving expressions of interest from project sponsors who are considering pursuing Value Capture techniques as part of their innovative project financing arrangements.

3. Expression of Interest Submission Process

Project sponsors must submit the required information by mail, email or facsimile by 11:59 p.m. EDT November 13, 2018, as specified in the **DATES** section of this Notice above. FTA reserves the right to request additional clarifying information from any and all project sponsors before making a selection to participate in the Pilot Program.

Project sponsors wishing to participate in the Pilot Program must submit an expression of interest to FTA no longer than 10 pages in length including any supporting documentation. While there is no specific format that must be followed for the expression of interest, the narrative provided by the project sponsor to FTA should include the following information:

a. A description of the proposed project that provides sufficient information to demonstrate its eligibility as a new fixed guideway capital project, small starts project, or core capacity improvement project as defined in Section 3005(b);

b. The proposed project schedule and an outline of the proposed financing plan for the project, including the total amount of Federal funding being sought;

c. A description of the public-private partnership included in the project;

d. A description of the advisors providing guidance to the project sponsor on the terms and structure of the project that are independent from investors in the project;

e. How the project sponsor intends to analyze the predicted and actual benefits and costs of the innovative project development and delivery methods or innovative financing for the eligible project in order to complete the Before and After Study required by Section 3005(b);

f. A certification that the project sponsor's existing public transportation system is in a state of good repair, or for core capacity improvement projects, a description of how the eligible project includes elements designed to aid the existing fixed guideway system in making substantial progress towards achieving a state of good repair;

g. Documentation that the project has completed the steps required by the Metropolitan Planning process or the Statewide and Non-Metropolitan Planning process, as applicable. Specifically, provide evidence that the

project is included in the approved Metropolitan Transportation Plan and Transportation Improvement Program or Statewide Transportation Improvement Program, or provide a schedule demonstrating the project will complete the process in the foreseeable future;

h. Documentation that the project has completed the NEPA process or a schedule demonstrating the project will complete the NEPA process in the foreseeable future.

4. Candidate Project Evaluation and Selection

FTA will evaluate the proposals to determine which proposed projects best meet the intent of Section 3005(b). FTA will work with the selected project sponsors to further define the steps in law required before a construction grant can be awarded under the program.

K. Jane Williams,

Acting Administrator.

[FR Doc. 2018–19860 Filed 9–11–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0078]

Reports, Forms, and Recordkeeping Requirements

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

ACTION: Notice.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on an information collection supporting the development of improved child-size crash test dummies.

DATES: Comments must be received on or before November 13, 2018.

ADDRESSES: You may submit comments using any of the following methods. All comments must have the applicable DOT docket number noted conspicuously on them.

Electronic submissions: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail: Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590.

Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: (202) 493–2251.

Instructions: Each submission must include the Agency name and the Docket number for this Notice. Note that all comments received will be posted without changes to *http://www.regulations.gov* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Jason Stammen, Ph.D., Applied Biomechanics Division, Vehicle Research and Test Center, NHTSA, 10820 State Route 347—Bldg. 60, East Liberty, Ohio 43319; Telephone (937) 666–4511; Facsimile: (937) 666–3590; email address: *jason.stammen@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: Pediatric Shoulder Response in Frontal Loading.

Type of Request: New collection.

OMB Clearance Number: None.

Requested Expiration Date of Approval: Three years from date of approval.

Summary of the Collection of Information: NHTSA proposes to collect information from the public to support the development of design criteria for the mobility of the shoulder of a new child-size crash test dummy. Minors age 8–12 will participate after informed consent of the parent/guardian is received. After researchers measure the participant's anthropometry (height, weight, shoulder landmarks, etc.), the participant will undergo a fun, low-intensity exercise activity under the direction of the researchers while the parent/guardian observes. The activity will involve motion of the participant's shoulder while resisting forces are collected. The data from all participants will then be compiled to develop design criteria for the crash test dummy shoulder.

Description of the Need for the Information and Proposed Use of the Information: In the early 2000's, NHTSA evaluated the Hybrid III 10-year-old child dummy. While this dummy was deemed adequate for the evaluation of large child restraints and eventually federalized in 2012, one of the shortcomings NHTSA identified of the child dummy is a shoulder that has very little mobility with no interaction with the ribcage. In 2011, the NHTSA Vehicle Research & Test Center Applied Biomechanics Division initiated a research program to develop a new crash dummy representing a large child with improved biofidelity called the Large Omnidirectional Child (LODC) dummy. NHTSA used pediatric biomechanical information from literature to guide the design of the LODC prototype. However, there was very little biomechanical information on the response of the pediatric shoulder. As the shoulder is a very important structure of the body for managing interaction of the restraint and body in a motor vehicle crash, new biomechanical data is needed to guide the design of the LODC shoulder.

Historically, child dummy component responses have simply been scaled from adult post-mortem surrogate tests. However, there is a large body of research that has demonstrated that children are not simply small adults when it comes to behavior in a high-speed crash scenario. Developmental anatomy must be considered in addition to mass and anthropometry in the creation of design targets for child dummies.

Because testing of pediatric post-mortem surrogates raises ethical concerns, researchers are compelled to find creative ways to gather biomechanical information from living children. The historical approach for obtaining body region response information is to design a fun, low-intensity activity or game where the participant movement is captured in some manner while resisting forces are collected. The forces generated with respect to the movements are used to develop a ''response target'' that serves as design guidance for the relevant crash dummy component.

Respondents: We estimate that 24 persons will complete the information collection. Respondents will be parents of children age 8–12.

Estimated Number of Respondents: In support of this research, it is estimated that 24 children age 8–12 will complete the activity while the parent observes.

Estimated Time per Response: The child and parent will be required to spend roughly 1 hour in the laboratory to complete the required steps associated with the activity.

Total Estimated Annual Burden: 24 hours, or 1 hour per participant.

Frequency of Collection: The data collection described will be performed once to obtain the target number of valid test participants.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Nathaniel Beuse,

Associate Administrator, Office of Vehicle Safety Research.

[FR Doc. 2018–19836 Filed 9–11–18; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing an update to the identifying information of a person currently included in the list of Specially Designated Nationals and Blocked Persons. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel. 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On September 7, 2018, OFAC updated the Specially Designated Nationals and Blocked Persons List entry for the following person, whose property and interests in property subject to U.S. jurisdiction continue to be blocked.

Individual

1. SARRIA DIAZ, Rafael Alfredo (a.k.a. SARRIA, Rafael; a.k.a. SARRIA–DIAZ, Rafael A), Miranda, Venezuela; La Moraleja, Madrid, Spain; 5599 NW 23rd Ave., Boca Raton, FL 33496, United States; 480 Park Avenue, Apt. 10B, New York, NY 10022, United States; Calle de la Pena Pintada, 11, Madrid, Comunidad de Madrid 28034, Spain; Calle Los Malabares, Quinta Anauco, Valle Arriba, Caracas, Miranda 1080, Venezuela; DOB 11 Nov 1965; Gender Male; Cedula No. 6974302 (Venezuela); Passport 114910699 (Venezuela) expires 02 Feb 2020; alt. Passport F0018546 (Venezuela) expires 02 Jul 2014 (individual) [VENEZUELA] (Linked To: CABELLO RONDON, Diosdado).

Dated: September 7, 2018.

Andrea M. Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2018–19817 Filed 9–11–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel. 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On March 19, 2018, OFAC's Director determined that the property and interests in property of the following persons are blocked pursuant to Executive Order 13692 of March 8, 2015, ''Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela'' (E.O. 13692). The OFAC Director designated each of these persons under section 1(a)(ii)(C) of E.O. 13692 for being a current or former official of the Government of Venezuela.

Individuals

1. CONTRERAS, Willian Antonio (a.k.a. CONTRERAS, William), Capital District, Venezuela; DOB 17 Aug 1968; citizen Venezuela; Gender Male; Cedula No. 9953939 (Venezuela); Passport 041067710 (Venezuela) expires 12 Jan 2016; Vice Minister of Internal Commerce, within the Ministry of Popular Power of Economy and Finance; National Superintendent for the Defense of Socioeconomic Rights (SUNDDE) (individual) [VENEZUELA]. Designated pursuant to section 1(a)(ii)(C) of E.O. 13692 for being a current or former official of the Government of Venezuela.

2. LEPAJE SALAZAR, Nelson Reinaldo, Aragua, Venezuela; DOB 24

Apr 1969; citizen Venezuela; Gender Male; Cedula No. 10049353 (Venezuela); Passport 064906043 (Venezuela) expires 12 Jan 2016; alt. Passport 009551291 (Venezuela) expires 04 Mar 2013; Acting in the Capacity of the Head of the Office of the National Treasury (individual) [VENEZUELA]. Designated pursuant to section 1(a)(ii)(C) of E.O. 13692 for being a current or former official of the Government of Venezuela.

3. MATA GARCIA, Americo Alex (Latin: MATA GARCÍA, Américo Alex) (a.k.a. MATA, Americo (Latin: MATA, Américo)), Miranda, Venezuela; DOB 02 Jan 1976; citizen Venezuela; Gender Male; Cedula No. 12711021 (Venezuela); Passport C1506013 (Venezuela); Alternate Director on the Board of Directors of the National Bank of Housing and Habitat; Former Vice Minister of Agricultural Economics; Former President of the Agricultural Bank of Venezuela (individual) [VENEZUELA]. Designated pursuant to section 1(a)(ii)(C) of E.O. 13692 for being a current or former official of the Government of Venezuela.

4. ROTONDARO COVA, Carlos Alberto (a.k.a. ROTONDARO COVA, Carlos; a.k.a. ROTONDARO, Carlos), Capital District, Venezuela; DOB 11 Sep 1965; citizen Venezuela; Gender Male; Cedula No. 6157070 (Venezuela); Passport 083445280 (Venezuela) expires 29 Jan 2019; alt. Passport 022740782 (Venezuela) expires 24 May 2014; Former President of the Board of Directors of the Venezuelan Institute of Social Security (IVSS) (individual) [VENEZUELA]. Designated pursuant to section 1(a)(ii)(C) of E.O. 13692 for being a current or former official of the Government of Venezuela.

Dated: September 7, 2018.

Andrea M. Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2018–19818 Filed 9–11–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one person that has been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this person are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel. 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On September 7, 2018, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authority listed below.

Individual

1. ZEIN, Waleed Ahmed, Mombasa, Kenya; DOB 14 Mar 1991; Passport A120391 (Kenya); National ID No. 33987482 (Kenya) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(d)(i) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224) for assisting in, sponsoring, or providing financial, material, or technological support for, or financial or other services to or in support of, the ISLAMIC STATE OF IRAQ AND THE LEVANT, an entity determined to be subject to E.O. 13224.

Dated: September 7, 2018.

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2018–19804 Filed 9–11–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On September 6, 2018, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked pursuant to the relevant sanctions authority listed below. For a person identified as identified as meeting the definition of the Government of North Korea, dealings in property subject to U.S. jurisdiction in which the person has an interest are prohibited effective as of the date of that status, which may be earlier than the date of OFAC's determination.

Individual

1. PARK, Jin Hyok (a.k.a. DAVID, Andoson; a.k.a. HENNY, Watson; a.k.a. KIM, Hyon U; a.k.a. KIM, Hyon Woo; a.k.a. KIM, Hyon Wu; a.k.a. PAK, Ch'in-hyo'k; a.k.a. PAK, Jin Hek; a.k.a. PAK, Jin Hyok); DOB 15 Aug 1984; alt. DOB 18 Oct 1984; Gender Male; Passport

290333974 (Korea, North) (individual) [DPRK3].

Designated pursuant to section 2(a)(v) of Executive Order 13722 of March 15, 2016, ''Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea'' (E.O. 13722) for having engaged in significant activities undermining cybersecurity through the use of computer networks or systems against targets outside of North Korea on behalf of the Government of North Korea or the Workers' Party of Korea.

Entity

1. KOREA EXPO JOINT VENTURE (a.k.a. CHOSUN EXPO; a.k.a. CHOSUN EXPO JOINT VENTURE; a.k.a. KOREA EXPO JOINT VENTURE CORPORATION), Pyongyang, Korea, North [DPRK3].

Identified as meeting the definition of the Government of North Korea as set forth in section 9(d) of E.O. 13722 and section 510.311 of the North Korean Sanctions Regulations, 31 CFR part 510.

Dated: September 6, 2018.

Andrea M. Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2018–19785 Filed 9–11–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

SUB–AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List pursuant to Executive Order 13582 of August 17, 2011, ''Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria.'' All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The list of Specially Designated Nationals and Blocked Persons (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*http://www.treasury.gov/ofac*).

Notice of OFAC Actions

On September 5, 2018, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. 'ABBAS, Yasir (a.k.a. 'ABBAS, Yasir 'Aziz); DOB 22 Aug 1978; nationality Syria; Gender Male (individual) [SYRIA].

Designated pursuant to section 1(b)(i) of Executive Order 13582 of August 17, 2011, ''Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria'' (E.O. 13582) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the GOVERNMENT OF SYRIA, an entity whose property and interests in property are blocked pursuant to E.O. 13582.

2. AL–ALI, Adnan (a.k.a. AL ALI, Adnan; a.k.a. AL-'ALI, 'Adnan), Baniyas, Syria; DOB 17 Jun 1968; POB Lattakia, Syria; nationality Syria; Gender Male; Passport 6066827 (Syria) expires 09 Mar 2017 (individual) [SYRIA] (Linked To: ABAR PETROLEUM SERVICE SAL).

Designated pursuant to section 1(b)(i) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, ABAR PETROLEUM SERVICE SAL, an entity whose property and interests in property are blocked pursuant to E.O. 13582.

3. AL–QATIRJI, Muhammad (a.k.a. AL–QATIRJI, Bara'; a.k.a. KATARJI, Bara'; a.k.a. KHATARJI, Bara Ahmad; a.k.a. KHATIRJI, Bara Ahmad; a.k.a. QATARJI, Abu al-Bara'; a.k.a. QATIRJI, Muhammad Bara'; a.k.a. QATIRJI, Muhammad Bara; a.k.a. QATIRJI, Muhammad Bara Ahmad Rushdi; a.k.a. QATRJI, Muhammad Nur al-Din; a.k.a. ''Abu Bara''); DOB 10 Nov 1976; POB Raqqah; nationality Syria; Gender Male; National ID No. 11010046398 (Syria); Registration Number 11824466 (Syria) (individual) [SYRIA].

Designated pursuant to section 1(b)(i) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the GOVERNMENT OF SYRIA, an entity whose property and interests in property are blocked pursuant to E.O. 13582.

4. NASSER, Fadi Nabih (a.k.a. NASSER, Fadi), Nasser Building, Menchieh Area, Bourj Brajneh (Baabda), Lebanon; DOB 19 Nov 1963; nationality Lebanon; Gender Male; Passport RL2432659 (Lebanon) issued 22 Jan 2013 expires 22 Jan 2018; alt. Passport RL1239879 (Lebanon) expires 05 Mar 2013; Chairman of Nasco Polymers & Chemicals Co. Sal (Off-shore) (individual) [SYRIA] (Linked To: NASCO POLYMERS & CHEMICALS CO SAL (OFF–SHORE); Linked To: SYRIAN COMPANY FOR OIL TRANSPORT).

Designated pursuant to section 1(b)(i) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, SYRIAN COMPANY FOR OIL TRANSPORT, an entity identified as meeting the definition of the GOVERNMENT OF SYRIA as set forth in section 8(d) of E.O. 13582 and section 542.305 of the Syrian Sanctions Regulations, 31 CFR part 542.

Also designated pursuant to section 1(b)(ii) of E.O. 13582 for having acted or purported to act for or on behalf of, directly or indirectly, NASCO POLYMERS & CHEMICALS CO SAL (OFF–SHORE), an entity whose property and interests in property are blocked pursuant to E.O. 13582.

Entities

1. ABAR PETROLEUM SERVICE SAL (a.k.a. ABAR PETROLEUM SERVICE SAL (OFFSHORE); a.k.a. ABAR PETROLEUM SERVICES LTD SAL (OFFSHORE)), Azarieh Building, Block 03, 5th floor, Azarieh Street, Beirut, Lebanon [SYRIA].

Designated pursuant to section 1(b)(i) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the GOVERNMENT OF SYRIA, an entity whose property and interests in property are blocked pursuant to E.O. 13582.

2. AL–QATIRJI COMPANY (a.k.a. AL–SHAM AND AL–DARWISH

COMPANY; a.k.a. KHATIRJI GROUP), Mazzah, Damascus, Syria [SYRIA].

Designated pursuant to section 1(b)(i) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the GOVERNMENT OF SYRIA, an entity whose property and interests in property are blocked pursuant to E.O. 13582.

3. INTERNATIONAL PIPELINE CONSTRUCTION FZE, Fujairah, United Arab Emirates [SYRIA] (Linked To: HESCO ENGINEERING & CONSTRUCTION CO).

Designated pursuant to section 1(b)(i) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, HESCO ENGINEERING & CONSTRUCTION CO, an entity whose property and interests in property are blocked pursuant to E.O. 13582.

Also designated pursuant to section 1(b)(ii) of E.O. 13582 for being owned or controlled by HESCO ENGINEERING & CONSTRUCTION CO, an entity whose property and interests in property are blocked pursuant to E.O. 13582.

4. NASCO POLYMERS & CHEMICALS CO SAL (OFF–SHORE) (a.k.a. NASCO POLYMERS & CHEMICALS; a.k.a. NASCO POLYMERS AND CHEMICALS), 2nd Floor, Nasco Center, Unesco Street, Unesco Sector, Beirut, Lebanon; Postal Box 1800629, Beirut, Lebanon; 2nd Flr, Unesco Center, Verdun Street, Beirut, Lebanon; website *www.nascopolymers.com;* Registration Number 1800629; International Maritime Organization No. (5777731) [SYRIA] (Linked To: SYRIAN COMPANY FOR OIL TRANSPORT).

Designated pursuant to section 1(b)(i) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, SYRIAN COMPANY FOR OIL TRANSPORT, an entity identified as meeting the definition of the GOVERNMENT OF SYRIA as set forth in section 8(d) of E.O. 13582 and section 542.305 of the Syrian Sanctions Regulations, 31 CFR part 542.

5. SONEX INVESTMENTS LTD. (a.k.a. SONEX INVESTMENTS LIMITED; a.k.a. SONNEX INVESTMENTS LTD.), P.O. Box 7191, Dubai, United Arab Emirates [SYRIA] (Linked To: SYRIAN COMPANY FOR OIL TRANSPORT).

Designated pursuant to section 1(b)(i) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, SYRIAN COMPANY FOR OIL TRANSPORT, an entity identified as meeting the definition of the GOVERNMENT OF SYRIA as set forth in section 8(d) of E.O. 13582 and section 542.305 of the Syrian Sanctions Regulations, 31 CFR part 542.

Dated: September 6, 2018.

Andrea M. Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2018–19819 Filed 9–11–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Members of Senior Executive Service Performance Review Boards

AGENCY: Internal Revenue Service (IRS), Department of the Treasury (Treasury).

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish the names of those IRS employees who will serve as members on IRS's Fiscal Year 2018 Senior Executive Service (SES) Performance Review Boards.

DATES: This notice is applicable September 1, 2018.

FOR FURTHER INFORMATION CONTACT: Willie Beard, IRS, 1111 Constitution Avenue NW, Room 3518, Washington, DC 20224, (202) 317–3828.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members to the IRS's SES Performance Review Boards. The names and titles of the executives serving on the boards are as follows:

Kirsten B. Wielobob, Deputy Commissioner for Services and Enforcement
Jeffrey J. Tribiano, Deputy Commissioner for Operations Support
Justin L. Abold-LaBreche, Deputy Director Accounts Management, Wage & Investment
David P. Alito, Deputy Division Commissioner, Wage & Investment
William H. Ankrum, Deputy Associate Chief Information Officer for User and Network Services, Information Technology
Lisa J. Beard-Niemann, Director, Government Entities/Shared Services, Tax Exempt and Government Entities
Robert J. Bedoya, Director, Submission Processing, Information Technology
Michael C. Beebe, Director, Return Integrity and Compliance Services, Wage & Investment
Thomas A. Brandt, Chief Risk Officer
Linda J. Brown, Director Submission Processing, Wage & Investment
Carol A. Campbell, Director, Return Preparer Office
John V. Cardone, Director, Withholding and International Individual Compliance, Large Business & International
Robert Choi, Director, Employee Plans, Tax Exempt & Government Entities
Elita I. Christiansen, Chief Diversity Officer
James P. Clifford, Director, Customer Account Services, Wage & Investment
Katherine M. Coffman, IRS Human Capital Officer
Amalia C. Colbert, Chief of Staff
Kenneth C. Corbin, Commissioner, Wage & Investment
Robert S. Cox, Deputy Associate Chief Information Officer for Cybersecurity, Information Technology Division
Brenda A. Dial, Director, Examination, Small Business/Self-Employed
Pamela Drenthe, Director, Examination Planning and Performance Analysis, Small Business/Self-Employed
Alain Dubois, Deputy Chief Financial Officer
John C. Duder, Project Director, Deputy Commissioner for Services and Enforcement
Elizabeth A. Dugger, Assistant Deputy Commissioner for Operations Support
Kimberly A. Edwards, Project Director, Large Business & International
Nikole C. Flax, Deputy Commissioner, Large Business & International
John D. Fort, Chief Criminal Investigation
Silvana G. Garza, Chief Information Officer, Information Technology
Ursula S. Gillis, Chief Financial Officer
Linda K. Gilpin, Associate Chief Information Officer, Enterprise IT Program Management Office, Information Technology
Dietra D. Grant, Director, Customer Assistance, Relationships and Education, Wage & Investment
Darren J. Guillot, Director, Collection—Field, Small Business/Self-Employed
Valerie A. Gunter, Director, Media & Publications, Wage & Investment
Daniel S. Hamilton, Associate Chief Information Officer, Enterprise Services, Information Technology
Donna C. Hansberry, Chief Appeals
Barbara L. Harris, Director, Northeastern Compliance Practice Area, Large Business & International
Gearl D. Harris, Assistant Deputy Commissioner International, Large Business & International
Nancy E. Hauth, Director, Examination Field, Small Business/Self-Employed
Mary R. Hernandez, Associate Chief Information Officer, Enterprise Operations, Information Technology

Benjamin D. Herndon, Chief Research, Applied, Analytics & Statistics
John E. Hinding, Director, Cross Border Activities Practice Area, Large Business & International
David W. Horton, Deputy Commissioner, Tax Exempt & Government Entities
Cecil T. Hua, Director, Infrastructure Services, Information Technology
Eric C. Hylton, Deputy Chief Criminal Investigation
Scott E. Irick, Director, Examination Headquarters, Small Business/Self-Employed
Sharon C. James, Associate Chief Information Officer, Cybersecurity, Information Technology
Tracy A. Keeter, Director, Enterprise Technology Implementation, Information Technology
Andrew J. Keyso Jr., Deputy Chief Appeals
Edward T. Killen, Chief Privacy Officer, Privacy, Governmental Liaison and Disclosure
Ronald J. Leidner Jr., Director, Data Delivery Services, Information Technology
Terry Lemons, Chief Communications & Liaison
Sunita B. Lough, Commissioner, Tax Exempt & Government Entities
William H. Maglin II, Associate Chief Financial Officer for Financial Management, Chief Financial Office
Paul J. Mamo, Director, Collection, Small Business/Self-Employed
Lee D. Martin, Director, Whistleblower Office
Erick Martinez, Director Field Operations—Northern Area, Criminal Investigation
Ivy S. McChesney, Director, Examination—Ogden, Small Business/Self-Employed
Kevin Q. McIver, Deputy IRS Human Capital Officer
Karen A. Michaels, Director, Accounts Management, Wage & Investment
Kevin M. Morehead, Director, Operations Support, Wage & Investment
Mary E. Murphy, Commissioner, Small Business/Self-Employed
Frank A. Nolden, Director, Stakeholder, Partnerships, Education & Communication, Wage & Investment
Douglas W. O'Donnell, Commissioner, Large Business & International
Nina E. Olson, National Taxpayer Advocate
Kaschit D. Pandya, Deputy Associate Chief Information Officer, Enterprise Operations, Information Technology
Holly O. Paz, Director, Pass Through Entities, Large Business & International
Richard A. Peterson, Senior Technical Advisor, Deputy Commissioner for Services and Enforcement
Robert A. Ragano, Deputy, Associate Chief Information Officer for Applications Development, Information Technology
Tamera L. Ripperda, Deputy Commissioner, Small Business/Self-Employed
Bridget T. Roberts, Deputy National Taxpayer Advocate
Richard L. Rodriguez, Chief, Facilities Management and Security Services
Rene S. Schwartzman, Director Identity Assurance, Privacy, Governmental Liaison and Disclosure
Theodore D. Setzer, Assistant Deputy Commissioner International, Large Business & International
Verline A. Shepherd, Associate Chief Information Officer for User and Network Services, Information Technology
Nancy A. Sieger, Associate Chief Information Officer for Applications Development, Information Technology
Susan Simon, Director, Field Assistance, Wage & Investment
Harrison Smith, Deputy Chief Procurement Officer
Tommy A. Smith, Associate Chief Information Officer, Strategy and Planning, Information Technology
Marla L. Somerville, Deputy Chief Information Officer for Strategy and Modernization, Information Technology
Beverly E. Thomas, Director, Collection—Campus, Small Business/Self-Employed
Kathryn D. Vaughan, Director, Operations Support, Small Business/Self-Employed
Margaret Von Lienen, Director, Exempt Organizations, Tax Exempt & Government Entities
Keith A. Walker, Director, Program and Business Solutions, Large Business & International
Shanna R. Webbers, Chief Procurement Officer
Stephen A. Whitlock, Director, Office of Professional Responsibility
Lavena B. Williams, Director, Eastern Compliance, Large Business & International

This document does not meet the Treasury's criteria for significant regulations.

Jeffrey J. Tribiano,

Deputy Commissioner for Operations Support, Internal Revenue Service.

[FR Doc. 2018–19618 Filed 9–11–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Annual Pay Ranges for Physicians, Dentists, and Podiatrists of the Veterans Health Administration (VHA)

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) Mission Act of 2018 (VA Maintaining Systems and Strengthening Integrated Outside Networks Act), Section 502, provides that podiatrists be paid from the Veterans Health Administration (VHA) physician and dentist pay system.

DATES: Annual pay ranges are applicable November 25, 2018.

FOR FURTHER INFORMATION CONTACT: Farine Cohen, Program Analyst, Policy and Programs, VHA Workforce Management and Consulting Office (10A2A), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–7179. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: As required by the ''Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004,'' (Pub. L. 108–445, dated December 3, 2004) VA is hereby giving notice of annual pay ranges for VHA podiatrists as prescribed by the Secretary for Department-wide applicability. The pay table placement and annual salary rates of podiatrists is intended to enhance the flexibility of the Department to recruit, develop, and retain the most highly-qualified podiatrists to serve our Nation's Veterans and maintain a standard of excellence in the VA health care system. Under 38 United States Code (U.S.C.) 7431(e)(1)(A), not less often than once every 2 years, the Secretary must prescribe for Department-wide applicability the minimum and maximum amounts of annual pay that may be paid to VHA physicians and dentists. Further, 38 U.S.C. 7431(e)(1)(B) allows the Secretary to prescribe separate minimum and maximum amounts of pay for a specialty or assignment. In construction of the annual pay ranges, 38 U.S.C. 7431(c)(4)(A) requires the consultation of two or more national surveys of pay, whether prepared by private, public, or quasi-public entities, in order to make a general assessment of the range of pays payable to physicians and dentists. Lastly, 38 U.S.C. 7431(e)(1)(C) states amounts prescribed under paragraph 7431(e) shall be published in the **Federal Register** and shall not take effect until at least 60 days after date of publication.

Background

The ''Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004'' (Pub. L. 108–445) was signed by the President on December 3, 2004. The major provisions of the law established a new pay system for VHA physicians and dentists consisting of base pay, market pay, and performance pay. While the base pay component is set by statute, market pay is intended to reflect the recruitment and retention needs for the specialty or assignment of a particular physician or dentist at a facility. Further, performance pay is intended to recognize the achievement of specific goals and performance objectives prescribed annually. These three components create a system of pay that is driven by both market indicators and employee performance, while recognizing employee tenure in VHA.

Discussion

VA identified and utilized salary survey data sources which most closely represent VA comparability in the areas of practice setting, employment environment, and hospital/health care system. Sullivan Cotter and Associates, Medical Group Management Association, and Korn Ferry Hay Group Healthcare Compensation were collectively utilized as benchmarks from which to prescribe annual pay ranges for podiatrists across the scope of assignments/specialties within the Department. While aggregating the data, a preponderance of weight was given to those surveys which most directly resembled the environment of the Department.

In developing pay table placement and annual salary rates of podiatrists, a few distinctive principles were factored into the compensation analysis of the data. The first principle is to ensure that both the minimum and maximum salary is at a level that accommodates special employment situations, from fellowships and medical research career development awards to Nobel Laureates, high-cost areas, and internationally-renowned clinicians. The second principle is to provide ranges large enough to accommodate career progression, geographic differences, sub-specialization, and other special factors.

Several VA data sources were reviewed against available, relevant private sector data. The podiatry specialties are grouped into one clinical pay range that reflect comparable complexity in salary, recruitment, and retention considerations.

Tier level	Minimum	Maximum
Pay Table 1—Clinical Specialty		
TIER 1	$100,967	$225,000
TIER 2	110,000	234,000
TIER 3	120,000	262,000
Pay Table 1—Covered Clinical Specialties		
Endocrinology.		
Endodontics.		
General Practice—Dentistry.		
Geriatrics.		
Infectious Diseases.		
Internal Medicine/Primary Care/Family Practice.		
Palliative Care.		
Periodontics.		
Podiatry (General).		
Podiatry (Surgery—Forefoot, Rearfoot/Ankle, Advanced Rearfoot/Ankle).		
Preventive Medicine.		
Prosthodontics.		
Rheumatology.		
All other specialties or assignments not requiring a specific specialty training or certification.		

Signing Authority

The Secretary of Veterans Affairs 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. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on September 7, 2018 for publication.

Dated: September 7, 2018.

Luvenia Potts,

Program Specialist, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2018–19847 Filed 9–11–18; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 83 Wednesday,
No. 177 September 12, 2018

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances; Printing, Coating, and Dyeing of Fabrics and Other Textiles; and Surface Coating of Metal Furniture Residual Risk and Technology Reviews; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2017–0668, EPA–HQ–OAR–2017–0669, EPA–HQ–OAR–2017–0670; FRL–9982–40–OAR]

RIN 2060–AT72

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances; Printing, Coating, and Dyeing of Fabrics and Other Textiles; and Surface Coating of Metal Furniture Residual Risk and Technology Reviews

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing the results of the residual risk and technology reviews (RTR) for three rules—the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Surface Coating of Large Appliances; the NESHAP for the Printing, Coating, and Dyeing of Fabrics and Other Textiles; and the NESHAP for the Surface Coating of Metal Furniture. The EPA is proposing to find the risks due to emissions of air toxics from these source categories under the current standards to be acceptable and that the standards provide an ample margin of safety to protect public health. We are proposing no revisions to the numerical emission limits based on these risk analyses or technology reviews. The EPA is proposing no new requirements based on the technology review of the NESHAP for the Printing, Coating, and Dyeing of Fabrics and Other Textiles. The EPA is proposing to require the use of high efficiency spray application equipment under the technology review for the two rules that employ the use of coating spray application, the NESHAP for the Surface Coating of Large Appliances and the NESHAP for the Surface Coating of Metal Furniture, if the source is not using the emission rate with add-on control compliance option. The EPA is also requesting comment on whether the high efficiency spray equipment technology requirement under the technology review is necessary in light of the risk analyses indicating that there are ample margins of safety. The EPA also is proposing to amend provisions addressing emissions during periods of startup, shutdown, and malfunction; to amend provisions regarding electronic reporting of performance test results; and to make miscellaneous clarifying and technical corrections.

DATES:

Comments. Comments must be received on or before October 29, 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 October 12, 2018.

Public Hearing. If a public hearing is requested by September 17, 2018, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document and posted at *https://www.epa.gov/stationary-sources-air-pollution/printing-coating-and-dyeing-fabrics-and-other-textiles-national, https://www.epa.gov/stationary-sources-air-pollution/surface-coating-large-appliances-national-emission-standards,* and *https://www.epa.gov/stationary-sources-air-pollution/surface-coating-metal-furniture-national-emission-standards.* See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES:

Comments. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2017–0668 for 40 Code of Federal Regulations (CFR) part 63, subpart OOOO, Printing, Coating, and Dyeing of Fabrics and Other Textiles; Docket ID No. EPA–HQ–OAR–2017–0669 for 40 CFR part 63, subpart RRRR, Surface Coating of Metal Furniture; or Docket ID No. EPA–HQ–OAR–2017–0670 for 40 CFR part 63, subpart NNNN, Surface Coating of Large Appliances, as applicable, at *https://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 methods 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 Nos. EPA–HQ–OAR–2017–0668, EPA–HQ–OAR–2017–0669, or EPA–HQ–OAR–2017–0670 (specify the applicable docket number), 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://www.epa.gov/dockets/commenting-epa-dockets.*

Public Hearing. Please contact Ms. Nancy Perry at (919) 541–5628 or by email at *perry.nancy@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.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action for the Surface Coating of Large Appliances source category, contact Ms. Kim Teal, Minerals and Manufacturing Group, Sector Policies and Programs Division (Mail Code D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, 109 T.W. Alexander Dr., Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5580; fax number: (919) 541–4991; and email address: *teal.kim@epa.gov.*

For questions about this proposed action for the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category, contact Ms. Paula Hirtz, Minerals and Manufacturing Group, Sector Policies and Programs Division (Mail Code D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, 109 T.W. Alexander Dr., Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2618; fax number: (919) 541–4991; and email address: *hirtz.paula@epa.gov.*

For questions about this proposed action for the Surface Coating of Metal Furniture source category, contact Ms. J. Kaye Whitfield, Minerals and Manufacturing Group, Sector Policies and Programs Division (Mail Code D243–04), Office of Air Quality

Planning and Standards, U.S. Environmental Protection Agency, 109 T.W. Alexander Dr., Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2509; fax number: (919) 541–4991; and email address: *whitfield.kaye@epa.gov.*

For specific information regarding the risk modeling methodology, contact Mr. Chris Sarsony, Health and Environmental Impacts Division (Mail Code C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4843; fax number: (919) 541–0840; and email address: *sarsony.chris@epa.gov.*

For information about the applicability of any of these NESHAP to a particular entity, contact Mr. 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 three separate dockets for this rulemaking. Docket ID No. EPA–HQ–OAR–2017–0668 has been established for 40 CFR part 63, subpart OOOO, Printing, Coating, and Dyeing of Fabrics and Other Textiles (hereafter referred to as the Fabrics and Other Textiles Docket). Docket ID No. EPA–HQ–OAR–2017–0669 has been established for 40 CFR part 63, subpart RRRR, Surface Coating of Metal Furniture (hereafter referred to as the Metal Furniture Docket). Docket ID No. EPA–HQ–OAR–2017–0670 has been established for 40 CFR part 63, subpart NNNN, Surface Coating of Large Appliances (hereafter referred to as the Large Appliances Docket). All documents in the dockets are listed in *Regulations.gov.* Although listed, 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–2017–0668 for 40 CFR part 63, subpart OOOO, Printing, Coating, and Dyeing of Fabrics and Other Textiles; Docket ID No. EPA–HQ–OAR–2017–0669 for 40 CFR part 63, subpart RRRR, Surface Coating of Metal Furniture; or Docket ID No. EPA–HQ–OAR–2017–0670 for 40 CFR part 63, subpart NNNN, Surface Coating of Large Appliances, as applicable to your comments. 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 *https://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 *https://www.regulations.gov* or email. This type of information should be submitted by mail as discussed in the **ADDRESSES** section and section I.C of this preamble. The *https://www.regulations.gov* website allows you to submit your comments anonymously, 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 *https://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 digital storage media 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 *https://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:

ACA American Coatings Association
AEGL acute exposure guideline level
AERMOD air dispersion model used by the HEM–3 model
BACT best available control technology
CAA Clean Air Act
CalEPA California EPA
CBI Confidential Business Information
CFR Code of Federal Regulations
ECHO Enforcement and Compliance History Online
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guideline
ERT Electronic Reporting Tool
GACT generally available control technology
gal gallon
HAP hazardous air pollutant(s)
HCl hydrochloric acid
HEM–3 Human Exposure Model, Version 1.1.0
HF hydrogen fluoride
HI hazard index
HQ hazard quotient
IBR incorporation by reference
ICAC Institute of Clean Air Companies
IRIS Integrated Risk Information System
kg kilogram
km kilometer
LAER lowest achievable emission rate
lb pound
MACT maximum achievable control technology
mg/kg-day milligrams per kilogram per day
mg/m^3 milligrams per cubic meter
MIR maximum individual risk
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NEI National Emission Inventory
NESHAP national emission standards for hazardous air pollutants
NSR New Source Review
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
PDF portable document format
ppmv parts per million by volume
ppmw parts per million by weight
PTE permanent total enclosure
RACT reasonably available control technology
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
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:

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source categories that are 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. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (see EPA–450/3–91–030, July 1992), which provides broad descriptions of the categories of major sources included on the initial list, the Surface Coating of Large Appliances source category includes any facility engaged in the surface coating of any large appliance part or product. The category includes, but is not limited to, coating of the following large, metal appliance parts or products: ranges, conventional ovens, microwave ovens, refrigerators, freezers, washers, dryers, dishwashers, water heaters or trash compactors manufactured for household, commercial, or recreational use. Facilities in this source category are also major sources of HAP emissions. We estimate that 10 major source facilities engaged in large appliance surface coating would be subject to this proposal. The Printing, Coating, and Dyeing of Fabrics and Other Textiles source category includes any facility engaged in those operations. In fabric printing, a decorative pattern or design is applied to fabric by methods such as roller, flat screen, or rotary screen. Fabric coating is an operation that imparts to a textile substrate, additional properties such as strength, stability, water or acid repellency, or other specific characteristics of appearance. Fabric dyeing is the process in which color is added to a substrate. This category includes, but is not limited to, coating of industrial and electrical tapes, tire cord, utility meter seals, imitation leathers, tarpaulins, shoe material, and upholstery fabrics. We estimate that 43 major source facilities engaged in the printing, coating, and dyeing of fabrics and other textiles would be subject to this proposal. The Surface Coating of Metal Furniture source category includes any facility engaged in the surface coating and manufacture of metal furniture parts or products. Such products may include chairs, tables, cabinets and bookcases. We estimate that 16 major source facilities engaged in metal furniture surface coating would be subject to this proposal.

TABLE 1—NESHAP AND INDUSTRIAL AND GOVERNMENT SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

NESHAP and source category	NAICS code [1]	Regulated entities [2]
Surface Coating of Large Appliances	335221	Household cooking equipment.
	335222	Household refrigerators and freezers.
	335224	Household laundry equipment.
	335228	Other major household appliances.
	333312	Commercial laundry, dry cleaning, and pressing equipment.
	333415	Air-conditioners (except motor vehicle), comfort furnaces, and industrial refrigeration units and freezers (except heat transfer coils and large commercial and industrial chillers).
	[3] 333319	Other commercial/service industry machinery, *e.g.,* commercial dishwashers, ovens, and ranges, etc.
Printing, Coating, and Dyeing of Fabrics and Other Textiles.	31321	Broadwoven fabric mills.
	31322	Narrow fabric mills and Schiffli machine embroidery.
	313241	Weft knit fabric mills.
	313311	Broadwoven fabric finishing mills.
	313312	Textile and fabric finishing (except broadwoven fabric) mills.
	313320	Fabric coating mills.

TABLE 1—NESHAP AND INDUSTRIAL AND GOVERNMENT SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION—Continued

NESHAP and source category	NAICS code [1]	Regulated entities [2]
Surface Coating of Metal Furniture	314110	Carpet and rug mills.
	326220	Rubber and plastics hoses and belting and manufacturing.
	339991	Gasket, packing, and sealing device manufacturing.
	337124	Metal Household Furniture Manufacturing.
	337214	Nonwood Office Furniture Manufacturing.
	337127	Institutional Furniture Manufacturing.
	337215	Showcase, Partition, Shelving, and Locker Manufacturing.
	337127	Institutional Furniture Manufacturing.
	332951	Hardware Manufacturing.
	332116	Metal Stamping.
	332612	Wire Spring Manufacturing.
	337215	Showcase, Partition, Shelving, and Locker Manufacturing.
	335121	Residential Electric Lighting Fixture Manufacturing.
	335122	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.
	339111	Laboratory Furniture Manufacturing.
	339114	Dental Equipment Manufacturing.
	337127	Institutional Furniture Manufacturing.
	81142	Reupholstery and Furniture Repair
	922140	State correctional institutions that apply coatings to metal furniture.

[1] North American Industry Classification System.
[2] Regulated entities means major source facilities that apply surface coatings to these parts or products.
[3] Excluding special industry machinery, industrial and commercial machinery and equipment, and electrical machinery equipment and supplies not elsewhere classified.

B. Where can I get a copy of this document and other related information?

In addition to being available in the dockets for this action, an electronic copy of this proposed action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/printing-coating-and-dyeing-fabrics-and-other-textiles-national#rule-summary, https://www.epa.gov/stationary-sources-air-pollution/surface-coating-large-appliances-national-emission-standards,* and *https://www.epa.gov/stationary-sources-air-pollution/surface-coating-metal-furniture-national-emission-standards.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at these same websites. Information on the overall RTR program is available at *https://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 Fabrics and Other Textiles Docket, Metal Furniture Docket, and Large Appliances Docket.

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 *https://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media 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 directly to the public docket through the procedures outlined *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media 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 (Mail Code C404–02), OAQPS, U.S. Environmental Protection Agency, 109 T. W. Alexander Dr., Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2017–0668 for Printing, Coating, and Dyeing of Fabrics and Other Textiles; Docket ID No. EPA–HQ–OAR–2017–0669 for Surface Coating of Metal Furniture; or Docket ID No. EPA–HQ–OAR–2017–0670 for Surface Coating of Large Appliances, as applicable.

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 Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*).[1] Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of hazardous air pollutants (HAP) from stationary sources. Generally, the first stage involves establishing technology-based standards and the second stage involves evaluating those standards that are based on maximum achievable control technology (MACT) 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 eight 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

[1] In addition, section 301 of the CAA provides general authority for the Administrator to ''prescribe such regulations as are necessary to carry out his functions'' under the Act.

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 dockets for each subpart in this rulemaking.

In the first stage of the CAA section 112 standard setting process, the EPA promulgates technology-based standards under CAA section112(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 approach 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 (DC Cir. 2008).

The approach incorporated into the CAA and 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) [2] 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 approach, 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, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

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 eight years. In conducting this review, which we call the ''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 are the source categories and how do the current NESHAP regulate their HAP emissions?

1. What is the Surface Coating of Large Appliances source category and how does the current NESHAP regulate its HAP emissions?

a. Source Category Description

The NESHAP for the Surface Coating of Large Appliances source category was promulgated on July 23, 2002 (67 FR 48254), and codified at 40 CFR part 63, subpart NNNN. As promulgated in 2002, the Surface Coating of Large Appliances NESHAP applies to the surface coating and related operations at each new and existing affected source of HAP emissions at facilities that are major sources and are engaged in the surface coating of a large appliance part or product. The Surface Coating of Large Appliances NESHAP (40 CFR 63.4081) defines a ''large appliance part or product'' as ''a component of a large appliance product manufactured for household, recreational, institutional, commercial, or industrial use'' including, but not limited to, ''cooking equipment; refrigerators, freezers, and refrigerated cabinets and cases; laundry equipment; dishwashers, trash compactors, and water heaters; and heating, ventilation, and air-conditioning (HVAC) units, air-conditioning (except motor vehicle) units, air-conditioning and heating combination units, comfort furnaces, and electric heat pumps. Specifically excluded are heat transfer coils and large commercial and industrial chillers.''

Based on our search of the National Emission Inventory (NEI) (*www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei*) and the EPA's

[2] 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.

Enforcement and Compliance History Online (ECHO) database (*www.echo.epa.gov)* and a review of active air emissions permits, we estimate that ten facilities are subject to the Surface Coating of Large Appliances NESHAP. A complete list of facilities subject to the Surface Coating of Large Appliances NESHAP is available in Table 1 of Appendix 10 to the memorandum titled *Residual Risk Assessment for the Surface Coating of Large Appliances Source Category in Support of the May 2018 Risk and Technology Review Proposed Rule* (hereafter referred to as the *Large Appliances Risk Assessment Report*) in the Large Appliances Docket (Docket ID No. EPA–HQ–OAR–2017–0670). The Surface Coating of Large Appliances NESHAP also defines a coating as a ''material that is applied to a substrate for decorative, protective or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, inks, adhesives, and maskants. Decorative, protective, or functional materials that consist only of protective oils, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.''

b. HAP Emission Sources

The primary HAP emitted from large appliance surface coating operations are organic HAP and include xylene, glycol ethers, toluene, methanol, ethyl benzene, methylene chloride, and methyl isobutyl ether. Approximately 80 percent of the HAP emissions from the Surface Coating of Large Appliances source category occur from the coating operations and from the mixing and storage areas. At the time of the original rule promulgation in 2002, most large appliance coating was applied either by using a spray gun in a spray booth or by dipping the substrate in a tank. Inorganic HAP emissions were considered in the development of the Surface Coating of Large Appliances NESHAP. Inorganic HAP, including chromium, cobalt, lead, and manganese compounds, are components of some specialty coatings used by this source category. However, most of the inorganic HAP components remain as solids in the dry coating film on the parts being coated or are deposited onto the walls, floor, and grates of the spray booths in which they are applied. The remaining inorganic HAP particles are entrained in the spray booth exhaust air. Spray booths in the large appliance industry typically have either water curtains or dry filters to remove overspray particles from the exhaust air. No inorganic HAP were reported in the cleaning materials in the data collected to develop the Surface Coating of Large Appliances NESHAP. No inorganic HAP were reported in the NEI data used for this RTR for surface coating operations at major source large appliance manufacturing facilities.

c. NESHAP Requirements for Control of HAP

We estimated that the Surface Coating of Large Appliances NESHAP requirements would reduce the emissions of organic HAP from the source category by 45 percent or 1,191 tons per year (67 FR 48259, July 23, 2002). The NESHAP specifies numerical emission limits for organic HAP emissions from surface coating application operations. The organic HAP emission limit for existing sources is 0.13 kilogram (kg) organic HAP/liter (1.1 pound/gallon (lb/gal)) of coating solids and for new or reconstructed sources is 0.022 kg organic HAP/liter (0.18 lb/gal) of coating solids.

The Surface Coating of Large Appliances NESHAP provides existing sources three compliance options: (1) Compliant coatings *i.e.,* all coatings have less than or equal to 0.13 kg organic HAP/liter (1.1 pound/gallon (lb/gal)) of coating solids; (2) emission rate without add-on controls; or (3) emission rate with add-on controls.

For any coating operation(s) on which the facility uses the compliant material option or the emission rate without add-on controls option, the facility is not required to meet any work practice standards.

If the facility uses the emission rate with add-on controls option, the facility must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the coating operation(s) using that option. The plan must specify practices and procedures to ensure that a set of minimum work practices specified in the NESHAP are implemented. The facility must also comply with site-specific operating limits for the emission capture and control system.

2. What is the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category and how does the current NESHAP regulate its HAP emissions?

a. Source Category Description

The NESHAP for the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category was promulgated on May 29, 2003 (68 FR 32172), and codified at 40 CFR part 63, subpart OOOO. As promulgated in 2003, the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP applies to the printing, coating, slashing, dyeing, or finishing of fabrics and other textiles and related operations at each new and existing affected source of HAP emissions at facilities that are major sources and are engaged in the printing, coating, slashing, dyeing, or finishing of fabrics and other textiles. The Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP (40 CFR 63.4371) defines a fabric as any woven, knitted, plaited, braided, felted, or non-woven material made of filaments, fibers, or yarns including thread. This term includes material made of fiberglass, natural fibers, synthetic fibers, or composite. The NESHAP defines textile as any one of the following: (1) Staple fibers and filaments suitable for conversion to or use as yarns, or for the preparation of woven, knit, or nonwoven fabrics; (2) Yarns made from natural or manufactured fibers; (3) Fabrics and other manufactured products made from staple fibers and filaments and from yarn; and (4) Garments and other articles fabricated from fibers, yarns, or fabrics.

Based on our search of the NEI and EPA's ECHO database and a review of active air emission permits, we estimate that 43 facilities are subject to the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP. A complete list of facilities we identified as subject to the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP is available in Table 1 of Appendix 10 to the memorandum titled *Residual Risk Assessment for the Printing, Coating, and Dyeing of Fabrics and Other Textiles Source Category in Support of the May 2018 Risk and Technology Review Proposed Rule*) hereafter referred to as the *Fabrics and Other Textiles Risk Assessment Report*), in the Fabrics and Other Textiles Docket (Docket ID No. EPA–HQ–OAR–2017–0668).

The Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP also defines a coating material as an elastomer, polymer, or prepolymer material applied as a thin layer to a textile web. Such materials include, but are not limited to, coatings, sealants, inks, and adhesives. Decorative, protective, or functional materials that consist only of acids, bases, or any combination of these substances are not considered coating materials for the purposes of this subpart. Thinning materials also are not included in this

definition of coating materials but are accounted for separately.

b. HAP Emission Sources

The primary HAP emitted from printing, coating, and dyeing operations are organic HAP and include toluene, phenol, methanol, and N,N-dimethylformamide. The majority of organic HAP emissions (greater than 95 percent) come from the coating and printing subcategories, with the remainder coming from dyeing and finishing.

Inorganic HAP emissions were considered in the development of the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP. Based on information reported in survey responses during the development of the 2002 proposed NESHAP, inorganic HAP, including chromium, cobalt, hydrogen chloride (HCl), lead, manganese compounds, and nickel were components of some coatings, dyes, and finishes used by this source category. However, we concluded that inorganic HAP are not likely to be emitted from these sources because of the application techniques used (67 FR 46032, July 11, 2002). No inorganic HAP were reported in the NEI data used for this RTR for printing, coating, and dyeing of fabrics and other textiles operations at major source facilities.

c. NESHAP Requirements for Control of HAP

We estimated that the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP requirements would reduce the emissions of organic HAP from the source category by 60 percent or 4,100 tpy (68 FR 32172, May 29, 2003). The NESHAP specifies numerical emission limits for organic HAP emissions from three subcategories of surface coating application operations: Printing and coating; dyeing and finishing; and slashing. The organic HAP emission limit for existing printing or coating affected sources is 0.12 kg organic HAP/kg (lb/lb) of coating solids applied and for new or reconstructed affected sources is 0.08 kg organic HAP/kg (lb/lb) of coating solids applied. Printing or coating affected sources may also demonstrate compliance by achieving at least a 98-percent HAP reduction for new affected sources or a 97-percent HAP reduction for existing sources. New and existing sources using a thermal oxidizer may also comply by achieving a HAP concentration at the oxidizer outlet of no greater than 20 parts per million by volume (ppmv) on a dry basis and having an emission capture system with 100-percent efficiency.

For new, reconstructed, or existing dyeing and finishing operations, the emission limit for conducting dyeing operations is 0.016 kg organic HAP/kg (lb/lb) dyeing materials applied; the limit for conducting finishing operations is 0.0003 kg organic HAP/kg (lb/lb) finishing materials applied; and the limit for conducting both dyeing and finishing operations is 0.016 kg organic HAP/kg (lb/lb) dyeing and finishing materials applied. For new, reconstructed, or existing slashing operations, the slashing materials must contain no organic HAP (each organic HAP that is not an Occupational Safety and Health Administration (OSHA)-defined carcinogen that is measured to be present at less than one percent by weight is counted as zero).

For any coating, printing, or dyeing operation(s) on which the facility uses the compliant material option or the emission rate without add-on controls option, the facility is not required to meet any work practice standards.

If the facility uses an add-on control device to demonstrate compliance, the facility must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the coating operation(s) using that option. The plan must specify practices and procedures to ensure that a set of minimum work practices specified in the NESHAP are implemented. The facility must also comply with site-specific operating limits for the emission capture and control system.

3. What is the Surface Coating of Metal Furniture source category and how does the current NESHAP regulate its HAP emissions?

a. Source Category Description

The NESHAP for the Surface Coating of Metal Furniture source category was promulgated on May 23, 2003 (68 FR 28606), and codified at 40 CFR part 63, subpart RRRR. As promulgated in 2003, the Surface Coating of Metal Furniture NESHAP applies to the surface coating and related operations at each new and existing affected source of HAP emissions at facilities that are major sources and are engaged, either in part or in whole, in the surface coating of metal furniture. The Surface Coating of Metal Furniture NESHAP (40 CFR 63.4881) defines metal furniture as furniture or components of furniture constructed either entirely or partially from metal. Metal furniture includes, but is not limited to, components of the following types of products as well as the products themselves: Household, office, institutional, laboratory, hospital, public building, restaurant, barber and beauty shop, and dental furniture; office and store fixtures; partitions; shelving; lockers; lamps and lighting fixtures; and wastebaskets.

Based on our search of the NEI and the EPA's ECHO database and a review of active air emission permits, we estimate that 16 facilities are subject to the Surface Coating of Metal Furniture NESHAP. A complete list of facilities subject to the Surface Coating of Metal Furniture NESHAP is available in Table 1 of Appendix 10 to the memorandum titled *Residual Risk Assessment for the Surface Coating of Metal Furniture Source Category in Support of the May 2018 Risk and Technology Review Proposed Rule* (hereafter referred to as the *Metal Furniture Risk Assessment Report*), in the Metal Furniture Docket (Docket ID No. EPA–HQ–OAR–2017–0669). The Surface Coating of Metal Furniture NESHAP defines a coating as a ''material that is applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, inks, adhesives, and maskants.''

b. HAP Emission Sources

Most of the organic HAP emissions from metal furniture surface coating operations occur from the coating application operations and the drying and curing ovens. In most cases, HAP emissions from surface preparation, storage, and handling are relatively small for this source category. The primary organic HAP emitted from metal furniture surface coating operations are xylene, glycol ethers, ethylbenzene, toluene, and cumene. These compounds account for more than 95 percent of this category's nationwide organic HAP emissions from major sources.

Inorganic HAP emissions, such as chromium, lead, and manganese compounds, were considered in the development of the Surface Coating of Metal Furniture NESHAP, and the EPA determined that inorganic HAP emissions would be very low (67 FR 20206, April 24, 2002). At that time, approximately 680 coatings were reported in the survey responses from the metal furniture industry, and only two coatings were reported as containing inorganic HAP. In the NEI data used for this risk and technology review, only one facility reported inorganic HAP emissions (antimony, 0.015 tpy, and nickel, 0.003 tpy) from metal furniture surface coating operations. According to the reporting facility, the reported emissions in the

NEI were conservatively over-estimated by an approximate factor of 10.[3]

c. NESHAP Requirements for Control of HAP

We estimated the Surface Coating of Metal Furniture NESHAP requirements would reduce the emissions of organic HAP from the source category by 73 percent or 16,300 tpy (68 FR 28606, May 23, 2003). The NESHAP specifies numerical emission limits for organic HAP emissions from surface coating application operations. The organic HAP emission rate for existing sources is no more than 0.10 kg organic HAP/liter (0.83 lb/gal) of coating solids used during each compliance period. A new or reconstructed affected source can emit no organic HAP during any compliance period unless a source requests approval from the Administrator to use an alternative new source emission limit for specific metal furniture components or types of components.

The Surface Coating of Metal Furniture NESHAP provides existing sources three compliance options: (1) Use only compliant coatings *i.e.,* all coatings have less than or equal to 0.10 kg organic HAP/liter (0.83 lb/gal) of coating solids used; (2) collectively manage the coatings such that the monthly emission rate of organic HAP is less than or equal to 0.10 kg organic HAP/liter (0.83 lb/gal) coating solids used; or (3) use emission capture systems and control devices to achieve an organic HAP emission rate of less than or equal to 0.10 kg organic HAP/liter (0.83 lb/gal) coating solids used.

For any metal furniture coating operation(s) on which the facility uses the compliant material option or the emission rate without add-on controls option, the facility is not required to meet any work practice standards.

If the facility uses an add-on control device to demonstrate compliance, the facility must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the coating operation(s) using that option. The plan must specify practices and procedures to ensure that a set of minimum work practices specified in the NESHAP are implemented. The facility must also comply with site-specific operating limits for the emission capture and control system.

[3] Telephone communication between Kaye Whitfield, U.S. EPA and Marley Ayres, Pinnacle Engineering, February 7, 2018.

C. What data collection activities were conducted to support this action?

For the risk modeling portion of these RTRs, the EPA used data from the 2011 and 2014 NEI. 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 three years. The NEI includes data 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 data to develop the model input files for the risk assessments for each of these three source categories. Additional information on the development of the modeling file for each source category can be found in Appendix 1 to the *Large Appliances Risk Assessment Report* in the Large Appliances Docket (Docket ID No. EPA–HQ–OAR–2017–0670), Appendix 1 to the *Fabrics and Other Textiles Risk Assessment Report* in the Fabrics and Other Textiles Docket (Docket ID No. EPA–HQ–OAR–2017–0668), and Appendix 1 to the *Metal Furniture Risk Assessment Report* in the Metal Furniture Docket (Docket ID No. EPA–HQ–OAR–2017–0669).

For both the risk modeling and technology review portion of these RTRs, we also gathered data from facility construction and operating permits, regarding emission points, air pollution control devices, and process operations. We collected permits and supporting documentation from state permitting authorities through state-maintained online databases. The facility permits were also used to confirm that the facilities were major sources of HAP and were subject to the NESHAP that are the subject of these risk assessments. In certain cases, we contacted facility owners or operators to confirm and clarify the sources of emissions that were reported in the NEI. No formal information collection request was performed.

For the technology review portion of these RTRs, we also used information from the EPA's ECHO database as a tool to identify which facilities were potentially subject to the 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 facilities that could potentially be subject to each of these three NESHAP. We then reviewed operating permits for these facilities, when available, to confirm that they were major sources of HAP with emission sources subject to these NESHAP.

Also for the technology reviews, we collected information from the Reasonably Available Control Technology (RACT), Best Available Control Technology (BACT), and Lowest Achievable Emission Rate (LAER) determinations in the EPA's RACT/BACT/LAER Clearinghouse (RBLC).[4] This is a database that contains case-specific information on 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 large 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 for these surface coating operations to reduce air emissions.

Additional information about these data collection activities for the technology reviews is contained in the technology review memoranda titled *Technology Review for Surface Coating Operations in the Large Appliance Category, August 2017* (hereafter referred to as the *Large Appliances Technology Review Memo*), *Technology Review for Printing, Coating, and Dyeing Category, August 2017* (hereafter referred to as the *Fabrics and Other Textiles Technology Review Memo*), and *Technology Review for Surface Coating Operations in the Metal Furniture Category, September 2017* (hereafter referred to as the *Metal Furniture Technology Review Memo*), available respectively in the Large Appliances Docket, Fabrics and Other Textiles Docket, and Metal Furniture Docket.

D. What other relevant background information and data are available?

For the technology review for each source category, we reviewed the NESHAP for various industries that were promulgated since the MACT standards being reviewed in this action.

[4] *https://www.epa.gov/catc/ractbactlaer-clearinghouse-rblc-basic-information.*

We reviewed the regulatory requirements and/or technical analyses associated with these later regulatory actions to identify any practices, processes, and control technologies considered in those rulemakings that could be applied to emission sources in each of these three source categories, as well as the costs, non-air impacts, and energy implications associated with the use of those technologies. We also reviewed information available in the American Coatings Association's (ACA) *Industry Market Analysis,* 9th Edition (2014–2019),[5] for the Surface Coating of Metal Furniture and Surface Coating of Large Appliances source categories. The *ACA Industry Market Analysis* provided information on trends in coatings technology that can affect emissions from the metal furniture and large appliance source categories, but did not address the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category. Additional details regarding our review of these information sources are contained in the *Large Appliances Technology Review Memo,* the *Fabrics and Other Textiles Technology Review Memo,* and the *Metal Furniture Technology Review Memo,* available in the Large Appliances Docket, Fabrics and Other Textiles Docket, and Metal Furniture Docket, respectively.

III. Analytical Procedures

In this section, we describe the analyses performed to support the proposed decisions for the RTRs 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 approach 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 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.[6] 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 comments 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 noncancer 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 his 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 his judgment, believes are appropriate to determining what will 'protect the public health'.'' See 54 FR 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 ten 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 categories under review, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in the categories.

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

[5] Prepared for the American Coatings Association, Washington, DC, by The ChemQuest Group, Inc., Cincinnati, Ohio. 2015.

[6] 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.

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.'' [7]

In response to the SAB recommendations, the EPA is incorporating certain cumulative risk analyses into its RTR risk assessments, including those reflected in this proposal. Specifically, 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 look at the cumulative risks from all sources at facilities within the category, we do not assess the cumulative risks from facilities outside the category that may be in the vicinity. We are interested in placing source category and facility-wide HAP risks in the context of total HAP risks from all sources of HAP in the vicinity of each source. However, 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 reviews focus 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, and non-air environmental impacts, and we also consider the emission reductions. In addition, we consider the appropriateness of applying controls to future affected sources versus retrofitting affected sources currently subject to the NESHAP.

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 the NESHAP (*i.e.,* the 2002 Surface Coating of Large Appliances NESHAP; the 2003 Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP; and the 2003 Surface Coating of Metal Furniture NESHAP), we reviewed a variety of data sources in our investigation of potential practices, processes, or controls that were not considered for each of the three source categories during development of the NESHAP. Among the sources we reviewed were the NESHAP for various industries that were promulgated since the MACT standards being reviewed in this action (*e.g.,* NESHAP for Miscellaneous Metal Parts and Products (40 CFR part 63, subpart MMMM)). We also reviewed the results of other technology reviews for other surface coating source categories since the promulgation of the NESHAP (*e.g.,* the technology reviews conducted for the Shipbuilding and Ship Repair (Surface Coating) NESHAP (40 CFR part 63, subpart II) and the Wood Furniture Manufacturing Operations NESHAP (40 CFR part 63, subpart JJ)). 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 Surface Coating of Large Appliances source category, the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category, and the Surface Coating of Metal Furniture 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-sponsored market analyses and trade journals, searching for advancements in add-on controls, advancements in lower HAP technology for coatings and solvents. For a more detailed discussion of our methods for performing these technology reviews, refer to the *Large Appliances Technology Review Memo,* the *Fabrics and Other Textiles Technology Review Memo,* and the *Metal Furniture Technology Review Memo,* available respectively in the Large Appliances Docket, Fabrics and Other Textiles Docket, and Metal Furniture Docket.

C. How did we estimate post-MACT risks posed by these source categories?

The EPA conducted risk assessments that provide estimates of the MIR for cancer posed by the HAP emissions from each source in each 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 assessments also provide estimates of the distribution of cancer risks within the exposed populations, cancer incidence, and an evaluation of the potential for adverse environmental effects. The seven sections that follow this paragraph describe how we estimated emissions and conducted the risk assessments. The Large Appliances Docket, Fabrics and Other Textiles Docket, and Metal Furniture Docket contain, respectively, the *Large Appliances Risk Assessment Report,* the *Fabrics and Other Textiles Risk Assessment Report,* and the *Metal Furniture Risk Assessment Report,* which provide more information on the

[7] 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: *https://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.*

risk assessment inputs and models. The methods used to assess risks (as described in the seven 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;[8] they are also consistent with the key recommendations contained in that report.

1. How did we estimate actual emissions and identify the emissions release characteristics?

The actual emissions and the emission release characteristics for each facility were obtained primarily from either the 2011 NEI or the 2014 NEI. Most data were obtained from the 2011 NEI, unless the 2014 NEI included HAP data for emission units or processes for which the 2011 NEI included only volatile organic compounds (VOC) or particulate matter. In some cases, the facilities were contacted to confirm emissions that appeared to be outliers, that were otherwise inconsistent with our understanding of the industry, or that were associated with high risk values in our initial risk screening analyses. When appropriate, emission values and release characteristics were corrected based on these facility contacts, and these changes were documented. Additional information on the development of the modeling file for each source category, including the development of the actual emissions and emissions release characteristics, can be found in Appendix 1 to the *Large Appliances Risk Assessment Report* in the Large Appliances Docket, Appendix 1 to the *Fabrics and Other Textiles Risk Assessment Report* in the Fabrics and Other Textiles Docket, and Appendix 1 to the *Metal Furniture Risk Assessment Report* in the Metal Furniture Docket.

2. How did we estimate MACT-allowable emissions?

The available emissions data in 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 allowed under the requirements of the current MACT standards. The emissions level allowed to be emitted under 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.)

For the Surface Coating of Large Appliances source category, the EPA calculated allowable emissions by developing a source category-specific multiplier of 1.2 that was applied to the current emissions to estimate allowable emissions. The multiplier was calculated using annual coating sales volumes provided in the *ACA Industry Market Analysis* for appliance finishes in the years 2005 to 2014. For more information on how the EPA calculated the MACT-allowable emissions for the Surface Coating of Large Appliances source category, please see Appendix 1 to the *Large Appliances Risk Assessment Report* in the Large Appliances Docket (Docket ID No. EPA–HQ–OAR–2017–0670).

For the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category, the EPA calculated allowable emissions by developing a source category-specific multiplier of 1.1 that was applied to the current emissions to estimate allowable emissions. We gathered current and historical publicly available category-specific production data from U.S. Census and based the calculation on plant capacity utilization rates for six different NAICS codes related to fabric and textile production for the years 2008 to 2016. We assumed the annual plant capacity utilization rates represented industry annual production rates. The multiplier of 1.1, or the ratio of the peak annual utilization rate in 2013 to the average annual utilization rate for the years 2008 to 2016, was applied to the actual emissions to estimate allowable emissions. For more details on how the EPA calculated the MACT-allowable emissions for the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category, please see Appendix 1 to the *Fabrics and Other Textiles Risk Assessment Report* in the Fabrics and Other Textiles Docket (Docket ID No. EPA–HQ–OAR–2017–0668).

For the Surface Coating of Metal Furniture source category, the EPA calculated allowable emissions by developing a source category-specific multiplier of 1.8 that was applied to the current emissions to estimate allowable emissions. The multiplier was calculated using annual coating sales volumes from the *ACA Industry Market Analysis* for non-wood furniture, fixture, and business equipment coatings from 2005 to 2014. For more details on how the EPA calculated the MACT-allowable emissions for the Surface Coating of Metal Furniture source category, please see Appendix 1 to the *Metal Furniture Risk Assessment Report* in the Metal Furniture Docket (Docket ID No. EPA–HQ–OAR–2017–0669).

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 categories 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.[9] 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 one year (2016) of hourly surface and upper air observations from 824 meteorological stations, selected to provide coverage of the U.S. and Puerto Rico. A second library of U.S. Census Bureau census block[10] 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

[8] 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.

[9] 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).

[10] A census block is the smallest geographic area for which census statistics are tabulated.

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 used the estimated annual average ambient air concentrations of each HAP emitted by each source for which we have emissions data in the source categories. The air concentrations at each nearby census block centroid were used as a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. We calculated the MIR for each facility as the cancer risk associated with a continuous lifetime (24 hours per day, seven 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 were 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 one 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 categories, the EPA summed the risks for each of the carcinogenic HAP [11] emitted by the modeled sources. Cancer incidence and the distribution of individual cancer risks for the population within 50 km of the sources were 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/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 EPA: (1) The Agency for Toxic Substances and Disease Registry (ATSDR) Minimum Risk Level (*https://www.atsdr.cdc.gov/mrls/index.asp*); (2) the CalEPA Chronic Reference Exposure Level (REL) (*https://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 (when available),[12] 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

[11] The 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 *https://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

[12] In the absence of hourly emission data, we develop estimates of maximum hourly emission rates by multiplying the average actual annual emissions rates by a factor (either a category-specific factor or a default factor of 10) and dividing by the total number of hours in a year (8,760 hours) to account for variability. This is documented in *Large Appliances Risk Assessment Report, Fabrics and Other Textiles Risk Assessment Report, and Metal Furniture Risk Assessment Report* and in Appendix 5 of the report: *Analysis of Data on Short-term Emission Rates Relative to Long-term Emission Rates.* These documents are available in the Large Appliances Docket, Fabrics and Other Textiles Docket, and Metal Furniture Docket.

for a specified exposure duration.'' [13] 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 ten minutes to eight hours.[14] 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/m^3 (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.'' The document also notes that ''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.'' [15] *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 one 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 these source categories, we did not have short term emissions data; therefore, we developed source category-specific factors based on information about each industry. We request comment on our assumptions regarding hour-to-hour variation in emissions and our methods of calculating the multiplier for estimating the peak 1-hour emissions for each source category and any additional information that could help refine our approach.

For the Surface Coating of Large Appliances source category, we do not expect to see substantial hour-to-hour variation in emissions during routine operations because the industry employs the use of compliant low HAP coatings in a continuous (non-batch) coating process. Thus, applying the default emission factor of ten to estimate the worst-case hourly emission rate is not reasonable for this category. We expect that minimal variations in emissions could possibly occur due to cleaning of process equipment during routine operations for coating operations using the emission rate without add-on controls compliance option. We calculated worst-case hourly emissions by developing a source category-specific multiplier of 1.2 that was applied to the annual emissions, which were then divided by the total number of hours in a year (8,760 hours). The multiplier was based on historical data on coating sales volumes from the *ACA Industry Market Analysis* for appliance finishes 2005 to 2014. The multiplier was the ratio of the peak coating sales volume (in gallons) in 2006 to the average sales volume for the years 2005 to 2014. The peak coating sales volume in 2006 was assumed to represent the maximum utilization of the current large appliance surface coating industry. A further discussion of why this factor was chosen can be found in Appendix 1 to the *Large Appliances Risk Assessment Report* in the Large Appliances Docket.

For the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category, we do not expect to see substantial hour-to-hour variation in emissions during routine operations because the industry employs the use of various compliance options, including add-on controls, compliant low HAP coatings, or emission rate without add-on controls option, in a continuous (non-batch) coating process that achieve consistent emission rates. Thus, applying the default emission factor of ten to estimate the worst-case hourly emission rate is not reasonable for this category. We expect that minimal variations in emissions could possibly occur during routine operations due to cleaning of process equipment. We calculated acute emissions by developing a source category-specific multiplier of 1.4 that was applied to the annual emissions, which were then divided by the total number of hours in a year (8,760 hours). The multiplier was based on historical U.S. Census data on plant capacity utilization rates for six different NAICS codes related to fabric and textile production for the years 2008 to 2016. The multiplier was the ratio of the maximum utilization rate (100 percent) to the peak utilization rate of 71.7 percent for the years 2008 to 2016. A further discussion of why this factor was chosen can be found in Appendix 1 to the *Fabrics and Other Textiles Risk Assessment Report* in the Fabrics and Other Textiles Docket.

For the Surface Coating of Metal Furniture source category, we do not expect to see substantial hour-to-hour variation in emissions during routine operations because the industry employs the use of compliant low HAP

[13] 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 *https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.*

[14] National Academy of Sciences, 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*).

[15] *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.*

coatings in a continuous (non-batch) coating process. Thus, applying the default emission factor of ten to estimate the worst-case hourly emission rate is not reasonable for this category. We expect that minimal variations in emissions could possibly occur due to cleaning of process equipment during routine operations for coating operations using the emission rate without add-on controls compliance option. We calculated worst-case hourly emissions by developing a source category-specific multiplier of 1.8 that was applied to the annual emissions, which were then divided by the total number of hours in a year (8,760 hours). The multiplier was based on historical data on coating sales volumes from the *ACA Industry Market Analysis* for non-wood furniture, fixture and business equipment coatings from 2005 to 2014. The multiplier was the ratio of the peak coating sales volume (in gallons) in 2005 to the average sales volume for the years 2005 to 2014. The peak sales volume in 2005 was assumed to represent maximum utilization of the current metal furniture surface coating industry. A further discussion of why this factor was chosen can be found in Appendix 1 to the *Metal Furniture Risk Assessment Report* in the Metal Furniture Docket.

In our acute inhalation screening risk assessment, acute impacts are deemed negligible for HAP where acute HQs are less than or equal to one (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 all three source categories, the acute data refinements employed consisted of plotting the HEM–3 polar grid results for each HAP with an acute HQ value greater than one on aerial photographs of the facilities. We then assessed whether the highest acute HQs were off-site and at locations that may be accessible to the public (*e.g.,* roadways and public buildings). These refinements are discussed more fully in the *Large Appliances Risk Assessment Report,* the *Fabrics and Other Textiles Risk Assessment Report,* and the *Metal Furniture Risk Assessment Report,* available respectively in the Large Appliances Docket, Fabrics and Other Textiles Docket, and Metal Furniture Docket.

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 categories 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 *https://www2.epa.gov/fera/risk-assessment-and-modeling-air-toxics-risk-assessment-reference-library*).

For the Surface Coating of Large Appliances; the Printing, Coating, and Dyeing of Fabrics and Other Textiles; and Surface Coating of Metal Furniture source categories, 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 these source categories.

5. 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 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 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 *Large Appliances Risk Assessment Report,* the *Fabrics and Other Textiles Risk Assessment Report,* and the *Metal Furniture Risk Assessment Report,* in the Large Appliances Docket, Fabrics and Other Textiles Docket, and Metal Furniture Docket, respectively.

b. Environmental Risk Screening Methodology

For the environmental risk screening assessment, the EPA first determined whether any facilities in the Surface Coating of Large Appliances; Printing, Coating, and Dyeing of Fabrics and Other Textiles; and Surface Coating of Metal Furniture source categories emitted any of the environmental HAP. For the Surface Coating of Large Appliances source category, we identified emissions of HCl and HF. No environmental HAP were emitted from the other two source categories.

Because one or more of the environmental HAP evaluated are emitted by at least one facility in the Surface Coating of Large Appliances

source category, we proceeded to the second step of the evaluation for that source category.

c. Acid Gas Environmental Risk Methodology

The environmental screening assessment for acid gases evaluates the potential phytotoxicity and reduced productivity of plants due to chronic exposure to HCl and HF. The environmental risk screening methodology for acid gases is a single-tier screening assessment that compares modeled ambient air concentrations (from AERMOD) to the ecological benchmarks for each acid gas. To identify potential adverse environmental effects (as defined in section 112(a)(7) of the CAA) from emissions of HCl and HF, we evaluate the following metrics: The size of the modeled area around each facility that exceeds the ecological benchmark for each acid gas, in acres and km^2; the percentage of the modeled area around each facility that exceeds the ecological benchmark for each acid gas; and the area-weighted average screening value around each facility (calculated by dividing the area-weighted average concentration over the 50-km modeling domain by the ecological benchmark for each acid gas). For further information on the environmental screening assessment approach, see Appendix 9 of the *Large Appliances Risk Assessment Report* in the Large Appliances Docket.

6. 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 compiled from the 2014 NEI. The source category records of that NEI dataset were removed, evaluated, and updated as described in section II.C of this preamble: ''What data collection activities were conducted to support this action?'' Once a quality assured source category dataset was available, it was placed back with the remaining records from the NEI for that facility. The facility-wide file was then used to analyze 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, the modeled source category risks were compared to the facility-wide risks to determine the portion of the facility-wide risks that could be attributed to the source categories 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 *Large Appliances Risk Assessment Report,* the *Fabrics and Other Textiles Risk Assessment Report,* and the *Metal Furniture Risk Assessment Report,* available respectively in the Large Appliances Docket, Fabrics and Other Textiles Docket, and Metal Furniture Docket, provide 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.

7. 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 datasets, 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 *Large Appliances Risk Assessment Report,* the *Fabrics and Other Textiles Risk Assessment Report,* and the *Metal Furniture Risk Assessment Report,* available respectively in the Large Appliances Docket, Fabrics and Other Textiles Docket, and Metal Furniture Docket. 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 Datasets

Although the development of the RTR emissions datasets involved quality assurance/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* [16]; 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).[17] In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[18] 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 [19] 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.,* one 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

[16] *Guidelines for Carcinogen Risk Assessment,* EPA/630/P–03/001F, March 2005. (*https://www.epa.gov/risk/guidelines-carcinogen-risk-assessment*).

[17] IRIS glossary (*https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary*).

[18] 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.

[19] U.S. EPA, 1993. Reference Dose (RfC); Description and Use in Health Risk Assessments. (*https://www.epa.gov/iris/reference-dose-rfd-description-and-use-health-risk-assessments*). U.S. EPA, 1994b. Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry. (*https://www.epa.gov/risk/methods-derivation-inhalation-reference-concentrations-and-application-inhalation-dosimetry*).

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 these source categories, 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.

f. Uncertainties in the Multipathway and Environmental Risk Screening Assessments

For each source category, we generally rely on site-specific levels of PB–HAP or environmental HAP emissions to determine whether a refined assessment of the impacts from multipathway exposures is necessary or whether it is necessary to perform an environmental screening assessment. None of the three source categories in this action emit PB–HAP, therefore, multipathway assessments were not conducted. Since no environmental HAP are emitted from the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category or the Surface Coating of Metal Furniture source category, an environmental risk screen was not conducted for these categories. Small amounts of the environmental HAP, HCl, and HF are emitted from the Surface Coating of Large Appliances source category, therefore, an environmental risk screen was conducted.

The environmental screening assessment relies on the outputs from AERMOD—that estimates environmental pollutant concentrations for two acid gases (HCl and HF). Two important types of uncertainty associated with the use of these models in RTR risk assessments and inherent to any assessment that relies on environmental modeling are model uncertainty and input uncertainty.[20] Model uncertainty concerns whether the model adequately represents the actual processes (*e.g.,* movement and accumulation) that might occur in the environment. For example, does the model adequately describe the movement of a pollutant through the soil? This type of uncertainty is difficult to quantify. However, based on feedback received from previous EPA SAB reviews and other reviews, we are confident that the models used in the screening assessments are appropriate and state-of-the-art for the environmental screening risk assessment conducted in support of RTR.

Input uncertainty is concerned with how accurately the models have been configured and parameterized for the assessment at hand. For the environmental screening assessment for acid gases, we employ a single-tiered approach. We use the modeled air concentrations and compare those with ecological benchmarks.

IV. Analytical Results and Proposed Decisions

A. What are the analytical results and proposed decisions for the Surface Coating of Large Appliances source category?

1. What are the results of the risk assessment and analyses?

As described in section III of this preamble, for the Surface Coating of Large Appliances source category, we conducted a risk assessment for all HAP emitted. We present results of the risk assessment briefly below and in more detail in the *Large Appliances Risk Assessment Report* in the Large Appliances Docket (Docket ID No. EPA–HQ–OAR–2017–0670).

a. Inhalation Risk Assessment Results

Table 2 of this preamble provides a summary of the results of the inhalation risk assessment for the source category. As discussed in section III.C.2 of this preamble, we set MACT-allowable HAP emission levels at large appliance coating facilities equal to 1.2 times actual emissions. For more detail about the MACT-allowable emission levels, see Appendix 1 to the *Large Appliances Risk Assessment Report* in the Large Appliances Docket.

TABLE 2—SURFACE COATING OF LARGE APPLIANCES SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS

Risk assessment	Maximum individual cancer risk (in 1 million)		Estimated population at increased risk of cancer ≥ 1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [1]		Maximum screening acute noncancer HQ [2]
	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions
Source Category	0.9	1	0	50	0.0001	0.0002	0.07	0.08	HQREL = 2
Whole Facility	6	.....	600	.....	0.0002	.....	0.2	.....	

[1] The target organ specific hazard index (TOSHI) is the sum of the chronic noncancer hazard quotients for substances that affect the same target organ or organ system.

[2] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values.

The results of the inhalation risk modeling using actual emissions data, as shown in Table 2 of this preamble, indicate that the maximum individual cancer risk based on actual emissions (lifetime) could be up to 0.9-in-1 million, the maximum chronic noncancer TOSHI value based on actual emissions could be up to 0.07, and the maximum screening acute noncancer HQ value (off-facility site) could be up to 2. The total estimated annual cancer incidence (national) from these facilities based on actual emission levels is 0.0001 excess cancer cases per year, or one case in every 10,000 years.

b. Acute Risk Results

Table 2 of this preamble shows the acute risk results for the Surface Coating of Large Appliances source category. The screening analysis for acute impacts was based on an industry specific multiplier of 1.2, to estimate the peak emission rates from the average rates. For more detailed acute risk results,

[20] In the context of this discussion, the term ''uncertainty'' as it pertains to exposure and risk encompasses both *variability* in the range of expected inputs and screening results due to existing spatial, temporal, and other factors, as well as *uncertainty* in being able to accurately estimate the true result.

refer to the *Large Appliances Risk Assessment Report* in the Large Appliances Docket.

c. Multipathway Risk Screening Results

There are no PB–HAP emitted by facilities in the Surface Coating of Large Appliances source category. Therefore, we do not expect any human health multipathway risks as a result of emissions from this source category.

d. Environmental Risk Screening Results

The emissions data for the Surface Coating of Large Appliances source category indicate that two environmental HAP are emitted by sources within this source category: HCl and HF. Therefore, we conducted a screening-level evaluation of the potential adverse environmental risks associated with emissions of HCl and HF for the Surface Coating of Large Appliances source category. For both HCl and HF, each individual concentration (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities. Therefore, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

e. Facility-Wide Risk Results

One facility has a facility-wide cancer MIR greater than or equal to 1-in-1 million. The maximum facility-wide cancer MIR is 6-in-1 million, driven by chromium (VI) compounds from a cleaning/pretreatment operation. The total estimated cancer incidence from the whole facility is 0.0002 excess cancer cases per year, or one excess case in every 5,000 years. Approximately 600 people were estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-MACT sources of the ten facilities in this source category. The maximum facility-wide TOSHI for the source category is estimated to be 0.2, driven by emissions of methylene diphenyl diisocyanate from foam produced as part of plastic products manufacturing.

f. 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 Surface Coating of Large Appliances source category across different demographic groups within the populations living near facilities.[21]

Results of the demographic analysis indicate that, for two of the 11 demographic groups, ''African American'' and ''Below the Poverty Level,'' 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 large appliance coating facilities, we find that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic noncancer hazard index greater than one based on actual emissions from the source category.

The methodology and the results of the demographic analysis are presented in a technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Large Appliances Source Category Operations,* September 2017 (hereafter referred to as the *Large Appliances Demographic Analysis Report*) in the Large Appliances Docket.

2. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effects?

a. Risk Acceptability

As noted in section III.A of this preamble, we weigh all health risk factors in our risk acceptability determination, including the cancer MIR, the number of persons in various cancer and noncancer risk ranges, cancer incidence, the maximum noncancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and risk estimation uncertainties (54 FR 38044, September 14, 1989).

For the Surface Coating of Large Appliances source category, the risk analysis indicates that the cancer risks to the individual most exposed could be up to 0.9-in-1 million due to actual emissions and up to 1-in-1 million based on 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 very low cancer incidence (0.0001 cases per year for actual emissions and 0.0002 cases per year for allowable emissions), and we did not identify potential for adverse chronic noncancer health effects. The acute noncancer risks based on actual emissions are low at an HQ of 2 for glycol ethers at one facility. Therefore, we find there is little potential concern of acute noncancer health impacts from actual emissions. In addition, the risk assessment indicates no significant potential for multipathway health effects.

Considering all of the health risk information and factors discussed above, including the uncertainties discussed in section III.C.7 of this preamble, we propose to find that the risks from the Surface Coating of Large Appliances source category are acceptable.

b. Ample Margin of Safety Analysis

Although we are proposing that the risks from the Surface Coating of Large Appliances source category are acceptable, risk estimates for approximately 50 individuals in the exposed population are above 1-in-1 million at the allowable emissions level. Consequently, we further considered whether the MACT standards for the Surface Coating of Large Appliances source category provide an ample margin of safety to protect public health. In this ample margin of safety analysis, we investigated available emissions control options that might reduce the risk from the source category. We considered this information along with all of the health risks and other health information considered in our determination of risk acceptability.

As described in section III.B of this preamble, our technology review focused on identifying developments in practices, processes, and control technologies for the Surface Coating of Large Appliances source category, and the EPA reviewed various information sources regarding emission sources that are currently regulated by the Surface Coating of Large Appliances NESHAP.

The only development identified in the technology review is the use of high-efficiency spray equipment. We estimated no costs or emissions reductions that would be achieved by switching to high efficiency application methods for this source category because we expect that large appliance surface coating facilities are already using high efficiency coating application methods due to state VOC rules and the economic incentives of using more efficient application methods. Because quantifiable

[21] 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 above the poverty level, and linguistically isolated people.

reductions in risk are unlikely, we are proposing that the current standards provide an ample margin of safety. As discussed below, however, we are proposing to require this technology under the technology review. We request comment on this proposed requirement and whether any facilities in this source category do not currently use high efficiency coating application methods.

c. Environmental Effects

The emissions data for the Surface Coating of Large Appliances source category indicate that two environmental HAP are emitted by sources within this source category: HCl and HF. The screening-level evaluation of the potential for adverse environmental risks associated with emissions of HCl and HF from the Surface Coating of Large Appliances source category indicated that each individual concentration (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities. In addition, 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 set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

3. What are the results and proposed decisions based on our technology review?

Our technology review focused on identifying developments in practices, processes, and control technologies for the Surface Coating of Large Appliances source category, and the EPA reviewed various information sources regarding emission sources that are currently regulated by the Surface Coating of Large Appliances NESHAP. These emission sources include coating mixing; coating application; coating curing; conveying coatings, thinners and cleaning materials; and waste storage and handling. Based on our review, we identified, as outlined below, one development in technology, the application of high-efficiency spray equipment, for the Surface Coating of Large Appliances source category. A brief summary of the EPA's findings in conducting the technology review of large appliance surface coating operations follows. For a detailed discussion of the EPA's findings, refer to the *Large Appliances Technology Review Memorandum* in the Large Appliances Docket.

The technology basis for the original MACT standards for existing and new or reconstructed sources under the Surface Coating of Large Appliance NESHAP was the use of lower-HAP coatings, thinners, and cleaning materials. Add-on capture and control systems for organic HAP were rarely used by the industry at that time (65 FR 81142, December 22, 2000). During development of that rulemaking, we identified and considered three alternatives more stringent than the MACT floor level of control for organic HAP: (1) Conversion to powder coatings; (2) conversion to liquid coatings that have a very low, or no, organic HAP content; and (3) use of add-on capture systems and control devices (*i.e.,* an emission capture system such as a spray booth) used in conjunction with thermal recuperative oxidizers, regenerative thermal oxidizers (RTO), catalytic oxidizers, or activated carbon adsorbers). However, we did not adopt any of these alternatives because they were not applicable beyond a small subset of facilities or would not be cost-effective for the incremental emission reductions achieved beyond the MACT floor level of control (65 FR 81143).

Using the EPA's NEI and the ECHO databases, we identified ten large appliance surface coating facilities that are currently subject to the Surface Coating of Large Appliances NESHAP. We reviewed their state operating permits to determine whether any are using add-on control technologies to comply with the NESHAP. Two of the ten facilities have add-on controls, but the permits indicate that nine of the ten facilities are using the compliant materials option or the emission rate without add-on controls option to demonstrate compliance with the NESHAP. One facility with an add-on control is using the add-on control to comply with only a VOC emission limitation but not to comply with the NESHAP. The second facility with add-on controls does not have add-on controls on all coating operations, but a 2017 inspection report indicates that the facility is using the emission rate with add-on controls compliance option. This one facility differs from the others complying with subpart NNNN in that it is a contract coating operation that performs surface coating on parts of large appliances, but also performs surface coating on parts for a variety of industries. All of the other facilities are large appliance manufacturers. Therefore, the result from this one facility is not applicable to other facilities dedicated to manufacturing just large appliances. Our search of the RBLC database did not identify any additional large appliance manufacturers using an add-on control device or subject to an emission limit more stringent than in subpart NNNN.

The use of a RTO and permanent total enclosure (PTE) was considered during development of the Large Appliances NESHAP as a control technology capable of achieving an efficiency of 95 percent, but was rejected as not cost effective for the incremental emission reductions that would be achieved relative to the MACT floor level of control. We found no information that any improvements in PTE and add-on control technology have occurred that would affect the cost-effectiveness of a PTE and add-on control or result in additional emission reductions. Therefore, EPA finds there have not been improvements in the RTO/PTE since we promulgated the NESHAP to support requiring this technology for the large appliance source category as part of the technology review.

We have not identified any process change or pollution prevention alternative that could be broadly applied to the large appliance coating industry. We reviewed the *ACA Industry Market Analysis* for recent trends in coating technology in the large appliance industry. The *ACA Industry Market Analysis* reports that the large appliance manufacturing industry has largely shifted from liquid coatings to powder coatings and pre-coated metal coil substrate. Specifically, the *ACA Industry Market Analysis* states that the volume of liquid finishes used in appliance finishes decreased by 67 percent between 2007 and 2014 as a result of the shift to powder coatings and pre-coated metal prepared by coil coating facilities. However, a substantial fraction of the coatings used (23 percent of coatings applied by large appliance coating facilities) are still liquid coatings, and the EPA is currently unable to determine whether all surface coating operations can be shifted to powder coatings or pre-coated metal coil substrate. The shift to the use of more powder coatings on specific parts has occurred as an expected industry response to comply with the original Surface Coating of Large Appliances NESHAP, but the shift was not category-wide, nor was it appropriate for all parts or segments of the industry. Since it is not a technology that can be adopted more broadly, we are not proposing to require use of powder coatings under the technology review. One area of development identified in the *ACA Industry Market Analysis* is the use of low-energy curing powders, such as

ultraviolet (UV)-cured powders, that can be used on plastic substrates. UV-cured powders are powder coatings that use ultraviolet light as the radiant energy source to initiate a photochemical reaction to generate a crosslinked network of polymer on the substrate surface. However, we were unable to find any information from our review of permits that UV-cured powder coating has been applied at large appliance surface coating facilities. For these reasons, EPA finds that there have not been developments in powder coatings and/or pre-coated metal coil substrates since we promulgated the NESHAP to support requiring this technology for all the sources in the large appliance source category as part of the technology review.

The technology review conducted for the Wood Furniture Manufacturing Operations NESHAP (40 CFR part 63, subpart JJ) identified air-assisted airless spraying, a more efficient coating application technology, as a development in process equipment, and adopted regulations preventing the use of conventional air-atomized coating spray guns. Several other surface coating NESHAP specify that high efficiency spray guns must be used for spray applied coatings (*i.e.,* 40 CFR part 63, subparts GG and JJ) or the compliance demonstration takes into account the transfer efficiency of the spray equipment, and the standards are based on high-efficiency spray application (*e.g.,* 40 CFR part 63, subpart IIII). Using high-efficiency spray equipment reduces the amount of coating applied compared to conventional spray equipment and, therefore, reduces emissions.

The Surface Coating of Large Appliances NESHAP does not contain any standards specifying the type of spray equipment that must be used when coatings are spray-applied. However, many facilities complying with the Surface Coating of Large Appliances NESHAP also are required by state VOC regulations in Indiana, Ohio, and Wisconsin to use high-efficiency spray guns for coatings that are spray applied. We expect that large appliance surface coating facilities in other states are also using high-efficiency application equipment for spray applied coatings as a cost saving measure to reduce coating and spray booth filter consumption and to reduce the amount of solid waste generated in the form of used spray booth filters. Although we expect that the high-efficiency application equipment would provide cost savings from an engineering perspective, we are uncertain of other factors that facilities may need to consider if choosing to switch to high-efficiency application equipment. Due to the competitive marketplace and the number of units going through these surface coating facilities, there may be facility specific operational, coating adherence, coating drying time, material compatibility, or other reasons that a facility may not have chosen to switch to high-efficiency spray equipment. We request comment on these and other aspects of facility decision making, as the agency has limited information on the market penetration of this technology and these other factors.

Based on these findings, we are proposing to revise the Surface Coating of Large Appliances NESHAP for coating application operations pursuant to CAA section 112(d)(6) to require that, for each coating operation for which coatings are spray applied, high efficiency spray equipment must be used if the source is not using the emission rate with add-on control compliance option. Specifically, all spray-applied coating operations, where the source is not using the emission rate with add-on control compliance option, must be demonstrated to achieve transfer efficiency equivalent to or better than 65 percent. There are four types of high efficiency spray equipment technologies that have been applied in these applications that could achieve the transfer efficiency equivalent to or better than 65 percent including high volume, low pressure (HVLP) spray equipment, electrostatic application, airless spray equipment, and air assisted airless spray equipment. Alternative spray equipment technologies may also be used with documentation demonstrating at least 65 percent transfer efficiency. Spray application equipment sources not using the emission rate with add-on control compliance option, and/or using alternative spray application equipment technologies other than the four listed, must follow procedures in the California South Coast Air Quality Management District's, ''Spray Equipment Transfer Efficiency Test Procedure for Equipment User, May 24, 1989'' to demonstrate that their spray application equipment is capable of achieving transfer efficiency equivalent to, or better than, 65 percent. Equivalency documentation may be certified by manufacturers of the spray equipment, on behalf of spray-applied coating operations sources, by following the aforementioned procedure in conjunction with California South Coast Air Quality Management District's ''Guidelines for Demonstrating Equivalency with District Approved Transfer Efficient Spray Guns, September 26, 2002.'' When using these equivalency procedures and/or guidelines, facilities would not be required to submit an application with the test plan or protocol to the Administrator, conduct the test in the presence of an Administrator's representative, or submit test results to the Administrator for review or approval. Instead, they would be required to maintain records demonstrating the transfer efficiency achieved, including a description of the procedures and/or guidelines used. We are proposing that all spray equipment used for spray-applied coating operations would be required to be operated according to company procedures, local specified operating procedures, or the manufacturer's specifications, whichever is determined to meet the 65 percent transfer efficiency. Further, we are proposing related definitions for ''airless and air-assisted airless spray,'' ''electrostatic application,'' ''high-volume, low-pressure (HVLP) spray equipment,'' ''spray-applied coating operations,'' ''and transfer efficiency.''

Considering just the incremental cost of the high efficiency spray equipment and savings due to using less material consumption, we expect that all facilities have already switched to high efficiency application methods. However, if a large appliance surface coating facility not using the emission rate with add-on control compliance option replaced their existing coating spray guns with a high-efficiency spray gun required by this proposed rule, such as an air-assisted airless spray gun, an estimated cost to do so would be approximately $700 per device, based on vendor information. See the memorandum titled *Impacts of Prohibiting the Use of Conventional Spray Guns in the Wood Manufacturing Operations Source Category* (Docket ID Number EPA–HQ–OAR–2010–0786 EPA). Any potential costs would be offset by savings in the cost of coatings, filters, and solid waste disposal fees for handling the liners used to capture coating overspray. EPA requests comment on this cost estimation, and whether other costs are associated with switching to high-efficiency spray equipment that the agency should consider in this technology review, such as operational efficiency changes, ancillary equipment changes, repair and maintenance costs, employee training or other factors

We have not estimated the emissions reductions achieved by switching to high efficiency application methods for this source category because we expect

that all large appliance surface coating facilities are using high efficiency coating application methods. However, if any facilities switch to high efficiency application equipment, there would likely be emission reductions. As an example, using the Wood Furniture Manufacturing Operations cost methodology, if a facility switched from conventional spray guns with 45 percent transfer efficiency to air-assisted airless spray guns with 65 percent transfer efficiency, to get one unit of solids on the part, an air-assisted airless spray gun needs 1.54 gallons of coating, compared to 2.22 gallons for a conventional spray gun. This increase transfer efficiency represents a 31 percent decrease in coating consumption, leading to a corresponding decrease in organic HAP emissions from coating application. For more information on the Wood Furniture Manufacturing Operations cost methodology, including the cost of spray gun equipment and calculation of potential HAP emission reductions, see the memorandum titled *Impacts of Prohibiting the Use of Conventional Spray Guns in the Wood Manufacturing Operations Source Category* (EPA Docket ID Number EPA–HQ–OAR–2010–0786 EPA). We request comment on whether facilities in the Large Appliances source category are not using high efficiency spray equipment and why it is not being used. Refer to section IV.A.5 of this preamble for a discussion of the compliance schedule for using high efficiency spray equipment

Finally, we identified no developments in work practices or procedures for the Surface Coating of Large Appliances source category, including work practices and procedures that are currently prescribed in the NESHAP. The current Surface Coating of Large Appliances NESHAP standards require that, if a facility uses add-on controls to comply with the emission limitations, the facility must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, all coating operations for which emission limits are established. The current work practice requirements address the potential emission sources that are normally located outside of the emission sources that are routed to the control device, and no new measures have been identified to further reduce the emissions from these sources. For further discussion of the technology review results, refer to the *Large Appliances Technology Review Memorandum* in the Large Appliances Docket.

In section III.B. above, we describe our typical approach for conducting technology reviews and the types of information we gather and evaluate as part of these reviews. In addition, we solicit comment on the relationship between the CAA section 112(d)(6) technology review and the CAA section 112(f) risk review. As we described in the preamble of the Coke Ovens RTR Final rule published on April 15, 2005 (70 FR 20009), we believe that the results of a CAA section 112(f) risk determination for a CAA section 112(d) standard should be key factors in any subsequent CAA section 112(d)(6) determination for that standard. In the Coke Ovens RTR final rule, the agency described potential scenarios where it may not be necessary to revise the standards based on developments in technologies, practices or processes if the remaining risks associated with air emissions from a source category have already been reduced to a level where we have determined further reductions under CAA section 112(f) are not necessary. Under one scenario, if the ample margin of safety analysis for the CAA section 112(f) determination was not based on the availability or cost of particular control technologies, then advances in air pollution control technology would not necessarily be a cause to revise the MACT standard pursuant to CAA section 112(d)(6), because the CAA section 112(f) standard (or a CAA section 112(d) standard evaluated pursuant to CAA section 112(f)) would continue to assure an adequate level of safety. Under another scenario, if the ample margin of safety analysis for a CAA section 112(f) standard (or a CAA section 112(d) standard evaluated pursuant to CAA section 112(f)) shows that lifetime excess cancer risks to the individual most exposed to emissions from a source in the category is less than 1-in-1 million, and the remaining risk associated with threshold pollutants falls below a similar threshold of safety, then no further revision under CAA section 112(d)(6) would be necessary, because an ample margin of safety has already been assured.

We solicit comment on whether revisions to the NESHAP are ''necessary'', as that term is used in CAA section 112(d)(6), in situations where EPA has determined that CAA section 112(d) standards evaluated pursuant to CAA section 112(f) provide an ample margin of safety to protect public health and prevent an adverse environmental effect. In other words, we solicit comment on our conclusion that, if remaining risks associated with air emissions from a source category have already been reduced to levels where we have determined under CAA section 112(f) that further reductions are not necessary, then it is not ''necessary'' to revise the standards based on developments in technologies, practices or processes under CAA section 112(d)(6). *See* CAA s. 112(d)(6) (''The Administrator shall review, and revise as necessary . . .''). We also solicit comment on whether further revisions under CAA section 112(d)(6) would be necessary if the CAA section 112(f) ample margin of safety analysis shows lifetime excess cancer risks to the individual most exposed to emissions from a source in the category is less than 1-in-1 million or if other, either higher or lower, cancer risk levels would be appropriate to consider if they assured an ample margin of safety.

Though we believe the results of the ample margin of safety analysis may eliminate the need to revise the emissions standards as based on developments in technologies practices and processes, we conducted a technology review to determine if any developments to further reduce HAP emissions have occurred, and to consider whether the current standards should be revised to reflect any such developments. We believe that the use of high-efficiency spray equipment in the Surface Coating of Large Appliances source category is cost effective, presents minimal or no additional burden and achieves reductions in actual or potential HAP emissions. Therefore, based on our technology review, we are proposing to require the use of high-efficiency spray application equipment for the Surface Coating of Large Appliances source category. Note that the discussion directly above also applies to the Printing, Coating, and Dyeing of Fabrics and Other Textiles and Surface Coating of Metal Furniture source categories.

4. What other actions are we proposing?

In the Surface Coating of Large Appliances source category, we are proposing to require electronic submittal of notifications, semi-annual reports and compliance reports (which include performance test reports). In addition, we are proposing revisions to the startup, shutdown, and malfunction (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 source owners and operators

from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. We also propose other changes, including addition of EPA Method 18, updating references to equivalent test methods, making technical and editorial revisions, and incorporation by reference (IBR) of alternative test methods. Our analyses and proposed changes related to these issues are discussed in the sections below.

Though we are not proposing to change reporting frequency currently in the rule, we are requesting comment on changing the reporting frequency for all reports to EPA from semi-annual to annual due to the potential redundancy of these reporting requirements. We recognize that Title V permits have a statutory requirement for semi-annual reports, which are generally reported to state regulatory agencies. However, we are not certain that changing the report frequency for just the reports submitted to EPA in this NESHAP will result in a reporting and recordkeeping burden reduction. We request comment and supporting information on the burden impact of changing the reporting requirement to annual for the reporting to EPA.

a. Electronic Reporting Requirements

The EPA proposes to require owners and operators of Surface Coating of Large Appliances facilities to submit electronic copies of initial notifications required in 40 CFR 63.9(b), notifications of compliance status required in 40 CFR 63.9(h), performance test reports, and semiannual reports through the EPA's Central Data Exchange (CDX), using the Compliance and Emissions Data Reporting Interface (CEDRI).[22] For further information regarding the electronic data submission process, please refer to the memorandum titled *Electronic Reporting for Surface Coating of Large Appliances, Subpart NNNN,* May 2018, in the Large Appliances Docket. Note that the rule proposes to require that performance test results collected using test methods that are not supported by the ERT as listed on the EPA's ERT website at the time of the test be submitted in portable document format (PDF) using the attachment module of the ERT.

The EPA proposes that electronic submittal of notifications and reports (initial notifications required in 40 CFR 63.9(b), notifications of compliance status required in 40 CFR 63.9(h), and semiannual reports) be required using electronic reporting forms that the EPA will make available in CEDRI. No specific form is proposed at this time for the initial notifications required in 40 CFR 63.9(b) and notifications of compliance status required in 40 CFR 63.9(h). Until the EPA has completed electronic forms for these notifications, the notifications will be required to be submitted via CEDRI in PDF. For semiannual reports, the EPA proposes that owners or operators use the appropriate spreadsheet template in CEDRI for 40 CFR part 63, subpart NNNN, or an alternate electronic file format consistent with the form's extensible markup language schema. For further information regarding the electronic data submission process, please refer to the spreadsheet attached to the memorandum titled *Electronic Reporting Template for Surface Coating of Large Appliances, Subpart NNNN Semiannual Reports,* May 2018, in the Large Appliances Docket. We specifically request comment on the format and usability of the template (*e.g.,* filling out and uploading a provided spreadsheet versus entering the required information into an on-line fillable CEDRI web form), as well as the content, layout, and overall design of the template. Prior to availability of the final semiannual compliance report template in CEDRI, owners or operators of affected sources will be required to submit semiannual compliance reports as otherwise required by the Administrator. After development of the final template, sources will be notified about its availability via the CEDRI website and the Clearinghouse for Inventories and Emissions Factors (CHIEF) Listserv.[23] We plan to finalize a required reporting format with the final rule. The owner or operator would begin submitting reports electronically with the next report that is due, once the electronic template has been available for at least one year.

As noted above, we propose that 40 CFR part 63, subpart NNNN, performance test reports be submitted through the EPA's Electronic Reporting Tool (ERT). The proposal to submit performance test data electronically to the EPA applies only if the EPA has developed an electronic reporting form for the test method as listed on the EPA's ERT website (*https://www3.epa.gov/ttn/chief/ert/ert_info.pdf*) and the agency has obtained an approved OMB control number consistent with the requirements of the Paperwork Reduction Act. Note that all but one of the EPA test methods (optional EPA Method 18) listed under the emissions destruction or removal efficiency section of 40 CFR part 63, subpart NNNN, are currently supported by the ERT. As mentioned above, the rule proposes that should an owner or operator choose to use Method 18, then its results would be submitted in PDF using the attachment module of the ERT.

We propose to provide owners or operators of facilities with the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility, *i.e.,* for a possible outage in the CDX or CEDRI or for a force majeure event in the time just prior to a report's due date.

In 40 CFR 63.4121(d), we propose to address the situation where an extension may be warranted due to outages of the EPA's CDX or CEDRI that may prevent access to the system and submittal of the required reports. If either the CDX or CEDRI is unavailable at any time beginning five business days prior to the date that the submission is due, and the unavailability prevents the submission of a report by the required date, we propose to enable the owner or operator of a facility to assert a claim of EPA system outage. We consider five business days prior to the reporting deadline to be an appropriate timeframe because if the system is down and returns to service prior to this time, facilities will still have 1 week prior to the reporting deadline 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 the ability to submit a required report on time. We will notify owners or operators of facilities about known outages as far in advance as possible by notification using the CHIEF Listserv, posting on the CEDRI website, and posting on the CDX website so that owners or operators can plan accordingly and still meet the reporting deadlines. However, if a planned or unplanned outage of the EPA's CDX or CEDRI occurs and an owner or operator of a facility believes that the outage will affect or it has affected compliance with an electronic reporting requirement, the proposed rule provides a process to assert such a claim.

Also in 40 CFR 63.4121(e), we propose to 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

[22] *https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri.*

[23] *https://www.epa.gov/air-emissions-inventories/air-emissions-inventory-listservs.*

compliance 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, equipment failures, or safety hazards that are beyond the control of the facility. If such an event occurs, or is still occurring, or if there are still lingering effects of the event in the five business days prior to a submission deadline, the proposed rule provides a process to assert a claim of force majeure.

While we propose these potential extensions to protect facilities from noncompliance with reporting requirements in cases when a facility cannot successfully submit a report by the reporting deadline for reasons outside of its control as described above, we do not propose an extension for other circumstances. Facility owners or operators should register for CEDRI far in advance of the initial compliance date to ensure that they can complete the identity proofing process prior to the initial compliance date. Additionally, we recommend developing reports early in case any questions arise during the reporting process.

As discussed in the *Electronic Reporting for Surface Coating of Large Appliances Subpart NNNN* memorandum, electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of those reports, and 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 regulated facilities. Electronic submittal will also improve compliance by facilitating the ability of regulated facilities to demonstrate compliance and the ability of air agencies and the EPA to assess and determine compliance. Moreover, electronic reporting is consistent with EPA's plan [24] to implement Executive Order 13563 and agency-wide policy to implement the White House's Digital Government Strategy [25] by specifying that new regulations will require reports to be electronic to the maximum extent possible. In addition to supporting regulation development, control strategy development, and other air pollution control activities, we believe that having an electronic database populated with performance test data will save industry, air agencies, and the EPA significant time, money, and effort while improving the quality of emission inventories and air quality regulations and enhancing the public's access to this important information.

b. Startup, Shutdown, and Malfunction Requirements

1. Proposed Elimination of the SSM Exemption

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the United States Court of Appeals for the District of Columbia Circuit 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.

We are proposing the elimination of the SSM exemption in this rule. Consistent with *Sierra Club* v. *EPA,* we are proposing standards in this rule that apply at all times. We are also proposing several revisions to Table 2 to subpart NNNN of part 63 (*Applicability of General Provisions to Subpart NNNN,* hereafter referred to as the ''General Provisions table to subpart NNNN''), as explained in more detail below in section IV.A.4.b.2 of this preamble. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We are also proposing to delete 40 CFR 63.4163(h), which specifies that deviations during SSM periods are not violations. Further, we are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption 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 seeking comment on the specific proposed deletions and revisions and also whether additional provisions should be revised to achieve the stated goal.

In proposing these rule amendments, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not proposed alternate standards for those periods. Startups and shutdowns are part of normal operations for the Surface Coating of Large Appliances source category. As currently specified in 40 CFR 63.4092(b), any coating operation(s) for which you use the emission rate with add-on controls option must meet operating limits ''at all times,'' except for solvent recovery systems for which you conduct liquid-liquid material balances according to 40 CFR 63.4161(h). Also, as currently specified in 40 CFR 63.4100(a)(2), any coating operation(s) for which you use the emission rate with add-on controls option must be in compliance ''at all times'' with the emission limit in 40 CFR 63.4090 and work practice standards in 40 CFR 63.4093. This means that during startup and shutdown periods, in order for a facility using add-on controls to meet the emission and operating standards, the control device for a coating operation needs to be turned on and operating at specified levels before the facility begins coating operations, and the control equipment needs to continue to be operated until after the facility ceases coating operations. In some cases, the facility needs to run thermal oxidizers on supplemental fuel before there are enough VOC for the combustion to be (nearly) self-sustaining. The proposed language in 40 CFR 63.4100 requires that the owner or operator operate and maintain the coating operation, including pollution control equipment, at all times to minimize emissions. See section IV.A.4.b.2 of this preamble for further discussion of this proposed revision.

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

[24] Improving Our Regulations: Final Plan for Periodic Retrospective Reviews of Existing Regulations, August 2011. Available at *https://www.regulations.gov, Document ID No. EPA–HQ–OA–2011–0156–0154.*

[25] Digital Government: Building a 21st Century Platform to Better Serve the American People, May 2012. Available at *https://www.whitehouse.gov/sites/default/files/omb/egov/digital-government/digitalgovernment-strategy/pdf.*

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 Risk and Technology Review, the EPA established a work practice standard for unique types of malfunctions 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.

It is unlikely that a malfunction in the application of large appliance surface coatings would result in a violation of the standards. A malfunction would not lead to an increase in the HAP content of the coatings or the amount of HAP emitted from those coatings; therefore, it is unlikely that malfunctions at facilities using the compliant material or emission rate without control option would result in a violation in any case where compliant materials are used. Finally, compliance with the large appliance surface coating emission limits is based on a monthly compliance period, so any malfunction that causes a short-term increase in emissions may not cause a violation of the standard. Similarly, for facilities in the surface coating of metal furniture source category using the emission rate with add-on control compliance option or percent reduction compliance option, the short-term malfunction of an emission capture system or control device is also unlikely to lead to a violation if the owner or operator operates and maintains the affected source in a manner consistent with safety and good air pollution control practices for minimizing emissions during that malfunction. Because compliance is based on a monthly or a rolling 12-month compliance period, a short-term malfunction is likely to represent only a small percent of the total operating time of the affected source. A single malfunction is also not likely to affect all of the emission units and control devices within the affected source. Therefore, a malfunction 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 any type of standard for malfunctions associated with the Surface Coating of Large Appliances or the Surface Coating of Metal Furniture source categories.

We are requesting comment on the need to establish a standard during periods of malfunction for the Fabric and Other Textiles source category in this action, and we are seeking the specific information described in section IV.B.4 of this preamble to support such a standard. We believe a work practice standard would be appropriate for a malfunction at facilities in this category. We are requesting comment on two alternatives in this preamble. The work practice standard, if included in the final rule, would include the following, or similar, requirements.

In the first alternative if a malfunction of a control device or a capture system that is used to meet the emission limits of this rule occurs, the facility may elect to continue operation without the control device for the period of the malfunction so long as it continues to meet the emission limits for the current compliance period. Each workstation would discontinue its application of coating materials onto the web, and complete drying of any coating materials already applied onto the web as of the start of the malfunction. Draining coating materials from the

line's applicators, or from piping, pans, or related equipment that deliver coating materials to the applicator, is not required. Deviations of a monitored parameter of a control device or enclosure are not malfunctions for purposes of this requirement.

A second alternative would require that repairs be immediately initiated and completed as expeditiously as possible, but the line would not have to cease operation. We note that this source category compliance is based on a 12-month rolling average. Therefore, operating a period of time without a control device would not necessarily result in an exceedance of the emissions limit. However, the facility would not be allowed to continue to operate the coating line once it becomes apparent they will be unable to complete repairs before the 12-month rolling average compliance limit will be exceeded. We request comment on both of these approaches for the Fabrics and Other Textiles source category.

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 will 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 will 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).

2. Proposed Revisions to the General Provisions Applicability Table

a. 40 CFR 63.4100(b) General Duty

We are proposing to revise the General Provisions table to subpart NNNN (table 2) entry for 40 CFR 63.6(e)(1)(i) by changing the ''yes'' in column 3 to a ''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 elimination of the SSM exemption. We are proposing instead to add general duty regulatory text at 40 CFR 63.4100(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. With the elimination of the SSM exemption, 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 63.4100(b) does not include that language from 40 CFR 63.6(e)(1).

We are also proposing to revise the General Provisions table to subpart NNNN (table 2) entry for 40 CFR 63.6(e)(1)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.4100(b).

b. SSM Plan

We are proposing to revise the General Provisions table to subpart NNNN (table 2) entry for 40 CFR 63.6(e)(3) by changing the ''yes'' in column 3 to a ''no.'' Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. We are also proposing to remove from 40 CFR part 63, subpart NNNN, the current provisions requiring the SSM plan, including 40 CFR 63.4100(d) and 63.4110(b)(9)(v). As noted, the EPA is proposing to remove the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance, and, thus, the SSM plan requirements are no longer necessary.

c. Compliance With Standards

We are proposing to revise the General Provisions table to subpart NNNN (table 2) entry for 40 CFR 63.6(f)(1) by changing the ''yes'' in column 3 to a ''no.'' The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standards apply continuously. Consistent with *Sierra Club,* the EPA is proposing to revise standards in this rule to apply at all times.

We are also proposing to remove rule text in 40 CFR 63.4161(g) clarifying that, in calculating emissions to demonstrate compliance, deviation periods must include deviations during an SSM period. Since the EPA is removing the SSM exemption, this clarifying text is no longer needed.

d. 40 CFR 63.4164 Performance Testing

We are proposing to revise the General Provisions table to subpart NNNN (table 2) entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in column 3 to a ''no.'' Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.4164. 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 restated 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 also not allow performance testing during startup or shutdown. 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. Section 63.7(e) requires that the owner or operator maintain records of the process information necessary to document operating conditions during the test and include in such records an explanation to support that such conditions represent normal operation. The EPA is proposing to add language clarifying that the owner or operator must make such records available to the Administrator upon request.

e. Monitoring

We are proposing to revise the General Provisions table to subpart NNNN (table 2) entry for 40 CFR 63.8(c)(1)(i) and (iii) by changing the ''yes'' in column 3 to a ''no.'' The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)). Further, we are proposing to revise the General Provisions table to subpart NNNN (table 2) entry for 40 CFR 63.8(c)(1)(ii) by changing the ''yes'' in column 3 to a ''no.'' We have determined that 40 CFR 63.8(c)(1)(ii) is redundant to the current monitoring requirement in 40 CFR 63.4168(a)(4) (*i.e.,* ''have available necessary parts for routine repairs of the monitoring equipment,'' except 40 CFR 63.8(c)(1)(ii) specifies ''have readily available.'' We are proposing to revise 40 CFR 63.4168(a)(4) to specify ''readily available.''

f. 40 CFR 63.4130 Recordkeeping

We are proposing to revise the General Provisions table to subpart NNNN (table 2) entry for 40 CFR 63.10(b)(2)(i) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA is proposing that recordkeeping and reporting applicable to normal operations will apply to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We are proposing to revise the General Provisions table to subpart NNNN (table 2) entry for 40 CFR 63.10(b)(2)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction, requiring a record of ''the occurrence and duration of each malfunction.'' A similar record is already required in 40 CFR 63.4130(j), which requires a record of ''the date, time, and duration of each deviation,'' which the EPA is retaining. The regulatory text in 40 CFR 63.4130(j) differs from the General Provisions in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment; whereas 40 CFR 63.4130(j) applies to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the ''occurrence.'' For this reason, the EPA is proposing to add to 40 CFR 63.4130(j) a requirement that sources also keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* coating HAP content and application rates and control device efficiencies). 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.

We are proposing to revise the General Provisions table to subpart NNNN (table 2) entry for 40 CFR 63.10(b)(2)(iv) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.4130(j)(4).

We are proposing to revise the General Provisions table to subpart NNNN (table 2) entry for 40 CFR 63.10(b)(2)(v) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

We are proposing to revise the General Provisions table to subpart NNNN (table 2) entry for 40 CFR 63.10(c)(15) by changing the ''yes'' in column 3 to a ''no.'' The EPA is proposing that 40 CFR 63.10(c)(15) no longer applies. When applicable, the provision allows an owner or operator to use the affected source's SSM plan or records kept to satisfy the recordkeeping requirements of the SSM plan, specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is proposing to eliminate this requirement because SSM plans would no longer be required, and, therefore, 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units.

We are proposing to remove the requirement in 40 CFR 63.4130(k)(1) that deviation records specify whether deviations from a standard occurred during a period of SSM. This revision is being proposed due to the proposed removal of the SSM exemption and because, as discussed above in this section, we are proposing that deviation records must specify the cause of each deviation, which could include a malfunction period as a cause. We are also proposing to remove the requirement to report the SSM records in 40 CFR 63.6(e)(3)(iii) through (v) by deleting 40 CFR 63.4130(k)(2).

g. 40 CFR 63.4120 Reporting

We are proposing to revise the General Provisions table to subpart NNNN (table 2) entry for 40 CFR 63.10(d)(5) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.4120. The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semi-annual compliance report already required under this rule. Subpart NNNN currently requires reporting of the date, time period, and cause of each deviation. We are clarifying in the rule that, if the cause of a deviation from the standard is unknown, this should be specified in the report. We are also proposing to change ''date and time period'' to ''date, time, and duration'' (see proposed revisions to 40 CFR 63.4120(d)(1), (g)(6), (g)(8), and (g)(13)) to use terminology consistent with the recordkeeping section. Further, we are proposing that the report must also contain the number of deviations from the standard, and a list of the affected source or equipment. For deviation reports addressing deviations from an applicable emission limit in 40 CFR

63.4090 or operating limit in Table 1 to subpart NNNN, we are proposing that the report also include an estimate of the quantity of each regulated pollutant emitted over any emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions. For deviation reports addressing deviations from work practice standards associated with the emission rate with add-on controls option (40 CFR 63.4120(g)(13)), we are retaining the current requirement (including reporting actions taken to correct the deviation), except that we are revising the rule language to reference the new general duty requirement in 40 CFR 63.4100(b), we are clarifying that the description of the deviation must include a list of the affected sources or equipment and the cause of the deviation, we are clarifying that ''time period'' includes the ''time and duration,'' and we are requiring that the report include the number of deviations from the work practice standards in the reporting period. Further, we are proposing to apply these same reporting requirements to deviations from the proposed new equipment standards associated with high efficiency spray equipment (see proposed revisions in 40 CFR 63.4120(d)(2)(vi), (e)(2), and (e)(2)(v).

Regarding the proposed new requirement discussed above to estimate the quantity of each regulated pollutant emitted over any emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions, examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* coating HAP content and application rates and control device efficiencies). The EPA is proposing this requirement 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.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans would no longer be required. The proposed amendments, therefore, eliminate 40 CFR 63.4120(j) that requires reporting of whether the source deviated from its SSM plan, including required actions to communicate with the Administrator, and the cross reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

We are proposing to revise the General Provisions table to subpart NNNN (table 2) entry for 40 CFR 63.10(d)(5)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(d)(5)(ii) describes an immediate report for startups, shutdown, and malfunctions when a source failed to meet an applicable standard, but did not follow the SSM plan. We will no longer require owners and operators to report when actions taken during a startup, shutdown, or malfunction were not consistent with an SSM plan, because plans would no longer be required.

We are proposing to remove the requirements in 40 CFR 63.4120(g)(8) that deviation reports must specify whether deviation from an operating limit occurred during a period of SSM. We are also proposing to remove the requirements in 40 CFR 63.4120(g)(10) to break down the total duration of deviations into the startup and shutdown categories. As discussed above in this section, we are proposing to require reporting of the cause of each deviation. Further, the startup and shutdown categories no longer apply because these periods are proposed to be considered normal operation, as discussed in section IV.A.4.b.1 of this preamble.

c. Technical Amendments to the Surface Coating of Large Appliances NESHAP

We propose to amend 40 CFR 63.4166(b) to add the option of conducting EPA Method 18 of appendix A to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography,'' to measure and then subtract methane emissions from measured total gaseous organic mass emissions as carbon. Facilities using the emission rate with add-on control compliance option can use either EPA Method 25 or Method 25A to measure control device destruction efficiency. Unlike EPA Method 25, Method 25A does not exclude methane from the measurement of organic emissions. Because many exhaust streams from coating operations may contain methane from natural gas combustion, we are proposing to allow facilities the option to measure this methane using Method 18 and to subtract this methane from the emissions as part of their compliance calculations. We also propose to revise the format of references to test methods in 40 CFR part 60. The current reference in 40 CFR 63.4166(a) and (b) to Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 25, and 25A specify that each method is in ''appendix A'' of part 60. Appendix A of part 60 has been divided into appendices A–1 through A–8. We propose to revise each reference to appendix A to indicate which of the eight sections of appendix A applies to the method.

EPA is proposing to amend 40 CFR 63.4141(a)(1)(i) and (4) to remove reference to paragraph (d)(4) of OSHA's Hazard Communication standard, which dealt with OSHA-defined carcinogens. EPA is proposing to replace that reference with its own list of hazardous air pollutants that must be regarded as potentially carcinogenic based on EPA guidelines. Although paragraph (d)(4) of OSHA's standard was deleted when the Agency adopted the Globally Harmonized System of Hazard Communication in 2012, it was replaced by section A.6.4.2 of mandatory Appendix A of that standard, which reads as follows:

''Where OSHA has included cancer as a health hazard to be considered by classifiers for a chemical covered by 29 CFR part 1910, subpart Z, Toxic and Hazardous Substances, chemical manufacturers, importers, and employers shall classify the chemical as a carcinogen.'' Thus, where OSHA has regulated workplace exposure to a chemical based, at least in part, on carcinogenic risk, OSHA requires the chemical to be classified as a carcinogen. OSHA suggests that EPA should refer to section A.6.4.2 of Appendix A of 29 CFR 1910.1200 in its discussion of section 63.4141 and consider chemicals that meet this requirement be considered ''OSHA-defined carcinogens.''

We are proposing to replace these references to carcinogens in 29 CFR 1910.1200(d)(4) with a list (in proposed new Table 5 to subpart NNNN) of those organic HAP that must be included in calculating total organic HAP content of a coating material if they are present at 0.1 percent or greater by mass.

We propose to include organic HAP in proposed Table 5 to subpart NNNN if they were categorized in the EPA's *Prioritized Chronic Dose-Response Values for Screening Risk Assessments* (dated May 9, 2014) as a ''human carcinogen,'' ''probable human carcinogen,'' or ''possible human carcinogen'' according to *The Risk Assessment Guidelines of 1986* (EPA/

600/8–87/045, August 1987),[26] or as ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' or with ''suggestive evidence of carcinogenic potential'' according to the *Guidelines for Carcinogen Risk Assessment* (EPA/630/P–03/001F, March 2005).

We propose to revise the monitoring provisions for thermal and catalytic oxidizers to clarify that a thermocouple is part of the temperature sensor referred to in 40 CFR 63.4168(c)(3) for purposes of performing periodic calibration and verification checks.

We propose to renumber 40 CFR 63.4130(k)(8) and (9) to be 40 CFR 63.4130(k)(7) and (8) because current paragraph 40 CFR 63.4130(k) is missing a paragraph (k)(7). This revision will address any confusion over this missing paragraph. We also propose to revise the rule citation ''§ 63.4130(k)(9)'' in 40 CFR 63.4163(e) to be ''§ 63.4130(k)(8),'' consistent with the proposed renumbering of 40 CFR 63.4130(k)(9) to (k)(8).

Current 40 CFR 63.4931(a) allows records, ''where appropriate,'' to be maintained as ''electronic spreadsheets'' or a ''data base.'' We propose to add clarification to this provision that the allowance to retain electronic records applies to all records that were submitted as reports electronically via the EPA's CEDRI. We also propose to add text to the same provision clarifying that 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.

We propose to revise various erroneous rule citations. We propose to revise one instance in 40 CFR 63.4160(a)(1) and three instances in 40 CFR 63.4160(b)(1) that an erroneous rule citation ''§ 63.4183'' is specified. Section 63.4183 does not exist in 40 CFR part 63, subpart NNNN, and 40 CFR 63.4083 is the correct citation, providing the compliance dates referred to in association with the erroneous rule citation. We propose to change the erroneous citation to ''§ 63.4083.'' We propose to revise one instance in 40 CFR 63.4110(b)(10) of an erroneous rule citation ''§ 63.4081(d).'' This rule citation is specified in 40 CFR 63.4110(b)(10) as the source for the allowance to comply with the requirements of another subpart in lieu of the requirements of this subpart NNNN. The correct citation for this allowance is 40 CFR 63.4081(e), and we propose to change the erroneous citation to ''§ 63.4081(e).'' We propose to revise one instance in 40 CFR 63.4130(f) and one instance in 40 CFR 63.4130(g) of an erroneous rule citation of ''§ 63.4141(a).'' This rule citation is specified in each 40 CFR 63.4130(f) and (g) as the source for the allowance that the volume solids determination is not required for coatings for which the mass fraction of organic HAP of the coating equals zero. However, it is the introductory paragraph to 40 CFR 63.4141, not 40 CFR 63.4141(a), that provides the allowance to not be required to determine the volume solids for zero-HAP coatings. We propose to change the erroneous citation to ''§ 63.4141.'' We propose to revise one instance in 40 CFR 63.4168(c)(2) that an erroneous rule citation ''§ 63.6167(b)(1) and (2)'' is specified. Section 40 CFR 63.6167(b)(1) and (2) does not exist in 40 CFR part 63, subpart NNNN. Section 40 CFR 63.4167(b)(1) and (2) is the correct citation, describing how to establish operating limits for catalytic oxidizers as referred to in association with the erroneous rule citation. We propose to change the erroneous citation to ''§ 63.4167(b)(1) and (2).'' We propose to revise two instances in Table 2 to Subpart NNNN of Part 63 of an erroneous rule citation ''§ 63.4120(b).'' This rule citation is specified in the fourth column of the table entry for ''§ 63.10(d)(2),'' as the source for the requirements related to reporting results of performance tests. Section 40 CFR 63.4120(b) does not provide these types of requirements; however, 40 CFR 63.4120(h) provides these requirements. The correct citation for this allowance is 40 CFR 63.4120(h), and we propose to change the erroneous citation to ''§ 63.4120(h).'' The rule citation ''§ 63.4120(b)'' is also specified in the fourth column of the table entry for ''§ 63.10(e)(3),'' as the source for the contents of periodic compliance reports. Section 40 CFR 63.4120(b) does not provide the contents of periodic compliance reports; however, 40 CFR 63.4120(g) provides these requirements. The correct citation for this allowance is 40 CFR 63.4120(g), and we propose to change the erroneous citation to ''§ 63.4120(g).'' Current 40 CFR 63.4152(c) requires inclusion in the semiannual compliance report of a statement that the source was in compliance with the emission limitations during the reporting period. We propose to add clarification to this provision that the requirement to submit this statement applies only if there were no deviations from the emission limitations.

d. Requesting Comment on Ongoing Emissions Compliance Demonstrations

As part of an ongoing effort to improve compliance with various federal air emission regulations, the EPA reviewed the compliance demonstration requirements in the Surface Coating of Large Appliance NESHAP. Currently, if a source owner or operator chooses to comply with the standards using add-on controls, the results of an initial performance test are used to determine compliance; however, the rule does not require on-going periodic performance testing for these emission capture systems and add-on controls.

As mentioned by the Institute of Clean Air Companies (ICAC) in their comments on proposed revisions to the NESHAP General Provisions (72 FR 69, January 3, 2007), ongoing maintenance and checks of control devices are necessary in order to ensure emissions control technology remains effective.[27]

Given these comments from ICAC, suppliers of air pollution control and monitoring technology, on the need for vigilance in maintaining equipment to stem degradation, the EPA is requesting comment on what steps, in addition to one-time initial emissions and capture efficiency testing, along with ongoing temperature measurement, might better ensure ongoing compliance with the standards.

The EPA specifically is requesting comment on whether performance testing should be required anytime a source plans to undertake an operational change that may adversely affect compliance with an applicable standard, operating limit, or parametric monitoring value. Any such requirement would include provisions to allow a source to make the change, but limit the change to a specific time before a test is required. We anticipate that a reasonable time limit under the new operations change would be approximately 30 days to allow adequate time for testing and developing a test report. The source would submit temperature and flow rate data during the test to establish new operating parameters. We specifically are requesting comment on this potential provision, including the time a source would be allowed to operate under the new parameters before they test, and what would constitute an operational change requiring testing.

[26] See *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

[27] See Docket Item No. EPA–HQ–OAR–2004–0094–0173, available at *www.regulations.gov.* A copy of the ICAC's comments on the proposed revisions to the General Provisions is also included in the Large Appliance Docket for this action.

This approach on which we are requesting comment could also allow an exception from periodic testing for facilities using instruments to continuously measure emissions. Such continuous emissions monitoring systems (CEMS) would show actual emissions. Use of CEMS to demonstrate compliance would obviate the need for periodic oxidizer testing. Moreover, installation and operation of a CEMS with a timesharing component, such that values from more than one oxidizer exhaust could be tabulated in a recurring frequency, could prove less expensive (estimated to have an annual cost below $15,000) than ongoing oxidizer testing.

The approach on which we are requesting comment would not require periodic testing or CEMS monitoring of facilities using the compliant materials option, or the emission-rate without add-on controls compliance option because these two compliance options do not use any add-on control efficiency measurements in the compliance calculations.

The approach would require air emissions testing to measure organic HAP destruction or removal efficiency at the inlet and outlet of the add-on control device, or measurement of the control device outlet concentration of organic HAP. Emissions would be measured as total gaseous organic mass emissions as carbon using either Method 25 or 25A of appendix A–7 to 40 CFR part 60, which are the methods currently required for the initial compliance demonstration.

We estimate that the cost to perform a control device emissions destruction or removal efficiency test using EPA Method 25 or 25A would be approximately $19,000 per control device. The cost estimate is included in the memorandum titled *Costs/Impacts of the 40 CFR part 63 Subparts NNNN, OOOO and RRRR Monitoring Review Revisions,* in the Large Appliances Docket.

5. What compliance dates are we proposing?

The EPA is proposing that affected sources that commenced construction or reconstruction on or before September 12, 2018 must comply with all of the amendments, with the exception of the proposed electronic format for submitting notifications and semiannual compliance reports, no later than 181 days after the effective date of the final rule. Affected sources that commence construction or reconstruction after September 12, 2018 must comply with all requirements of the subpart, including the amendments being proposed, with the exception of the proposed electronic format for submitting notifications and semiannual compliance reports, no later than the effective date of the final rule or upon startup, whichever is later. All affected facilities would have to continue to meet the current requirements of 40 CFR part 63, subpart NNNN until the applicable compliance date of the amended rule. The final action is not expected to be a ''major rule'' as defined by 5 U.S.C. 804(2), so the effective date of the final rule will be the promulgation date as specified in CAA section 112(d)(10).

For existing sources, we are proposing two changes that would impact ongoing compliance requirements for 40 CFR part 63, subpart NNNN. As discussed elsewhere in this preamble, we are proposing to add a requirement that notifications, performance test results, and semiannual compliance reports be submitted electronically using the new template. We are also proposing to change the requirements for SSM by removing the exemption from the requirements to meet the standard during SSM periods and by removing the requirement to develop and implement an SSM plan. Our experience with similar industries that are required to convert reporting mechanisms to install necessary hardware and software, become familiar with the process of submitting performance test results electronically through the EPA's CEDRI, test these new electronic submission capabilities, and reliably employ electronic reporting shows that a time period of a minimum of 90 days, and, more typically, 180 days is generally necessary to successfully accomplish these revisions. Our experience with similar industries further shows that this sort of regulated facility generally requires a time period of 180 days to read and understand the amended rule requirements; to evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule and make any necessary adjustments; and to update their operation, maintenance, and monitoring plan to reflect the revised requirements. The EPA recognizes the confusion that multiple different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose. From our assessment of the timeframe needed for compliance with the entirety of the revised requirements, the EPA considers a period of 180 days to be the most expeditious compliance period practicable and, thus, is proposing that existing affected sources and new affected sources that commenced construction or reconstruction on or before September 12, 2018 be in compliance with all of this regulation's revised requirements, except for the requirement to use high efficiency spray equipment discussed below, within 181 days of the regulation's effective date.

Under CAA section 112(d), we are proposing compliance dates for the proposed requirement to use high efficiency spray equipment if the source is not using the emission rate with add-on control compliance option. For existing affected sources under this proposed action, we propose to provide sources three years after the effective date of the final rule to comply with the proposed requirement to use high efficiency spray equipment. We are proposing a 3-year compliance date for facilities that have not switched to high efficiency spray equipment because facilities that are not yet using high efficiency spray equipment have multiple alternative equipment types to consider under this proposed rule. The 3-year compliance period will provide all facilities sufficient time to source and purchase the specific type of spray application equipment compatible with their operations. Furthermore, the compliance period provides time for sources to verify that the spray equipment they choose meets the transfer efficiency requirements in this proposed rule. In addition, because a spray gun's useful lifespan is approximately two years, the proposed three-year compliance period will provide enough time for facilities to source and purchase replacement guns on their current equipment purchase cycle, develop any necessary operational procedures, and perform training. Finally, the 3-year compliance period will ensure that a facility is not required to replace a spray gun before it has time to identify and source new guns and develop bid specification and operation procedures. For new affected sources under this proposed action, the proposed compliance date is the effective date of the final rule or upon startup, whichever is later.

We solicit comment on these proposed compliance periods, and we specifically request submission of information from sources in this source category regarding specific actions that would need to be undertaken to comply with the proposed amended requirements and the time needed to make the adjustments for compliance with any of the revised requirements. We note that information provided may result in changes to the proposed compliance dates.

B. What are the analytical results and proposed decisions for the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category?

1. What are the results of the risk assessment and analyses?

As described above in section III of this preamble, for the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category, we conducted a risk assessment for all HAP emitted. We present results of the risk assessment briefly below and in more detail in the *Fabrics and Other Textiles Risk Assessment Report* in the Fabrics and Other Textiles Docket (Docket ID No. EPA–HQ–OAR–2017–0668).

a. Inhalation Risk Assessment Results

Table 3 below provides a summary of the results of the inhalation risk assessment for the source category. As discussed in section III.C.2 of this preamble, we determined that MACT-allowable HAP emission levels at fabrics and other textiles printing, coating, and dyeing facilities are equal to 1.1 times the actual emissions. For more detail about the MACT-allowable emission levels, see Appendix 1 to the *Fabrics and Other Textiles Risk Assessment Report* in the Fabrics and Other Textiles Docket.

TABLE 3—PRINTING, COATING, AND DYEING OF FABRICS AND OTHER TEXTILES SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS

Risk assessment	Maximum individual cancer risk (in 1 million)		Estimated population at increased risk of cancer ≥1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [1]		Maximum screening acute noncancer HQ [2]
	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions
Source Category	9	10	8,500	10,000	0.002	0.002	0.3	0.3	HQ_{REL} = 0.6
Whole Facility	9		12,200		0.003		0.3		

[1] The TOSHI is the sum of the chronic noncancer HQ for substances that affect the same target organ or organ system.
[2] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values.

The results of the inhalation risk modeling using actual emissions data, as shown in Table 3 above, indicate that the maximum individual cancer risk based on actual emissions (lifetime) could be up to 9-in-1 million, the maximum chronic noncancer TOSHI value based on actual emissions could be up to 0.3, and the maximum screening acute noncancer HQ value (off-facility site) could be up to 0.6. The total estimated annual cancer incidence (national) from these facilities based on actual emission levels is 0.002 excess cancer cases per year, or one case in every 500 years.

b. Acute Risk Results

Table 3 also shows the acute risk results for the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category. The screening analysis for acute impacts was based on an industry-specific multiplier of 1.4, to estimate the peak emission rates from the average emission rates. For more detailed acute risk results refer to the *Fabrics and Other Textiles Risk Assessment Report* in the Fabrics and Other Textiles Docket.

c. Multipathway Risk Screening Results

We did not identify any PB–HAP emitted by facilities in this source category. Therefore, we do not expect any human health multipathway risks as a result of emissions from this source category.

d. Environmental Risk Screening Results

The emissions data for the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category indicate that no environmental HAP are emitted by sources within this source category. Therefore, we did not conduct a screening-level evaluation of the potential adverse environmental risks associated with emissions for the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category. We do not expect an adverse environmental effect as a result of HAP emissions from this source category.

e. Facility-Wide Risk Results

The results of our facility-wide assessment indicate that 12 facilities have a facility-wide cancer MIR greater than or equal to 1-in-1 million. The maximum facility-wide cancer MIR is 9-in-1 million, driven by ethylene oxide from fabric finishing. The total estimated cancer incidence from the whole facility assessment is 0.003 excess cancer cases per year, or one excess case in every 330 years. Approximately 12,200 people were estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-MACT sources collocated at the 43 facilities in this source category. The maximum facility-wide TOSHI for the source category is estimated to be 0.3, driven by emissions of trichloroethylene from adhesive application.

f. 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 Printing, Coating, and Dyeing of Fabrics and Other Textiles source category across different demographic groups within the populations living near facilities.[28]

The results of the demographic analysis are summarized in Table 4 of this preamble. These results, for various demographic groups, are based on the estimated risks from actual emissions levels for the population living within 50 km of the facilities.

[28] 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 above the poverty level, and linguistically isolated people.

TABLE 4—PRINTING, COATING, AND DYEING OF FABRICS AND OTHER TEXTILES SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to printing, coating, and dyeing of fabrics and other textiles	Population with chronic noncancer HI above 1 due to printing, coating, and dyeing of fabrics and other textiles
Total Population	317,746,049	8,500	0
White and Minority by Percent			
White	62	54	0
Minority	38	46	0
Minority Detail by Percent			
African American	12	39	0
Native American	0.8	0.02	0
Hispanic or Latino	18	5	0
Other and Multiracial	7	2	0
Income by Percent			
Below the Poverty Level	14	26	0
Above the Poverty Level	86	74	0
Education by Percent			
Over 25 Without High a School Diploma	14	21	0
Over 25 With a High School Diploma	86	79	0

The results of the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category demographic analysis indicate that emissions from the source category expose approximately 8,500 people to a cancer risk at or above 1-in-1 million and no one to a chronic noncancer hazard index greater than 1. The percentages of the at-risk population in the following specific demographic groups are higher than their respective nationwide percentages: ''African American,'' ''Over 25 Without a HS Diploma,'' and ''Below the Poverty Level.''

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 Printing, Coating, and Dyeing of Fabrics and Other Textiles Source Category Operations,* September 2017 (hereafter referred to as the *Fabrics and Other Textiles Demographic Analysis Report*), available in the Fabrics and Other Textiles Docket.

2. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effects?

a. Risk Acceptability

As noted in section III.A of this preamble, we weigh all health risk factors in our risk acceptability determination, including the cancer MIR, the number of persons in various cancer and noncancer risk ranges, cancer incidence, the maximum noncancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and risk estimation uncertainties (54 FR 38044, September 14, 1989).

For the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category, the risk analysis indicates that the cancer risks to the individual most exposed could be up to 9-in-1 million due to actual emissions and up to 10-in-1 million based on 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 very low cancer incidence (0.002 cases per year for actual emissions and allowable emissions), and we did not identify potential for adverse chronic noncancer health effects. The acute noncancer risks based on actual emissions is below an HQ of one for all facilities (maximum of 0.6 for formaldehyde). Therefore, we find there is little potential concern of acute noncancer health impacts from actual emissions. In addition, the risk assessment indicates no significant potential for multipathway health effects.

Considering all of the health risk information and factors discussed above, including the uncertainties discussed in section III.C.7 of this preamble, we propose that the risks from the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category are acceptable.

b. Ample Margin of Safety Analysis

Although we are proposing that the risks from the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category are acceptable, risk estimates for approximately 8,500 individuals in the exposed population are above 1-in-1 million at the actual emissions level and 10,000 individuals in the exposed population are above 1-in-1 million at the allowable emissions level. Consequently, we further considered whether the MACT standards for the Printing, Coating, and

Dyeing of Fabrics and Other Textiles source category provide an ample margin of safety to protect public health. In this ample margin of safety analysis, we investigated available emissions control options that might reduce the risk from the source category. We considered this information along with all of the health risks and other health information considered in our determination of risk acceptability.

As described in section III.B of this preamble, our technology review focused on identifying developments in practices, processes, and control technologies for the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category, and we reviewed various information sources regarding emission sources that are currently regulated by the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP. Based on our review, we did not identify any developments in add-on control technologies, other equipment or work practices and procedures since the promulgation of the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP. We note, however, that the only facility that reported ethylene oxide emissions no longer emits this HAP as a result of a process change, as discussed below in the technology review discussion. Therefore, we are proposing that additional emissions controls for this source category are not necessary to provide an ample margin of safety.

c. Environmental Effects

The emissions data for the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category indicate that no environmental HAP are emitted by sources within this source category and we are unaware of any adverse environmental effects caused by HAP emitted from 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 set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

3. 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 practices, processes, and control technologies for the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category, and the EPA reviewed various information sources regarding emission sources that are currently regulated by Fabrics and Other Textiles NESHAP. These emission sources include coating and printing, dyeing and finishing, and slashing of fabrics and other textiles. Based on our review, we identified one potential development in technology, a process change that eliminated the use of ethylene oxide at one facility. During a recent site visit to the facility, we learned that the ethylene oxide emissions were, in fact, overstated by the facility. The facility confirmed that it no longer uses the ethylene oxide-containing material due to cost. We note that this was the only facility that reported ethylene oxide emissions, and we conclude that ethylene oxide-containing materials are no longer used in the industry, based on our information. We did not identify any other developments in add-on control technologies, other equipment, or work practices and procedures since the promulgation of the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP. A brief summary of the EPA's findings in conducting the technology review of fabric printing, coating, and dyeing operations follows. For a detailed discussion of the EPA's findings, refer to the *Fabrics and Other Textiles Technology Review Memorandum* in the Fabrics and Other Textiles Docket.

The technology basis for coating and printing subcategory operations under the original MACT standards in the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP was emission capture and add-on control with an overall control efficiency of 97 percent for existing sources and 98 percent for new or reconstructed sources. During development of that rulemaking, we evaluated the use of alternative coatings (*i.e.,* waterborne, ultraviolet-curable, electron-beam (EB)-curable, and thermal (a.k.a., hot-melt)) and more stringent standards than the MACT floor level of control for organic HAP. EB-curable coatings are coatings that use an electron beam as the radiant energy source to initiate a photochemical reaction to generate a crosslinked network of polymer on the substrate surface. However, we did not adopt any of these alternatives because they were not universally applicable and could not achieve the needed characteristics for numerous types of products (67 FR 46028, July 11, 2002).

The technology basis for dyeing and finishing subcategory operations at existing sources and new or reconstructed sources under the original MACT standards in the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP was the use of low-HAP materials (*i.e.,* the purchased materials used in the dyes and finishes applied at a facility). During development of that rulemaking, we found that add-on capture and control systems for organic HAP were not used at that time by the industry for dyeing and finishing operations, and no beyond-the-floor technology was identified (67 FR 46028, July 11, 2002).

The technology basis for the slashing subcategory operations at existing sources and new or reconstructed sources under original MACT standards in the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP was the use of zero organic HAP materials. For these materials, each organic HAP that is not an OSHA-defined carcinogen that is measured to be present at less than one percent by weight is counted as zero. We found that no add-on emission capture and control systems for organic HAP were used by the industry. During development of that rulemaking, we identified no beyond-the-floor technology that could achieve a lower organic HAP content in materials ''as purchased'' than zero percent HAP (67 FR 46028, July 11, 2002).

Using the RBLC database, we identified seven entries for facilities currently subject to the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP. We reviewed the state operating permits for the seven facilities to determine if any are using technologies that exceed MACT. Six of the seven permits included VOC emission limitations issued prior to promulgation of the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP. All seven facilities entered in the RBLC database indicated they were meeting their VOC limits using solvent substitution, solvent reformulation, low VOC adhesives, or condensation controls. However, the VOC limits for four facilities were either annual, monthly, or daily VOC emission limits. The remaining limits for three facilities were VOC limits that were at least several times higher than the HAP content limits in 40 CFR part 63, subpart OOOO for the same subcategories. Because none of these limitations were more stringent than the HAP content limits, none of these limitations represented a development in practices, processes, and control technologies for this source category.

Using the EPA's NEI and the ECHO databases, we identified 43 facilities (including the seven facilities mentioned above) that are currently subject to the Printing, Coating, and

Dyeing of Fabrics and Other Textiles NESHAP. We reviewed their state operating permits to determine the subcategory operations being performed and the type of control used for those subcategories to comply with the NESHAP. Our review of the state operating permits found that the facilities using PTEs and add-on controls (*e.g.,* carbon adsorbers and thermal or catalytic oxidizers) were using them only on fabric coating lines. We did not find any facilities in the printing, dyeing and finishing, or slashing subcategories using add-on controls for any of the other subcategories. The use of add-on controls is found for the same subcategories for which they were found at the time of MACT development. That is, facilities in the coating and printing subcategory are using add-on controls and facilities in the dyeing and finishing subcategory are using low-HAP coatings and are not using add-on controls. (We found very few facilities that were performing both coating and printing and no facilities performing just printing; most facilities subject to 40 CFR part 63, subpart OOOO were performing coating, but not printing.)

For the dyeing and finishing, and slashing subcategories, no facilities are using add-on controls to comply. The technology basis for these subcategories was the use of low-HAP (dyeing and finishing) and non-HAP materials (slashing). We have not identified any other process change or pollution prevention alternatives that could be applied to these two subcategories that would further reduce the emissions from these two subcategories.

Finally, we identified no developments in work practices or procedures for the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category. However, we note that the one facility that previously reported ethylene oxide has eliminated its use through a process change, and we solicit comment on whether the agency should ban the use of ethylene oxide in this source category under the technology review. The current Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP requires affected sources using add-on controls as a compliance strategy to develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, all coating operations for which emission limits are established. The current work practice requirements address all of the potential emission sources that are normally located outside of the PTE that is routed to the control device, and no new measures have been identified to further reduce the emissions from these sources.

Based on a finding of no new developments in practices, processes, and control technologies in the technology review for printing, coating, and dyeing operations, we are not proposing to revise the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP emission limit requirements pursuant to CAA section 112(d)(6). For further discussion of the technology review results, refer to the *Fabrics and Other Textiles Technology Review Memorandum* in the Fabrics and Other Textiles Docket.

4. What other actions are we proposing?

In the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category, we are proposing to require electronic submittal of notifications, semiannual reports, and compliance reports (which include performance test reports). In addition, 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 the addition of EPA Method 18, IBR of an alternative test method, and various technical and editorial changes. Our analyses and proposed changes related to these issues are discussed in the sections below.

Though we are not proposing to change reporting frequency currently in the rule, we are requesting comment on changing the reporting frequency for all reports to EPA from semi-annual to annual due to the potential redundancy of these reporting requirements. We recognize that Title V permits have a statutory requirement for semi-annual reports, which are generally reported to state regulatory agencies. However, we are not certain that changing the report frequency for just the reports submitted to EPA in this NESHAP will result in a reporting and recordkeeping burden reduction. We request comment and supporting information on the burden impact of changing the reporting requirement to annual for the reporting to EPA.

a. Electronic Reporting Requirements

The EPA is proposing that owners and operators of facilities subject to the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP submit electronic copies of initial notifications required in 40 CFR 63.9(b), notifications of compliance status required in 40 CFR 63.9(h), performance test reports, and semiannual reports through the EPA's CDX, using the CEDRI. A description of the EPA's CDX and the EPA's proposed rationale and details on the addition of these electronic reporting requirements for the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category is the same as for the Surface Coating of Large Appliances source category as discussed in section IV.A.4.a of this preamble. For further information regarding the electronic data submission process, please refer to the memorandum titled *Electronic Reporting for Printing, Coating, and Dyeing of Fabrics and Other Textiles, Subpart OOOO,* May 2018, in the Fabrics and Other Textiles Docket. No specific form is proposed at this time for the initial notifications required in 40 CFR 63.9(b) and notifications of compliance status required in 40 CFR 63.9(h). Until the EPA has completed electronic forms for these notifications, the notifications will be required to be submitted via CEDRI in PDF. After development of the final forms, we will notify sources about their availability via the CEDRI website and the Clearinghouse for Inventories and Emissions Factors (CHIEF) Listserv. For semiannual reports, the EPA proposes that owners or operators use the appropriate spreadsheet template in CEDRI for 40 CFR part 63, subpart OOOO, or an alternate electronic file format consistent with the form's extensible markup language schema. For further information regarding the electronic data submission process, please refer to the spreadsheet template attached to the memorandum titled *Electronic Reporting Template for Printing, Coating, and Dyeing of Fabrics and Other Textiles, Subpart OOOO Semiannual Reports,* May 2018, in the Fabrics and Other Textiles Docket. We specifically request comment on the format and usability of the template (*e.g.,* filling and uploading a provided spreadsheet versus entering the required information into a fillable CEDRI web form), as well as the content, layout, and overall design of the template. Prior to availability of the final semiannual compliance report template in CEDRI, owners or operators of affected sources will be required to submit semiannual compliance reports as otherwise required by the Administrator. After development of the final template, we will notify sources about its availability via the CEDRI website and the CHIEF

Listserv.[29] We plan to finalize a required reporting format with the final rule. The owner or operator would begin submitting reports electronically with the next report that is due, once the electronic template has been available for at least one year.

Regarding submittal of performance test reports via EPA's ERT, as discussed in section IV.A.4.a of this preamble for the Surface Coating of Large Appliances NESHAP, the proposal to submit performance test data electronically to the EPA applies only if the EPA has developed an electronic reporting form for the test method as listed on the EPA's ERT website. For the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP, most of the EPA test methods (including EPA Methods 25 and 25A) listed under 40 CFR part 63, subpart OOOO, are currently supported by the ERT. As discussed in section IV.A.4.a of this preamble, we are proposing that performance test results collected using test methods that are not supported by the ERT as listed on the EPA's ERT website at the time of the test be submitted in PDF using the attachment module of the ERT.

Also, as discussed in section IV.A.4.a of this preamble for the Surface Coating of Large Appliances NESHAP, we are proposing to provide facilities with the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility. In proposed 40 CFR 63.4311(f), we address the situation for facilities subject to the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP where an extension may be warranted due to outages of the EPA's CDX or CEDRI, which may prevent access to the system and submittal of the required reports. In proposed 40 CFR 63.4311(g), we address the situation for facilities subject to the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP 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 compliance with the requirement to submit a report electronically as required by this rule.

b. Startup, Shutdown and Malfunction Requirements

1. Proposed Elimination of the SSM Exemption

The EPA is proposing to eliminate the SSM exemption in the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP. The EPA's proposed rationale for the elimination of the SSM exemption for the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category is the same as for the Surface Coating of Large Appliances source category, which is discussed in section IV.A.4.b.1 of this preamble. We are also proposing several revisions to Table 3 to subpart OOOO of 40 CFR part 63 (*Applicability of General Provisions to Subpart OOOO,* hereafter referred to as the ''General Provisions table to subpart OOOO'') as is explained in more detail below in section IV.B.4.b.2 of this preamble. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We are also proposing to delete 40 CFR 63.4342(h), which specifies that deviations during SSM periods are not violations. Further, we are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption 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 the specific proposed deletions and revisions and also whether additional provisions should be revised to achieve the stated goal.

In proposing these rule amendments, the EPA has taken into account startup and shutdown periods and, for the same reasons explained in section IV.A.4.b.1 of this preamble for the Surface Coating of Large Appliances source category, has not proposed alternate standards for those periods in the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP. Although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible, as further discussed in section IV.A.4.b.1 of this preamble for the Surface Coating of Large Appliances source category. It is unlikely that a malfunction of sources in the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category would result in a violation of the standards for those facilities using the compliant material or the emission rate without add-on controls option, since they meet the emission limits without using add-on controls. It also is unlikely that facilities using the add-on control option to meet the emission limits would experience a malfunction that would result in a violation, since compliance with the surface coating emission limits is based on a rolling 12-month compliance period. However, it is not inevitable that a malfunction would result in a violation of the standards for those facilities using add-on controls; therefore, we are considering the need for a work practice for periods of malfunction for these facilities. In fact, the EPA has received information that it is possible that a control device malfunction for sources in the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category could potentially result in an emissions increase and potential violation of the emissions limit. During these periods, it is possible that an immediate line shutdown may not be feasible due to safety concerns, and concerns that an immediate shutdown would result in the unnecessary generation of hazardous wastes. In those cases, it may be appropriate to establish a standard for malfunctions. Given the fact that emissions testing during malfunctions is both economically and technically infeasible, we would anticipate that a separate standard would be in the form of a work practice standard. We are, therefore, soliciting information on industry best practices and the best level of emission control during malfunction events for the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category. We are also soliciting information on the cost savings associated with these practices. In addition, we are soliciting specific supporting data on organic HAP emissions during malfunction events for this category, including the cause of malfunction, the frequency of malfunction, duration of malfunction, and the estimate of organic HAP emitted during each malfunction. We also are asking specifically for comment on the use of CEMS by facilities in this source category as a method to better quantify organic HAP emissions during malfunctions and normal operation.

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. Refer to section IV.A.4.b.1 of this preamble for further discussion of the EPA's actions in response to a source failing to comply with the applicable CAA section 112(d) standards as a result of a malfunction

[29] *https://www.epa.gov/air-emissions-inventories/air-emissions-inventory-listservs.*

event for the Surface Coating of Large Appliances source category, which applies to this source category.

2. Proposed Revisions to the General Provisions Applicability Table

a. 40 CFR 63.4300(b) General Duty

We are proposing to revise the General Provisions table to subpart OOOO (table 3) entry for 40 CFR 63.6(e)(1)(i) by changing the ''yes'' in column 3 to a ''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 elimination of the SSM exemption. We are proposing instead to add general duty regulatory text at 40 CFR 63.4300(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. With the elimination of the SSM exemption, 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 63.4300(b) does not include that language from 40 CFR 63.6(e)(1).

We are also proposing to revise the General Provisions table to subpart OOOO (table 3) entry for 40 CFR 63.6(e)(1)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.4300(b).

b. SSM Plan

We are proposing to revise the General Provisions table to subpart OOOO (table 3) entry for 40 CFR 63.6(e)(3) by changing the ''yes'' in column 3 to a ''no.'' Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. We are also proposing to remove from 40 CFR part 63, subpart OOOO, the current provisions requiring the SSM plan in 40 CFR 63.4300(c) and requiring reporting related to the SSM plan in 40 CFR 63.4310(c)(9)(iv). As noted, the EPA is proposing to remove the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance, and, thus, the SSM plan requirements are no longer necessary.

c. Compliance With Standards

We are proposing to revise the General Provisions table to subpart OOOO (table 3) entry for 40 CFR 63.6(f)(1) by changing the ''yes'' in column 3 to a ''no.'' The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standards apply continuously. Consistent with *Sierra Club,* the EPA is proposing to revise standards in this rule to apply at all times.

We are also proposing to remove rule text in 40 CFR 63.4341(e)(4) and (f)(4) and 40 CFR 63.4351(d)(4) clarifying that, in calculating emissions to demonstrate compliance, deviation periods must include deviations during an SSM period. Since the EPA is removing the SSM exemption, this clarifying text is no longer needed.

d. 40 CFR 63.4360 Performance Testing

We are proposing to revise the General Provisions table to subpart OOOO (table 3) entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in column 3 to a ''no.'' Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.4360. 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 restated the SSM exemption and language that precluded startup and shutdown periods from being considered ''representative'' for purposes of performance testing. Also, the proposed performance testing provisions will not allow performance testing during startup or shutdown. 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. Section 63.7(e) requires that the owner or operator maintain records of the process information necessary to document operating conditions during the test and include in such records an explanation to support that such conditions represent normal operation. The EPA is proposing to add language clarifying that the owner or operator must make such records available to the Administrator upon request.

e. Monitoring

We are proposing to revise the General Provisions table to subpart OOOO (table 3) entry for 40 CFR 63.8(c)(1)(i) and (iii) by changing the ''yes'' in column 3 to a ''no.'' The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)). Further, we are proposing to revise the General Provisions table to subpart NNNN (table 3) entry for 40 CFR 63.8(c)(1)(ii) by changing the ''yes'' in column 3 to a ''no.'' We have determined that 40 CFR 63.8(c)(1)(ii) is redundant to the current monitoring requirement in 40 CFR 63.4364(a)(6) (*i.e.,* ''maintain the monitoring system in proper working order including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment''), except 40 CFR 63.8(c)(1)(ii) requires that necessary parts be ''readily'' available. We are proposing to revise 40 CFR 63.4967(a)(4) to replace ''maintaining'' with specify ''keeping readily available.''

f. 40 CFR 63.4312 Recordkeeping

We are proposing to revise the General Provisions table to subpart OOOO (table 3) entry for 40 CFR 63.10(b)(2)(i) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA is proposing that recordkeeping and reporting applicable to normal operations will apply to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We are proposing to revise the General Provisions table to subpart OOOO (table 3) entry for 40 CFR 63.10(b)(2)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction, requiring a record of ''the occurrence and duration of each malfunction.'' A similar record is already required in 40 CFR 63.4312(i), which requires a record of ''the date, time, and duration of each deviation,''

which the EPA is retaining. The regulatory text in 40 CFR 63.4312(i) differs from the General Provisions in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment; whereas 40 CFR 63.4312(i) applies to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the ''occurrence.'' The EPA is also proposing to add to 40 CFR 63.4312(i) a requirement that sources also keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* coating HAP content and application rates and control device efficiencies). We also propose to revise 40 CFR 63.4312(i) to clarify that, if an owner or operator uses the equivalent emission rate option to comply with this subpart, the applicable information reported as currently required in 40 CFR 63.4311(a)(8)(ii) through (iv) satisfies the requirement to keep a record of the estimate of the quantity of each regulated pollutant for which the source failed to meet the standard and a description of the method used to estimate the emissions. The EPA proposes 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.

We are proposing to revise the General Provisions table to subpart OOOO (table 3) entry for 40 CFR 63.10(b)(2)(iv) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.4312(i)(5).

We are proposing to revise the General Provisions table to subpart OOOO (table 3) entry for 40 CFR 63.10(b)(2)(v) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

We are proposing to revise the General Provisions table to subpart OOOO (table 3) entry for 40 CFR 63.10(c)(15) by changing the ''yes'' in column 3 to a ''no.'' The EPA is proposing that 40 CFR 63.10(c)(15) no longer apply. When applicable, the provision allows an owner or operator to use the affected source's SSM plan or records kept to satisfy the recordkeeping requirements of the SSM plan, specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is proposing to eliminate this requirement because SSM plans would no longer be required, and, therefore, 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units.

We are proposing to remove the requirement in 40 CFR 63.4312(j)(1) that deviation records specify whether deviations from a standard occurred during a period of SSM. This revision is being proposed due to the proposed removal of the SSM exemption and because, as discussed above in this section, we are proposing that deviation records must specify the cause of each deviation, which could include a malfunction period as a cause. We are also proposing to remove the requirement to report the SSM records in 40 CFR 63.6(e)(3)(iii) through (v) by deleting 40 CFR 63.4312(j)(2).

g. 40 CFR 63.4311 Reporting

We are proposing to revise the General Provisions table to subpart OOOO (table 3) entry for 40 CFR 63.10(d)(5) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.4311. The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semi-annual compliance report already required under this rule. Subpart OOOO currently requires reporting of the date, time period, and cause of each deviation. We are clarifying in the rule that, if the cause of a deviation from a standard is unknown, this should be specified in the report. We are also proposing to change ''date and time period'' or ''date and time'' to ''date, time, and duration'' (see proposed revisions to 40 CFR 63.4311(a)(7)(vii), (a)(7)(ix), and (a)(7)(xiv)) to use terminology consistent with the recordkeeping section. Further, we are proposing that the report must also contain the number of deviations from the standard and a list of the affected sources or equipment. For deviation reports addressing deviations from an applicable emission limit in Table 1 to subpart OOOO or operating limit in Table 2 to subpart OOOO, we are proposing that the report also include an estimate of the quantity of each regulated pollutant emitted over any emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions. For deviation reports addressing deviations from work practice standards associated with the emission rate with add-on controls option (see proposed revisions to 40 CFR 63.4311(a)(7)(xiv)), we are retaining the current requirement (including reporting actions taken to correct the deviation), except that we are revising the rule language to reference the new general duty requirement in 40 CFR 63.4200(b), we are clarifying that the description of the deviation must include a list of the affected sources or equipment and the cause of the deviation, we are clarifying that ''time period'' includes the ''time and duration,'' and we are requiring that the report include the number of deviations from the work practice standards in the reporting period.

Regarding the proposed new requirement discussed above to estimate the quantity of each regulated pollutant emitted over any emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions, examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* coating HAP content and application rates and control device efficiencies). The EPA is proposing this requirement 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.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans would no longer be required. The proposed amendments, therefore, eliminate 40 63.4311(c) that requires reporting of whether the source deviated from its SSM plan, including required actions to communicate with the Administrator, and the cross reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

We are proposing to revise the General Provisions table to subpart OOOO (table 3) entry for 40 CFR 63.10(d)(5)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(d)(5)(ii) describes an immediate report for startups, shutdown, and malfunctions when a source failed to meet an applicable standard, but did not follow the SSM plan. We will no longer require owners and operators to report when actions taken during a startup, shutdown, or malfunction were not consistent with an SSM plan, because plans would no longer be required.

We are proposing to remove the requirements in 40 CFR 63.4311(a)(7)(ix) that deviation reports must specify whether a deviation from an operating limit occurred during a period of SSM. We are also proposing to remove the requirements in 40 CFR 63.4311(a)(7)(xi) to break down the total duration of deviations into the startup and shutdown categories. As discussed above in this section, we are proposing to require reporting of the cause of each deviation. Further, the startup and shutdown categories no longer apply because these periods are proposed to be considered normal operation, as discussed in section IV.A.4.b.1 of this preamble for the Surface Coating of Large Appliances source category, which also applies to this source category.

c. Technical Amendments to the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP

We propose to amend 40 CFR 63.4331, Equation 7; 40 CFR 63.4350(a)(3) and (b)(3); and 40 CFR 63.4351(a) and (e) to correct the references to the alternative control device outlet organic HAP concentration limit from 20 parts per million by weight (ppmw) to 20 ppmv. The reference to ppmw was incorrect and inconsistent with the rest of the NESHAP.

We propose to amend 40 CFR 63.4362(b) to add the option of conducting EPA Method 18 of appendix A to 40 CFR part 60 ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography'' to measure and then subtract methane emissions from measured total gaseous organic mass emissions as carbon. Facilities using the emission rate with add-on control compliance option can use either EPA Method 25 or Method 25A to measure control device destruction efficiency. Unlike EPA Method 25, Method 25A does not exclude methane from the measurement of organic emissions. Because exhaust streams from coating operations may contain methane from natural gas combustion, we are proposing to allow facilities the option to measure methane using Method 18 and to subtract the methane from the emissions as part of their compliance calculations. We also propose to revise the format of references to test methods in 40 CFR part 60. The current reference in 40 CFR 63.4362(a) and (b) to Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 25, and 25A specify that each method is in ''appendix A'' of part 60. Appendix A of part 60 has been divided into appendices A–1 through A–8. We propose to revise each reference to appendix A to indicate which of the eight sections of appendix A applies to the method.

EPA is proposing to amend 40 CFR 63.4321(e)(1)(i)(A) and (e)(1)(iv), which describe how to demonstrate initial compliance with the emission limitations using the compliant material option, to remove reference to paragraph (d)(4) of OSHA's Hazard Communication standard, which dealt with OSHA-defined carcinogens. EPA is proposing to replace that reference with its own list of hazardous air pollutants that must be regarded as potentially carcinogenic based on EPA guidelines. Although paragraph (d)(4) of OSHA's standard was deleted when the Agency adopted the Globally Harmonized System of Hazard Communication in 2012, it was replaced by section A.6.4.2 of mandatory Appendix A of that standard, which reads as follows:

''Where OSHA has included cancer as a health hazard to be considered by classifiers for a chemical covered by 29 CFR part 1910, subpart Z, Toxic and Hazardous Substances, chemical manufacturers, importers, and employers shall classify the chemical as a carcinogen.'' Thus, where OSHA has regulated workplace exposure to a chemical based, at least in part, on carcinogenic risk, OSHA requires the chemical to be classified as a carcinogen. OSHA suggests that EPA should refer to section A.6.4.2 of Appendix A of 29 CFR 1910.1200 in its discussion of section 63.4141 and consider chemicals that meet this requirement be considered ''OSHA-defined carcinogens.''

We also propose to remove the same reference in the definition of ''No organic HAP'' in 40 CFR 63.4371. We propose to replace these references to OSHA-defined carcinogens at 29 CFR 1910.1200(d)(4) with a list (in proposed new Table 6 to subpart OOOO) of those organic HAP that must be included in calculating total organic HAP content of a coating material if they are present at 0.1 percent or greater by mass.

We propose to include organic HAP in proposed Table 6 to subpart OOOO if they were categorized in the EPA's *Prioritized Chronic Dose-Response Values for Screening Risk Assessments* (dated May 9, 2014) as a ''human carcinogen,'' ''probable human carcinogen,'' or ''possible human carcinogen'' according to *The Risk Assessment Guidelines of 1986* (EPA/600/8–87/045, August 1987),[30] or as ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' or with ''suggestive evidence of carcinogenic potential'' according to the *Guidelines for Carcinogen Risk Assessment* (EPA/630/P–03/001F, March 2005).

We propose to revise the monitoring provisions for thermal and catalytic oxidizers to clarify that a thermocouple is part of the temperature indicator referred to in 40 CFR 63.4364(c) for purposes of performing periodic calibration and verification checks.

Current 40 CFR 63.4931(a) allows records, ''where appropriate,'' to be maintained as ''electronic spreadsheets'' or a ''data base.'' We propose to add clarification to this provision that the allowance to retain electronic records applies to all records that were submitted as reports electronically via the EPA's CEDRI. We also propose to add text to the same provision clarifying that this ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a

[30] See *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

delegated air agency or the EPA as part of an on-site compliance evaluation.

We propose to revise a reporting requirement in 40 CFR 63.4342(f) to harmonize the requirement with the same reporting requirement in 40 CFR 63.4311(a)(4). Section 40 CFR 63.4342(f) requires ''If there were no deviations from the applicable emission limit in Table 1 to this subpart,'' then the source (*i.e.,* coating/printing or dyeing/finishing operation) must submit a statement that the source is ''in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in Table 1 to this subpart, and you achieved the operating limits required by § 63.4292 and the work practice standards required by § 63.4293 during each compliance period.'' We are proposing to revise the text; ''If there were no deviations from the applicable emission limit in Table 1 to this subpart,'' to read ''If there were no deviations from the applicable emission limitations in §§ 63.4290, 63.4292, and 63.4293.'' This revised text will be consistent with the same reporting requirement in 40 CFR 63.4311(a)(4) that requires the same statement to be reported if ''there were no deviations from the emission limitations in Table 1 to this subpart and §§ 63.4292, and 63.4293.'' Note that ''emission limitation'' is defined in 40 CFR 63.4371 to mean an emission limit, operating limit, or work practice standard.

We propose to revise one instance in 40 CFR 63.4311(a)(7)(i)(B) and one instance in 40 CFR 63.4311(a)(7)(ii)(B) that reference an equation that is missing. Each of these provisions specifies that ''Equations 4, 4A, 5, and 7 of § 63.4331'' must be used to calculate the organic HAP emission rate for dyeing/finishing operations; however, Equation 6 of § 63.4331 should also be used, together with Equations 4, 4A, 5, and 7 of § 63.4331. We propose to add ''6'' to the list of equations cited in 40 CFR 63.4311(a)(7)(i)(B) and 63.4311(a)(7)(ii)(B), so that the citation reads ''Equations 4, 4A, 5, 6, and 7 of § 63.4331.'' We propose to revise one instance in 40 CFR 63.4340(b)(3) in which an erroneous rule citation ''§ 63.4561'' is specified. Section 63.4561 does not exist in 40 CFR part 63, subpart OOOO, and 40 CFR 63.4341 is the correct citation, providing the calculations for demonstrating initial compliance, referred to in association with the erroneous rule citation. We propose to change the erroneous citation to ''§ 63.4341.'' We propose to revise one instance in Table 3 to Subpart OOOO of Part 63 of an erroneous rule reference to ''sections 63.4342 and 63.4352.'' This rule citation is specified in the fourth column of the table entry for ''§ 63.8(g)(1)–(5),'' as the source for the requirements related to reducing monitoring data. Sections 40 CFR 63.4342 and 63.4352 do not provide requirements related to data reduction; however, 40 CFR 63.4363 and 63.4364 do provide these requirements and should be the correct citation. We propose to change the erroneous citation to ''Sections 63.4363 and 63.4364.''

d. Requesting Comment on Ongoing Emissions Compliance Demonstrations

As part of an ongoing effort to improve compliance with various federal air emission regulations, the EPA reviewed the compliance demonstration requirements in the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP. Currently, if a source owner or operator chooses to comply with the standards using add-on controls, the results of an initial performance test are used to determine compliance; however, the rule does not require on-going periodic performance testing for these emission capture systems and add-on controls.

As described more fully in section IV.A.4.d of this preamble for the Surface Coating of Large Appliances source category, the ICAC, in their comments on proposed revisions to the NESHAP General Provisions (72 FR 69, January 3, 2007), commented that ongoing maintenance and checks of control devices are necessary in order to ensure emissions control technology, including both thermal and catalytic oxidizers, remains effective.[31] These same comments apply to the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category.

Given these comments from ICAC, suppliers of air pollution control and monitoring technology, on the need for vigilance in maintaining equipment to stem degradation, the EPA is requesting comment on what steps, in addition to one-time initial emissions and capture efficiency testing, along with ongoing temperature measurement, might better ensure ongoing compliance with the standards.

EPA specifically requests comment on whether air performance testing should be required anytime a source plans to undertake an operational change that may adversely affect compliance with an applicable standard, operating limit, or parametric monitoring value. This requirement would include provisions to allow a source to make the change, but limit the change to a specific time before a test is required. We anticipate that a reasonable time limit under the new operations change would be approximately 30 days to allow adequate time for testing and developing a test report. The source would submit temperature and flow rate data during the test to establish new operating parameters. We are specifically requesting comment on this potential provision, including the time a source is allowed to operate under the new parameters before they test, and what would constitute an operational change requiring testing.

This approach would require air emissions testing to measure organic HAP destruction or removal efficiency at the inlet and outlet of the add-on control device, or measurement of the control device outlet concentration of organic HAP. Emissions would be measured as total gaseous organic mass emissions as carbon using either Method 25 or 25A of appendix A–7 to 40 CFR part 60, which are the methods currently required for the initial compliance demonstration.

We estimate that the cost to perform a control device emissions destruction or removal efficiency test using EPA Method 25 or 25A would be approximately $19,000 per control device. The cost estimate is included in the memorandum titled *Costs/Impacts of the 40 CFR part 63 Subparts NNNN, OOOO and RRRR Monitoring Review Revisions,* in the Fabrics and Other Textiles Docket.

5. What compliance dates are we proposing?

The EPA is proposing that affected sources that commenced construction or reconstruction on or before September 12, 2018 must comply with all of the amendments, with the exception of the proposed electronic format for submitting notifications and semiannual compliance reports, no later than 181 days after the effective date of the final rule. Affected sources that commence construction or reconstruction after September 12, 2018 must comply with all requirements of the subpart, including the amendments being proposed, with the exception of the proposed electronic format for submitting notifications and semiannual compliance reports, no later than the effective date of the final rule or upon startup, whichever is later. All affected facilities would have to continue to meet the current requirements of 40 CFR

[31] See Docket Item No. EPA–HQ–OAR–2004–0094–0173, available at *www.regulations.gov.* A copy of the ICAC's comments on the proposed revisions to the General Provisions is also included in the Fabrics and Other Textiles Docket for this action.

part 63, subpart OOOO until the applicable compliance date of the amended rule. The final action is not expected to be a ''major rule'' as defined by 5 U.S.C. 804(2), so the effective date of the final rule will be the promulgation date as specified in CAA section 112(d)(10).

For existing sources, we are proposing two changes that would impact ongoing compliance requirements for 40 CFR part 63, subpart OOOO. As discussed elsewhere in this preamble, we are proposing to add a requirement that notifications, performance test results, and semiannual compliance reports be submitted electronically using the new template. We are also proposing to change the requirements for SSM by removing the exemption from the requirements to meet the standard during SSM periods and by removing the requirement to develop and implement an SSM plan. Our experience with similar industries that are required to convert reporting mechanisms to install necessary hardware and software, become familiar with the process of submitting performance test results electronically through the EPA's CEDRI, test these new electronic submission capabilities, and reliably employ electronic reporting shows that a time period of a minimum of 90 days, and, more typically, 180 days is generally necessary to successfully accomplish these revisions. Our experience with similar industries further shows that this sort of regulated facility generally requires a time period of 180 days to read and understand the amended rule requirements; to evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule and make any necessary adjustments; and to update their operation, maintenance, and monitoring plan to reflect the revised requirements. The EPA recognizes the confusion that multiple different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose. From our assessment of the timeframe needed for compliance with the entirety of the revised requirements, the EPA considers a period of 180 days to be the most expeditious compliance period practicable and, thus, is proposing that all affected sources that commenced construction or reconstruction on or before September 12, 2018 be in compliance with all of this regulation's revised requirements within 181 days of the regulation's effective date.

We solicit comment on the proposed compliance periods, and we specifically request submission of information from sources in this source category regarding specific actions that would need to be undertaken to comply with the proposed amended requirements and the time needed to make the adjustments for compliance with any of the revised requirements. We note that information provided may result in changes to the proposed compliance dates.

C. What are the aanalytical results and proposed decisions for the Surface Coating of Metal Furniture source category?

1. What are the results of the risk assessment and analyses?

As described in section III of this preamble, for the Surface Coating of Metal Furniture source category, we conducted a risk assessment for all HAP emitted. We present results of the risk assessment briefly below and in more detail in the *Metal Furniture Risk Assessment Report* in the Metal Furniture Docket (Docket ID No. EPA–HQ–OAR–2017–0669).

a. Inhalation Risk Assessment Results

Table 5 of this preamble provides a summary of the results of the inhalation risk assessment for the source category. As discussed in section III.C.2 of this preamble, we set MACT-allowable HAP emission levels at metal furniture coating facilities equal to 1.8 times actual emissions. For more detail about the MACT-allowable emission levels, see Appendix 1 to the *Metal Furniture Risk Assessment Report* in the Metal Furniture Docket.

TABLE 5—SURFACE COATING OF METAL FURNITURE SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS

Risk assessment	Maximum individual cancer risk (in 1 million)		Estimated population at increased risk of cancer ≥ 1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [1]		Maximum Screening Acute Noncancer HQ [2]
	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions
Source Category	7	10	2,100	4,200	0.0004	0.0008	0.2	0.3	HQ_{REL} = 2
Whole Facility	7	.....	2,200	.....	0.0005	.....	0.1	.....	

[1] The TOSHI is the sum of the chronic noncancer HQ for substances that affect the same target organ or organ system.
[2] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values.

The results of the inhalation risk modeling using actual emissions data, as shown in Table 5 of this preamble, indicate that the maximum individual cancer risk based on actual emissions (lifetime) could be up to 7-in-1 million, the maximum chronic noncancer TOSHI value based on actual emissions could be up to 0.2, and the maximum screening acute noncancer HQ value (off-facility site) could be up to 2. The total estimated annual cancer incidence (national) from these facilities based on actual emission levels is 0.0004 excess cancer cases per year or one case in every 2,500 years.

b. Acute Risk Results

Table 5 of this preamble shows the acute risk results for the Surface Coating of Metal Furniture source category. The screening analysis for acute impacts was based on an industry specific multiplier of 1.8, to estimate the peak emission rates from the average rates. For more detailed acute risk results refer to the *Metal Furniture Risk Assessment Report* in the Metal Furniture Docket.

c. Multipathway Risk Screening Results

We did not identify any PB–HAP emitted by facilities in this source category. Therefore, we do not expect any human health multipathway risks as a result of emissions from this source category.

d. Environmental Risk Screening Results

The emissions data for the Surface Coating of Metal Furniture source category indicate that no environmental HAP are emitted by sources within this source category. Therefore, we did not conduct a screening-level evaluation of the potential adverse environmental risks associated with emissions for the Surface Coating of Metal Furniture source category. We do not expect an adverse environmental effect as a result

of HAP emissions from this source category.

e. Facility-Wide Risk Results

Four facilities have a facility-wide cancer MIR greater than or equal to 1-in-1 million. The maximum facility-wide cancer MIR is 7-in-1 million, driven by ethyl benzene. The total estimated cancer incidence from the whole facility is 0.0005 excess cancer cases per year, or one excess case in every 2,000 years. Approximately 2,200 people were estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-MACT sources of the 16 facilities in this source category. The maximum facility-wide TOSHI for the source category is estimated to be 0.1.

f. 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 Surface Coating of Metal Furniture source category across different demographic groups within the populations living near facilities.[32]

The results of the demographic analysis are summarized in Table 6 below. These results, for various demographic groups, are based on the estimated risks from actual emissions levels for the population living within 50 km of the facilities.

TABLE 6—SURFACE COATING OF METAL FURNITURE SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to Surface Coating of Metal Furniture source category	Population with chronic noncancer hazard index above 1 due to Surface Coating of Metal Furniture source category
Total Population	317,746,049	2,100	0
White and Minority			
White	62	62	0
Minority	38	38	0
Minority Detail by Percent			
African American	12	7	0
Native American	0.8	0	0
Hispanic or Latino	18	30	0
Other and Multiracial	7	2	
Income by Percent			
Below the Poverty Level	14	23	0
Above the Poverty Level	86	77	0
Education by Percent			
Over 25 Without a High School Diploma	14	34	0
Over 25 With a High School Diploma	86	66	0

The results of the Surface Coating of Metal Furniture source category demographic analysis indicate that emissions from the source category expose approximately 2,100 people to a cancer risk at or above 1-in-1 million and no one to a chronic noncancer HI greater than 1. The percentages of the at-risk population in the following specific demographic groups are higher than their respective nationwide percentages: ''Hispanic or Latino,'' ''Over 25 Without a HS Diploma,'' and ''Below the Poverty Level.''

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 Surface Coating of Metal Furniture Source Category Operations,* October 2017, available in the Metal Furniture Docket.

2. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effects?

a. Risk Acceptability

As noted in section III.A of this preamble, we weigh all health risk factors in our risk acceptability determination, including the cancer MIR, the number of persons in various cancer and noncancer risk ranges, cancer incidence, the maximum noncancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and risk estimation uncertainties (54 FR 38044, September 14, 1989).

For the Surface Coating of Metal Furniture source category, the risk analysis indicates that the cancer risks to the individual most exposed could be up to 7-in-1 million due to actual emissions and up to 10-in-1 million based on 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 very low cancer incidence (0.0004 cases per year for actual emissions, or one case in every

[32] 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 above the poverty level, and linguistically isolated people.

2,500 years, and 0.0008 cases per year for allowable emissions or one case in every 1,250 years), and we did not identify potential for adverse chronic noncancer health effects. The acute noncancer risks based on actual emissions is an HQ of 2 for glycol ethers. Therefore, we find there is little potential concern of acute noncancer health impacts from actual emissions. In addition, the risk assessment indicates no significant potential for multipathway health effects.

Considering all of the health risk information and factors discussed above, including the uncertainties discussed in section III.C.7 of this preamble, we propose to find that the risks from the Surface Coating of Metal Furniture source category are acceptable.

b. Ample Margin of Safety Analysis

Although we are proposing that the risks from the Surface Coating of Metal Furniture source category are acceptable, risk estimates for approximately 2,100 individuals in the exposed population are above 1-in-1 million at the actual emissions level and 4,200 individuals in the exposed population are above 1-in-1 million at the allowable emissions level. Consequently, we further considered whether the MACT standards for the Surface Coating of Metal Furniture source category provide an ample margin of safety to protect public health. In this ample margin of safety analysis, we investigated available emissions control options that might further reduce the risk from the source category. This information was considered along with our determination of the health risks acceptability.

As described in section III.B of this preamble, our technology review focused on identifying developments in practices, processes, and control technologies for the Surface Coating of Metal Furniture source category, and the EPA reviewed various information sources regarding emission sources that are currently regulated by the Surface Coating of Metal Furniture NESHAP.

The only development identified in the technology review is the use of high-efficiency spray equipment. We estimated no costs or emissions reductions that would be achieved by switching to high efficiency application methods for this source category because we expect that metal furniture surface coating facilities are already using high efficiency coating application methods due to state VOC rules and the economic incentives of using more efficient application methods. As discussed below, however, we are proposing to require this technology under the technology review. We request comment on this proposed requirement and whether any facilities in this source category do not currently use high efficiency coating application methods.

Based on our review, we did not identify any developments in add-on control technologies, other equipment, or work practices and procedures that would reduce HAP from the industry. Therefore, we are proposing that additional emissions controls for this source category are not necessary to provide an ample margin of safety.

c. Environmental Effects

The emissions data for the Surface Coating of Metal Furniture source category indicate that no environmental HAP are emitted by sources within this source category and we are unaware of any adverse environmental effects caused by HAP emitted from 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 set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

3. 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 practices, processes, and control technologies for the Surface Coating of Metal Furniture source category, and the EPA reviewed various information sources regarding emission sources that are currently regulated by the Surface Coating of Metal Furniture NESHAP. These emission sources include coating mixing; coating application; coating curing; conveying coatings, thinners and cleaning materials; and waste storage and handling. Based on our review, we identified, as outlined below, one development in technology, the application of high-efficiency spray equipment, for the Surface Coating of Metal Furniture source category. A brief summary of the EPA's findings in conducting the technology review of metal furniture surface coating operations follows. For a detailed discussion of the EPA's findings, refer to the *Metal Furniture Technology Review Memorandum* in the Metal Furniture Docket.

The technology basis for the original MACT standards for existing sources under the Surface Coating of Metal Furniture NESHAP was a combination of low-HAP liquid (high-solids and waterborne) coatings and cleaning solvents, and powder coatings. During development of that rulemaking, we found that add-on capture and control systems for organic HAP were rarely used by the industry at that time; of the 22 existing sources that were the basis of the MACT analysis, only one source was identified as using an add-on control (a carbon adsorber/oxidizer system).[33] The original MACT basis for new or reconstructed sources under the NESHAP was the use of non-HAP coatings, including the use of powder coatings and the use of non-HAP liquid coatings. Under the final original MACT standards, new or reconstructed affected sources must emit no organic HAP during each compliance period. Existing affected sources must limit organic HAP emissions to no more than 0.10 kg organic HAP/liter (0.83 lb/gal) of coating solids used during each compliance period. The use of a PTE and add-on control was considered during development of the Metal Furniture NESHAP, but was rejected as not cost effective for the incremental emission reductions that would be achieved relative to the MACT floor level of control.

Using the RBLC database, we identified entries for two facilities currently subject to the Surface Coating of Metal Furniture NESHAP. We reviewed the state operating permits for the two facilities in the RBLC database, and for all other facilities known to be subject to 40 CFR part 63, subpart RRRR to determine if any are using technologies that exceed MACT or that were not considered during the development of the original NESHAP. None of these facilities are using add-on controls to comply with the Surface Coating of Metal Furniture NESHAP, and none of these facilities are using any other technology that exceeds MACT or that was not considered during the development of the original NESHAP.

We have also found no information that any improvements in PTE and add-on control technology have occurred that would affect the cost effectiveness of a PTE and add-on control or result in additional emission reductions. We have not identified any changes that would increase the efficiency of these controls or reduce their cost. Therefore, the EPA does not consider the use of a PTE and add-on control to be a

[33] National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Category: Metal Furniture Surface Coating—Background Information for Proposed Standards. EPA–453/R–01–010. October 2001. Table 6–1, pp. 6–3 to 6–4.

development in technology for the metal furniture source category. This result is consistent with the technology review determinations for the Wood Furniture Manufacturing Operations NESHAP (75 FR 80247, December 21, 2010) and for the Shipbuilding and Ship Repair (Surface Coating) NESHAP (75 FR 80239, December 21, 2010) that the incremental emissions reductions that would be achieved using PTE and add-on control would not warrant the additional cost that each existing source would incur. We considered PTEs and add-on controls in the development of the original Surface Coating of Metal Furniture NESHAP, but we rejected these systems as a beyond-the-floor options for MACT for the source category because the additional reductions, compared to a combination of low-HAP liquid coatings and powder coatings, would not justify the additional costs (67 FR 20206, at 20216, April 24, 2002). None of the facilities currently subject to the Metal Furniture NESHAP are using add-on controls, and we have not identified any add-on control technology or other equipment that has been developed that was not identified and considered during MACT standard development. Similarly, we have identified no improvements in add-on control technology or other equipment, and no change in the cost effectiveness of add-on controls that were identified and considered during MACT standard development that could result in additional emission reductions.

We have not identified 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 Metal Furniture MACT standard. We reviewed other sources for information on recent trends in coating technology in the metal furniture industry. The *ACA Industry Market Analysis* has reported that the technology for non-wood (predominantly metal) furniture coating has been stable over the period since the NESHAP was promulgated, with a slow and steady increase in the use of powder and high-solids coatings. According to the *ACA Industry Market Analysis,* liquid coatings still account for about 75 percent of the coatings used on non-wood furniture and fixtures, but greater than 80 percent of the liquid coatings are high-solids coatings. Powder coatings and high solids (lower-HAP coatings) were considered during development of the original NESHAP and are the basis for the MACT standards, so these technologies do not represent developments in practices, processes, or control technologies since the Surface Coating of Metal Furniture NESHAP was promulgated. Rather, the shift to use of more powder and higher solids coatings has occurred as an expected response to comply with the original Surface Coating of Metal Furniture NESHAP. The *ACA Industry Market Analysis* reported that the growth in powder coating demand has slowed since 2005, as the technology has matured and the powders are seen as commodities with little product differentiation.

The technology review conducted for the Wood Furniture Manufacturing Operations NESHAP (40 CFR part 63, subpart JJ) identified the use of more efficient spray equipment as a development in process equipment, and adopted regulations preventing the use of conventional air-atomized spray guns. The Wood Furniture Manufacturing MACT identified the use of air-assisted airless spraying as a more efficient coating application technology.

The Surface Coating of Metal Furniture NESHAP does not contain any standards specifying the type of spray equipment that must be used when coatings are spray-applied. Several other surface coating NESHAP specify that high efficiency spray guns must be used for spray applied coatings (*i.e.,* 40 CFR part 63, subparts GG and JJ) or the compliance demonstration takes into account the transfer efficiency of the spray equipment, and the standards are based on high-efficiency spray application (*e.g.,* 40 CFR part 63, subpart IIII). Using high-efficiency spray equipment increases the amount of coating applied to the substrate compared to conventional spray equipment and, therefore, reduces emissions. Many facilities complying with 40 CFR part 63, subpart RRRR are required by state VOC regulations in Indiana, Ohio, and Wisconsin to use high-efficiency spray guns for coatings that are spray applied. We expect that most other metal furniture surface coating facilities also are using high-efficiency application equipment for spray applied coatings as a cost saving measure to reduce coating and spray booth filter consumption and to reduce the amount of solid waste generated in the form of used spray booth filters. Although we expect that the high-efficiency application equipment would provide cost savings from an engineering perspective, we are uncertain of other factors that facilities may need to consider if choosing to switch to high-efficiency application equipment. Due to the competitive marketplace and the number of units going through these surface coating facilities, there may be facility specific operational, coating adherence, coating drying time, material compatibility, or other reasons that a facility may not have chosen to switch to high-efficiency spray. We request comment on these and other aspects of facility decision making as the agency has limited information on the market penetration of this technology and these other factors.

Based on these findings, we are proposing to revise the Surface Coating of Metal Furniture NESHAP for coating application operations pursuant to CAA section 112(d)(6) to require that, for each coating operation for which coatings are spray applied, high efficiency spray equipment must be used if the source is not using the emission rate with add-on control compliance option. Specifically, all spray-applied coating operations, where the source is not using the emission rate with add-on control compliance option, must be demonstrated to achieve transfer efficiency equivalent to or better than 65 percent. There are four types of high efficiency spray equipment technologies that have been applied in these applications that could achieve the transfer efficiency equivalent to or better than 65 percent including high volume, low pressure (HVLP) spray equipment, electrostatic application, airless spray equipment, and air assisted airless spray equipment. Alternative spray equipment technologies may also be used with documentation demonstrating at least 65 percent transfer efficiency. Spray application equipment sources not using the emission rate with add-on control compliance option, and/or using alternative spray application equipment technologies other than the four listed, must follow procedures in the California South Coast Air Quality Management District's, ''Spray Equipment Transfer Efficiency Test Procedure for Equipment User, May 24, 1989'' to demonstrate that their spray application equipment is capable of achieving transfer efficiency equivalent to, or better than, 65 percent. Equivalency documentation may be certified by manufacturers of the spray equipment, on behalf of spray-applied coating operations sources, by following the aforementioned procedure in conjunction with California South Coast Air Quality Management District's ''Guidelines for Demonstrating Equivalency with District Approved Transfer Efficient Spray Guns, September 26, 2002.'' When using these equivalency procedures and/or guidelines, facilities would not be required to submit an application with

the test plan or protocol to the Administrator, conduct the test in the presence of an Administrator's representative, or submit test results to the Administrator for review or approval. Instead, they would be required to maintain records demonstrating the transfer efficiency achieved, including a description of the procedures and/or guidelines used. We are proposing that all spray equipment used for spray-applied coating operations would be required to be operated according to company procedures, local specified operating procedures, or the manufacturer's specifications, whichever is determined to meet the 65 percent transfer efficiency. Further, we are proposing related definitions for ''airless and air-assisted airless spray,'' ''electrostatic application,'' ''high-volume, low-pressure (HVLP) spray equipment,'' ''spray-applied coating operations,'' ''and transfer efficiency.''

Considering just the incremental cost of the high efficiency spray equipment and savings due to using less material consumption, we expect that all facilities have already switched to high efficiency application methods for the reasons discussed in the technology review section for surface coating of large appliances. We have not estimated the emissions reductions achieved by switching to high efficiency application methods for this source category because we expect that all large appliance surface coating facilities are using high efficiency coating application methods. However, if any facilities switch to high efficiency application equipment, there would likely be emission reductions of the same magnitude as would occur in the large appliance surface coating source category. For more information on the cost of spray gun equipment and potential HAP emission reductions, see the memorandum titled *Impacts of Prohibiting the Use of Conventional Spray Guns in the Wood Manufacturing Operations Source Category* (Docket ID Number EPA–HQ–OAR–2010–0786 EPA). Refer to section IV.A.5 of this preamble for a discussion of the compliance schedule for using high efficiency spray equipment.

Finally, we identified no developments in work practices or procedures for the Surface Coating of Metal Furniture source category, including work practices and procedures that are currently prescribed in the NESHAP. The current Surface Coating of Metal Furniture NESHAP standards require that, if a facility uses add-on controls to comply with the emission limitations (and currently no facilities do this), the facility must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, all coating operations for which emission limits are established. The current work practice requirements address all the potential emission sources that are normally located outside of the PTE that is routed to the control device, and no new measures have been identified to further reduce the emissions from these sources.

Refer to section IV.C.5 of this preamble for a discussion of the compliance schedule for using high efficiency spray equipment. For further discussion of the technology review results, refer to the *Metal Furniture Technology Review Memorandum* in the Metal Furniture Docket.

4. What other actions are we proposing?

We are proposing to require electronic submittal of notifications, semiannual reports, and compliance reports (which include performance test reports). In addition, 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 (DC 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 the addition of EPA Method 18, various technical and editorial changes, and IBR of alternative test methods. Our analyses and proposed changes related to these issues are discussed in the sections below.

Though we are not proposing to change reporting frequency currently in the rule, we are requesting comment on changing the reporting frequency for all reports to EPA from semi-annual to annual due to the potential redundancy of these reporting requirements. We recognize that Title V permits have a statutory requirement for semi-annual reports, which are generally reported to state regulatory agencies. However, we are not certain that changing the report frequency for just the reports submitted to EPA in this NESHAP will result in a reporting and recordkeeping burden reduction. We request comment and supporting information on the burden impact of changing the reporting requirement to annual for the reporting to EPA.

a. Electronic Reporting Requirements

The EPA is proposing that owners and operators of facilities subject to the Surface Coating of Metal Furniture NESHAP submit electronic copies of initial notifications required in 40 CFR 63.9(b), notifications of compliance status required in 40 CFR 63.9(h), performance test reports, and semiannual reports through the EPA's CDX, using the CEDRI. A description of the EPA's CDX and the EPA's proposed rationale and details on the addition of these electronic reporting requirements for the Surface Coating of Metal Furniture source category is the same as for the Surface Coating of Large Appliances source category, which is discussed above in section IV.A.4.a of this preamble. For further information regarding the electronic data submission process, please refer to the memorandum titled *Electronic Reporting for Surface Coatings of Metal Furniture,* May 2018, in the Metal Furniture Docket. No specific form is proposed at this time for the initial notifications required in 40 CFR 63.9(b) and notifications of compliance status required in 40 CFR 63.9(h). Until the EPA has completed electronic forms for these notifications, the notifications will be required to be submitted via CEDRI in PDF. After development of the final forms, we will notify sources about their availability via the CEDRI website and the CHIEF Listserv. For semiannual reports, the EPA proposes that owners or operators use the appropriate spreadsheet template in CEDRI for 40 CFR part 63, subpart RRRR, or an alternate electronic file format consistent with the form's extensible markup language schema. For further information regarding the electronic data submission process, please refer to the spreadsheet template attached to the memorandum *Electronic Reporting Template for Surface Coating of Metal Furniture, Subpart RRRR Semiannual Reports,* May 2018, in the Metal Furniture Docket. We specifically request comment on the format and usability of the template (*e.g.,* filling and uploading a provided spreadsheet versus entering the required information into a fillable CEDRI web form), as well as the content, layout, and overall design of the template. Prior to availability of the final semiannual compliance report template in CEDRI, owners or operators of affected sources will be required to submit semiannual compliance reports as otherwise required by the Administrator. After development of the final template, we will notify sources about its availability via the CEDRI website and the CHIEF

Listserv.[34] We plan to finalize a required reporting format with the final rule. The owner or operator would begin submitting reports electronically with the next report that is due, once the electronic template has been available for at least one year.

Regarding submittal of performance test reports via the EPA's ERT, as discussed in section IV.A.4.a of this preamble for the Surface Coating of Large Appliances NESHAP, the proposal to submit performance test data electronically to the EPA applies only if the EPA has developed an electronic reporting form for the test method as listed on the EPA's ERT website. For the Surface Coating of Metal Furniture NESHAP, most of the current EPA test methods listed under 40 CFR part 63, subpart RRRR, are currently supported by the ERT, including EPA Methods 25 and 25A. EPA Method 18, which is proposed for measuring and subtracting methane from total organic compounds as measured by current EPA Method 25 or 25A, is not supported by ERT. As discussed in section IV.A.4.a of this preamble, we are proposing that performance test results collected using test methods that are not supported by the ERT as listed on the EPA's ERT website at the time of the test be submitted in PDF using the attachment module of the ERT.

Also, as discussed in section IV.A.4.a of this preamble for the Surface Coating of Large Appliances NESHAP, we are proposing to provide facilities with the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility. In proposed 40 CFR 63.4921(d), we address the situation for facilities subject to the Surface Coating of Metal Furniture NESHAP where an extension may be warranted due to outages of the EPA's CDX or CEDRI which may prevent access to the system and submittal of the required reports. In 40 CFR 63.4921(e), we address the situation for facilities subject to the Surface Coating of Metal Furniture NESHAP 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 compliance with the requirement to submit a report electronically as required by this rule.

[34] *https://www.epa.gov/air-emissions-inventories/air-emissions-inventory-listservs.*

b. Startup, Shutdown, and Malfunction Requirements

1. Proposed Elimination of the SSM Exemption

The EPA is proposing to eliminate the SSM exemption in the Surface Coating of Metal Furniture NESHAP. The EPA's proposed rationale for the elimination of the SSM exemption for the Surface Coating of Metal Furniture source category is the same as for the Surface Coating of Large Appliances source category, which is discussed in section IV.A.4.b.1 of this preamble. We are also proposing several revisions to Table 2 to subpart RRRR of 40 CFR part 63 (*Applicability of General Provisions to Subpart RRRR,* hereafter referred to as the ''General Provisions table to subpart RRRR'') as is explained in more detail below in section IV.C.4.b.2 of this preamble. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. Further, we are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption 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 the specific proposed deletions and revisions and also whether additional provisions should be revised to achieve the stated goal.

In proposing these rule amendments, the EPA has taken into account startup and shutdown periods and, for the same reasons explained in section IV.A.4.b.1 of this preamble for the Surface Coating of Large Appliances source category, has not proposed alternate standards for those periods in the Surface Coating of Metal Furniture NESHAP. Although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible, as further discussed in section IV.A.4.b.1 of this preamble for the Surface Coating of Large Appliances source category. Further, it is unlikely that a malfunction of sources in the Surface Coating of Metal Furniture source category would result in a violation of the standards. Because a malfunction of the coating operation would lead to defective products, it would most likely be corrected by the owner/operator as quickly as possible to minimize economic losses. Furthermore, a malfunction would not lead to an increase in the HAP content of the coatings or the amount of HAP emitted from those coatings; therefore, it is unlikely that malfunctions at facilities using the compliant material or emission rate without control option would result in a violation. Finally, compliance with the surface coating emission limits is based on a monthly compliance period, so any malfunction that causes a short-term increase in emissions may not cause a violation of the standard. We have no information to suggest that it is feasible or necessary to establish any type of standard for malfunctions associated with the Surface Coating of Metal Furniture source category. We encourage commenters to provide any such information, if available.

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. Refer to section IV.A.4.b.1 of this preamble for further discussion of the EPA's actions in response to a source failing to comply with the applicable CAA section 112(d) standards as a result of a malfunction event for the Surface Coating of Large Appliances source category, which applies to this source category.

2. Proposed Revisions to the General Provisions Applicability Table

a. 40 CFR 63.4900(b) General Duty

We are proposing to revise the General Provisions table to subpart RRRR (table 2) entry for 40 CFR 63.6(e)(1)(i) by changing the ''yes'' in column 3 to a ''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 elimination of the SSM exemption. We are proposing instead to add general duty regulatory text at 40 CFR 63.4900(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. With the elimination of the SSM exemption, 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 63.4900(b) does not include that language from 40 CFR 63.6(e)(1).

We are also proposing to revise the General Provisions table to subpart RRRR (table 2) entry for 40 CFR 63.6(e)(1)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.4900(b).

b. SSM Plan

We are proposing to revise the General Provisions table to subpart RRRR (table 2) entry for 40 CFR 63.6(e)(3) by changing the ''yes'' in column 3 to a ''no.'' Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. We are also proposing to remove from 40 CFR part 63, subpart RRRR, the current provisions requiring the SSM plan, including 40 CFR 63.4900(c) and 63.4910(c)(9)(v). As noted, the EPA is proposing to remove the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and thus the SSM plan requirements are no longer necessary.

c. Compliance With Standards

We are proposing to revise the General Provisions table to subpart RRRR (table 2) entry for 40 CFR 63.6(f)(1) by changing the ''yes'' in column 3 to a ''no.'' The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standards apply continuously. Consistent with *Sierra Club,* the EPA is proposing to revise standards in this rule to apply at all times.

We are also proposing to remove rule text in 40 CFR 63.4961(h) clarifying that, in calculating emissions to demonstrate compliance, deviation periods must include deviations during an SSM period. Since the EPA is removing the SSM exemption, this clarifying text is no longer needed.

d. 40 CFR 63.4963 Performance Testing

We are proposing to revise the General Provisions table to subpart RRRR (table 2) entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in column 3 to a ''no.'' Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.4963. We are also proposing to remove rule text in 40 CFR 63.4963(a)(1) that states that periods of malfunction do not constitute representative conditions for the purposes of conducting a performance test. The performance testing requirements we are proposing 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 restated the SSM exemption and language that precluded startup and shutdown periods from being considered ''representative'' for purposes of performance testing. Also, the proposed performance testing provisions will not allow performance testing during startup or shutdown. 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. Section 63.7(e) requires that the owner or operator maintain records of the process information necessary to document operating conditions during the test and include in such records an explanation to support that such conditions represent normal operation. The EPA is proposing to add language clarifying that the owner or operator must make such records available to the Administrator upon request.

e. Monitoring

We are proposing to revise the General Provisions table to subpart RRRR (table 2) entry for 40 CFR 63.8(c)(1)(i) and (iii) by changing the ''yes'' in column 3 to a ''no.'' The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)). Further, we are proposing to revise the General Provisions table to subpart NNNN (table 2) entry for 40 CFR 63.8(c)(1)(ii) by changing the ''yes'' in column 3 to a ''no.'' We have determined that 40 CFR 63.8(c)(1)(ii) is redundant to the current monitoring requirement in 40 CFR 63.4967(a)(4) (*i.e.,* ''maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment''), except 40 CFR 63.8(c)(1)(ii) specifies ''readily available.'' We are proposing to revise 40 CFR 63.4967(a)(4) to specify ''readily available.''

f. 40 CFR 63.4930 Recordkeeping

We are proposing to revise the General Provisions table to subpart RRRR (table 2) entry for 40 CFR 63.10(b)(2)(i) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA is proposing that recordkeeping and reporting applicable to normal operations will apply to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We are proposing to revise the General Provisions table to subpart RRRR (table 2) entry for 40 CFR 63.10(b)(2)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction, requiring a record of ''the occurrence and duration of each malfunction.'' A similar record is already required in 40 CFR 63.4930(j), which requires a record of ''the date, time, and duration of each deviation,'' which the EPA is retaining. The regulatory text in 40 CFR 63.4930(j) differs from the General Provisions in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment; whereas 40 CFR 63.4930(j) applies to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the ''occurrence.'' The EPA is also proposing to add to 40 CFR 63.4930(j) a requirement that sources also keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* coating HAP content and application rates and control device efficiencies). 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.

We are proposing to revise the General Provisions table to subpart RRRR (table 2) entry for 40 CFR 63.10(b)(2)(iv) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.4930(j)(4).

We are proposing to revise the General Provisions table to subpart RRRR (table 2) entry for 40 CFR 63.10(b)(2)(v) by changing the ''yes'' in column 3 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

We are proposing to revise the General Provisions table to subpart RRRR (table 2) entry for 40 CFR 63.10(c)(15) by changing the ''yes'' in column 3 to a ''no.'' The EPA is proposing that 40 CFR 63.10(c)(15) no longer apply. When applicable, the provision allows an owner or operator to use the affected source's SSM plan or records kept to satisfy the recordkeeping requirements of the SSM plan, specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is proposing to eliminate this requirement because SSM plans would no longer be required, and, therefore, 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units.

We are proposing to remove the requirement in 40 CFR 63.4930(k)(1) that deviation records specify whether deviations from a standard occurred during a period of SSM. This revision is being proposed due to the proposed removal of the SSM exemption and because, as discussed above in this section, we are proposing that deviation records must specify the cause of each deviation, which could include a malfunction period as a cause. We are also proposing to remove the requirement to report the SSM records in 40 CFR 63.6(e)(3)(iii) through (v) by deleting 40 CFR 63.4930(k)(2).

g. 40 CFR 63.4920 Reporting

We are proposing to revise the General Provisions table to subpart RRRR (table 2) entry for 40 CFR 63.10(d)(5) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.4920. The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semi-annual compliance report already required under this rule. Subpart RRRR of 40 CFR subpart 63 currently requires reporting of the date, time period, and cause of each deviation. We are clarifying in the rule that, if the cause of a deviation from the standard is unknown, this should be specified in the report. We are also proposing to change ''date and time period'' or ''date and time'' to ''date, time, and duration'' (see 40 CFR 63.4920(a)(5)(i), (a)(7)(ix), and (a)(7)(xi), (a)(7)(xvi)) to use terminology consistent with the recordkeeping section. Further, we are proposing that the report must also contain the number of deviations from the standard and a list of the affected source or equipment. For deviation reports addressing deviations from an applicable emission limit in 40 CFR 63.4890 or operating limit in Table 1 to subpart RRRR, we are proposing that the report also include an estimate of the quantity of each regulated pollutant emitted over any emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions. For deviation reports addressing deviations from work practice standards associated with the emission rate with add-on controls option (see proposed revisions to 40 CFR 63.4920(a)(7)(xvi)), we are retaining the current requirement (including reporting actions taken to correct the deviation), except that we are revising the rule language to reference the new general duty requirement in 40 CFR 63.4900(b), we are clarifying that the description of the deviation must include a list of the affected sources or equipment and the cause of the deviation, we are clarifying that ''time period'' includes the ''time and duration,'' and we are requiring that the report include the number of deviations from the work practice standards in the reporting period. Further, we are proposing to apply these same reporting requirements to deviations from the proposed new equipment standards associated with high efficiency spray equipment (see proposed revisions in 40 CFR 63.4920(a)(5)(ii), (a)(5)(ii)(F), and (a)(5)(ii)(G)).

Regarding the proposed new requirement discussed above to estimate the quantity of each regulated pollutant emitted over any emission limit for which the source failed to meet the standard, and a description of the method used to estimate the emissions, examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters (*e.g.,* coating HAP content and application rates and control device efficiencies). The EPA is proposing this requirement 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.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans would no longer be required. The proposed amendments, therefore, eliminate 40 CFR 63.4920(c) that requires reporting of whether the source deviated from its SSM plan, including required actions to communicate with the Administrator, and the cross reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

We are proposing to revise the General Provisions table to subpart RRRR (table 2) entry for 40 CFR 63.10(d)(5)(ii) by changing the ''yes'' in column 3 to a ''no.'' Section 63.10(d)(5)(ii) describes an immediate report for startups, shutdown, and malfunctions when a source failed to meet an applicable standard, but did not follow the SSM plan. We will no longer require owners and operators to report when actions taken during a startup, shutdown, or malfunction were not consistent with an SSM plan, because plans would no longer be required.

We are proposing to remove the requirements in 40 CFR 63.4920(a)(7)(xiii) that deviation reports must specify whether a deviation from an operating limit occurred during a period of SSM. We are also proposing to remove the requirements in 40 CFR 63.4920(a)(7)(xi) to break down the total duration of deviations into the startup and shutdown categories. As discussed above in this section, we are proposing to require reporting of the cause of each deviation. Further, the startup and shutdown categories no longer apply because these periods are proposed to be considered normal operation, as discussed in section IV.C.4.b.1 of this preamble for the Surface Coating of Large Appliances source category, which also applies to this source category.

c. Technical Amendments to the Surface Coating of Metal Furniture NESHAP

We are proposing to amend 40 CFR 63.4965(b) to add the option of conducting EPA Method 18 of appendix A to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography'' to measure and then subtract methane emissions from measured total gaseous organic mass emissions as carbon. Facilities using the emission rate with add-on control compliance option can use either EPA Method 25 or Method 25A to measure control device destruction efficiency. Unlike EPA Method 25, Method 25A does not exclude methane from the measurement of organic emissions. Because many exhaust streams from coating operations may contain methane from natural gas combustion, we are proposing to allow facilities the option to measure the methane using Method 18 and to subtract it from the emissions as part of their compliance calculations. We also propose to revise the format of references to test methods in 40 CFR part 60. The current reference in 40 CFR 63.4965(a) and (b) to Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 25, and 25A specify that each method is in ''appendix A'' of part 60. Appendix A of part 60 has been divided into appendices A–1 through A–8. We propose to revise each reference to appendix A to indicate which of the eight sections of appendix A applies to the method.

EPA is proposing to amend 40 CFR 63.4941(a)(1)(i) and (a)(4), which describe how to demonstrate initial compliance with the emission limitations using the compliant material option, to remove reference to paragraph (d)(4) of OSHA's Hazard Communication standard, which dealt with OSHA-defined carcinogens. EPA is proposing to replace that reference with its own list of hazardous air pollutants that must be regarded as potentially carcinogenic based on EPA guidelines. Although paragraph (d)(4) of OSHA's standard was deleted when the Agency adopted the Globally Harmonized System of Hazard Communication in 2012, it was replaced by section A.6.4.2 of mandatory Appendix A of that standard, which reads as follows:

''Where OSHA has included cancer as a health hazard to be considered by classifiers for a chemical covered by 29 CFR part 1910, subpart Z, Toxic and Hazardous Substances, chemical manufacturers, importers, and employers shall classify the chemical as a carcinogen.'' Thus, where OSHA has regulated workplace exposure to a chemical based, at least in part, on carcinogenic risk, OSHA requires the chemical to be classified as a carcinogen. OSHA suggests that EPA should refer to section A.6.4.2 of Appendix A of 29 CFR 1910.1200 in its discussion of section 63.4141 and consider chemicals that meet this requirement be considered ''OSHA-defined carcinogens.''

We are proposing to replace these references to OSHA-defined carcinogens at 29 CFR 1910.1200(d)(4) with a list (in proposed new Table 5 to 40 CFR part 63, subpart RRRR) of those organic HAP that must be included in calculating total organic HAP content of a coating material if they are present at 0.1 percent or greater by mass.

We are including organic HAP in the proposed Table 5 to 40 CFR part 63, subpart RRRR if they were categorized in the EPA's *Prioritized Chronic Dose-Response Values for Screening Risk Assessments* (dated May 9, 2014) as a ''human carcinogen,'' ''probable human carcinogen,'' or ''possible human carcinogen'' according to *The Risk Assessment Guidelines of 1986* (EPA/600/8–87/045, August 1987),[35] or as ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' or with ''suggestive evidence of carcinogenic potential'' according to the *Guidelines for Carcinogen Risk Assessment* (EPA/630/P–03/001F, March 2005).

We are also proposing to revise the monitoring provisions for thermal and catalytic oxidizers to clarify that a thermocouple is part of the temperature sensor referred to in 40 CFR 63.4967(c)(3) for purposes of performing periodic calibration and verification checks.

Current 40 CFR 63.4931(a) allows records, ''where appropriate,'' to be maintained as ''electronic spreadsheets'' or a ''data base.'' We propose to add clarification to this provision that the allowance to retain electronic records applies to all records that were submitted as reports electronically via the EPA's CEDRI. We also propose to add text to the same provision clarifying that 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.

We propose to revise the second sentence of 40 CFR 63.4920(a)(4) to correct an erroneous reference to ''the emission limitations in § 63.4890,'' to be ''the applicable emission limitations in §§ 63.4890, 63.4892, and 63.4893.'' This provision is intended to provide the criteria for all compliance options, for making a statement that there were no deviations in the compliance period. For this provision to apply to the emission rate with add-on control devices option cited later in the sentence in ''§ 63.4962(f),'' the criteria for making an affirmative statement of no deviations must address all three types of emission limitations (as defined in 40 CFR 63.4981) in 40 CFR 63.4890, 63.4892, and 63.4893. To avoid confusion with the term ''emission limitation'' as defined in 40 CFR 63.4981, and harmonize the terminology with 40 CFR 63.4890, we also propose to change ''emission limitation'' in the first sentence of 40 CFR 63.4920(a)(4) to be ''emission limit.''

We propose to remove from 40 CFR 63.4951(c) the list of methods that may be used to determine the density of each coating, thinner, and cleaning material, and to retain the reference to 40 CFR 63.4941(c), which provides the same list of methods. This list of methods is being updated in 40 CFR 63.4941(c), including IBR of a new version of a method, and this proposed approach minimizes redundancy in the rule and removes the need to incorporate the revised method into two separate provisions of the subpart.

We propose to revise one instance in Table 2 to Subpart RRRR of Part 63 of an erroneous rule citation of ''§ 63.4920(a).'' This rule citation is specified in the fourth column of the table entry for ''§ 63.10(e)(3),''as the source for the contents of periodic compliance reports. Section 40 CFR 63.4920(a) does not provide the contents of periodic compliance reports; they are provided in 40 CFR 63.4920(b), and we propose to change the erroneous citation to ''§ 63.4920(b).''

[35] See *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

d. Requesting Comment on Ongoing Emissions Compliance Demonstrations

As part of an ongoing effort to improve compliance with various federal air emission regulations, the EPA reviewed the compliance demonstration requirements in the Surface Coating of Metal Furniture NESHAP. Currently, if a source owner or operator chooses to comply with the standards using add-on controls, the results of an initial performance test are used to determine compliance; however, the rule does not require on-going periodic performance testing for these emission capture systems and add-on controls.

As described more fully in section IV.A.4.d of this preamble for the Surface Coating of Large Appliances source category, the ICAC, in their comments on proposed revisions to the NESHAP General Provisions (72 FR 69, January 3, 2007), commented that ongoing maintenance and checks of control devices are necessary in order to ensure emissions control technology, including both thermal and catalytic oxidizers, remains effective.[36] These same comments apply to the Surface Coating of Metal Furniture source category.

Given these comments from ICAC, suppliers of air pollution control and monitoring technology, on the need for vigilance in maintaining equipment to stem degradation, the EPA is requesting comment on what steps, in addition to one-time initial emissions and capture efficiency testing, along with ongoing temperature measurement, might better ensure ongoing compliance with the standards.

One approach on which the EPA is specifically requesting comment, but which is not included in this proposed rule, would be to require air performance testing anytime a source plans to undertake an operational change that may adversely affect compliance with an applicable standard, operating limit, or parametric monitoring value. This requirement would include provisions to allow a source to make the change, but limit the change to a specific time before a test is required. We anticipate that a reasonable time limit under the new operations change would be approximately 30 days to allow adequate time for testing and developing a test report. The source would submit temperature and flow rate data during the test to establish new operating parameters. We are specifically requesting comment on this potential provision, including the time a source is allowed to operate under the new parameters before they test, and what would constitute an operational change requiring testing.

This approach on which we are requesting comment could also allow an exception from periodic testing for facilities using instruments to continuously measure emissions. Such CEMS would show actual emissions. Use of CEMS to demonstrate compliance would obviate the need for periodic oxidizer testing. Moreover, installation and operation of a CEMS with a timesharing component, such that values from more than one oxidizer exhaust could be tabulated in a recurring frequency, could prove less expensive (estimated to have an annual cost below $15,000) than ongoing oxidizer testing.

Of course, this approach on which we are requesting comment would not require periodic testing or CEMS monitoring of facilities using the compliant materials option, or the emission-rate without add-on controls compliance option because these two compliance options do not use any add-on control efficiency measurements in the compliance calculations.

This approach would require air emissions testing to measure organic HAP destruction or removal efficiency at the inlet and outlet of the add-on control device, or measurement of the control device outlet concentration of organic HAP. Emissions would be measured as total gaseous organic mass emissions as carbon using either Method 25 or 25A of appendix A–7 to 40 CFR part 60, which are the methods currently required for the initial compliance demonstration.

We estimate that the cost to perform a control device emissions destruction or removal efficiency test using EPA Method 25 or 25A would be approximately $19,000 per control device. The cost estimate is included in the memorandum titled *Costs/Impacts of the 40 CFR part 63 Subparts NNNN, OOOO and RRRR Monitoring Review Revisions,* in the Metal Furniture Docket.

5. What compliance dates are we proposing?

The EPA is proposing that affected sources that commenced construction or reconstruction on or before September 12, 2018 must comply with all of the amendments, with the exception of the proposed electronic format for submitting notifications and semiannual compliance reports, no later than 181 days after the effective date of the final rule. Affected sources that commence construction or reconstruction after September 12, 2018 must comply with all requirements of the subpart, including the amendments being proposed, with the exception of the proposed electronic format for submitting notifications and semiannual compliance reports, no later than the effective date of the final rule or upon startup, whichever is later. All affected facilities would have to continue to meet the current requirements of 40 CFR part 63, subpart RRRR until the applicable compliance date of the amended rule. The final action is not expected to be a ''major rule'' as defined by 5 U.S.C. 804(2), so the effective date of the final rule will be the promulgation date as specified in CAA section 112(d)(10).

For existing sources, we are proposing two changes that would impact ongoing compliance requirements for 40 CFR part 63, subpart RRRR. As discussed elsewhere in this preamble, we are proposing to add a requirement that notifications, performance test results, and semiannual compliance reports be submitted electronically using the new template. We are also proposing to change the requirements for SSM by removing the exemption from the requirements to meet the standard during SSM periods and by removing the requirement to develop and implement an SSM plan. Our experience with similar industries that are required to convert reporting mechanisms to install necessary hardware and software, become familiar with the process of submitting performance test results electronically through the EPA's CEDRI, test these new electronic submission capabilities, and reliably employ electronic reporting shows that a time period of a minimum of 90 days, and, more typically, 180 days is generally necessary to successfully accomplish these revisions. Our experience with similar industries further shows that this sort of regulated facility generally requires a time period of 180 days to read and understand the amended rule requirements; to evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule and make any necessary adjustments; and to update their operation, maintenance, and monitoring plan to reflect the revised requirements. The EPA recognizes the confusion that multiple different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose. From

[36] See Docket EPA–HQ–OAR–2004–0094–0173, available at *www.regulations.gov.* A copy of the ICAC's comments on the proposed revisions to the General Provisions is also included in the Metal Furniture Docket for this action.

our assessment of the timeframe needed for compliance with the entirety of the revised requirements, the EPA considers a period of 180 days to be the most expeditious compliance period practicable and, thus, is proposing that existing affected sources and new affected sources that commenced construction or reconstruction on or before September 12, 2018 be in compliance with all of this regulation's revised requirements, except for the requirement to use high efficiency spray equipment discussed below, within 181 days of the regulation's effective date.

Under CAA section 112(d), we are proposing compliance dates for the proposed requirement to use high efficiency spray equipment if the source is not using the emission rate with add-on control compliance option. For existing affected sources under this proposed action, we propose to provide sources three years after the effective date of the final rule to comply with the proposed requirement to use high efficiency spray equipment. We are proposing a three-year compliance date for facilities that have not switched to high efficiency spray equipment because facilities that are not yet using high efficiency spray equipment have multiple alternative equipment types to consider under this proposed rule. The three-year compliance period will provide all facilities sufficient time to source and purchase the specific type of spray application equipment compatible with their operations. Furthermore, the compliance period provides time for sources to verify that the spray equipment they choose meets the transfer efficiency requirements in this proposed rule. In addition, because a spray gun's useful lifespan is approximately two years, the proposed three-year compliance period will provide enough time for facilities to source and purchase replacement guns on their current equipment purchase cycle, develop any necessary operational procedures, and perform training. Finally, the three-year compliance period will ensure that a facility is not required to replace a spray gun before it has time to identify and source new guns and develop bid specification and operation procedures. For new affected sources under this proposed action, the proposed compliance date is the effective date of the final rule or upon startup, whichever is later. We solicit comment on these proposed compliance periods, and we specifically request submission of information from sources in this source category regarding specific actions that would need to be undertaken to comply with the proposed amended requirements and the time needed to make the adjustments for compliance with any of the revised requirements. We note that information provided may result in changes to the proposed compliance dates.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

Currently, ten major sources subject to the Surface Coating of Large Appliances NESHAP are operating in the United States. The affected source under the NESHAP is the collection of all coating operations; all storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed; all manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and all storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation. A coating operation is defined as the equipment used to apply cleaning materials to a substrate to prepare it for coating application or to remove dried coating (surface preparation), to apply coating to a substrate (coating application) and to dry or cure the coating after application, or to clean coating operation equipment (equipment cleaning). A single coating operation may include any combination of these types of equipment, but always includes at least the point at which a coating or cleaning material is applied and all subsequent points in the affected source where organic HAP emissions from that coating or cleaning material occur. There may be multiple coating operations in an affected source.

Currently, 43 major sources subject to the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP are operating in the United States. The affected source under the NESHAP includes the following three categories of operations: Web coating and printing operations, slashing operations, and dyeing and finishing operations.

The web coating and printing operations subcategory is the collection of all web coating and printing equipment used to apply cleaning materials to a substrate on the coating or printing line to prepare it for coating or printing material application, to apply coating or printing materials to a substrate and to dry or cure the coating or printing materials, or equipment used to clean web coating/printing operation equipment; all containers used for storage and vessels used for mixing coating, printing, thinning, or cleaning materials; all equipment and containers used for conveying coating, printing, thinning, or cleaning materials; all containers used for storage, and all equipment and containers used for conveying waste materials generated by a coating or printing operation; and all equipment, structures, and/or devices(s) used to convey, treat, or dispose of wastewater streams or residuals generated by a coating or printing operation.

The slashing operations subcategory is the collection of all slashing equipment used to apply and dry the sizing on the warp yarn (the warp yarn are the vertical fibers, and a chemical compound referred to as sizing is used to bind and stiffen the yarn to provide abrasion resistance during weaving); all containers used for storage and vessels used for mixing slashing materials; all equipment and containers used for conveying slashing materials; all containers used for storage and all equipment and containers used for conveying waste materials generated by a slashing operation; and all equipment, structures, and/or devices(s) used to convey, treat, or dispose of wastewater streams or residuals generated by a slashing operation.

The dyeing and finishing subcategory is the collection of all dyeing and finishing equipment used to apply dyeing or finishing materials, to fix dyeing materials to the substrate, to rinse the textile substrate, or to dry or cure the dyeing or finishing materials; all containers used for storage and vessels used for mixing dyeing or finishing materials; all equipment and containers used for conveying dyeing or finishing materials; all containers used for storage, and all equipment and containers used for conveying, waste materials generated by a dyeing or finishing operation; and all equipment, structures, and/or devices(s) used to convey, treat, or dispose of wastewater streams or residuals generated by a dyeing or finishing operation.

Currently, 16 major sources subject to the Surface Coating of Metal Furniture NESHAP are operating in the United States. The affected source under the NESHAP is the collection of all coating operations; all storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed; all manual and automated equipment and containers and all pumps and piping within the affected source used for conveying coatings, thinners, and cleaning materials; and all storage containers, all pumps and piping, and all manual and

automated equipment and containers within the affected source used for conveying waste materials generated by a coating operation. A coating operation is defined as the equipment used to apply cleaning materials to a substrate to prepare it for coating application or to remove dried or wet coating (surface preparation); to apply coating to a substrate (coating application) and to dry or cure the coating after application; and to clean coating operation equipment (equipment cleaning). A single coating operation may include any combination of these types of equipment, but always includes at least the point at which a coating or cleaning material is applied and all subsequent points in the affected source where organic HAP emissions from that coating or cleaning material occur. There may be multiple coating operations in an affected source.

B. What are the air quality impacts?

At the current level of control, estimated emissions of volatile organic HAP from the Surface Coating of Large Appliances source category are approximately 120 tpy. Current estimated emissions of volatile organic HAP from the Printing, Coating, and Dyeing of Fabrics and Other Textiles source category are approximately 737 tpy. Current estimated emissions of volatile organic HAP from the Surface Coating of Metal Furniture source category are approximately 145 tpy.

We do not estimate any volatile organic HAP emission reductions from the proposed requirement to use high-efficiency coating spray application equipment in the large appliance surface coating and the metal furniture surface coating source categories. We did not quantify these reductions; however, if a facility switched from spray guns with 50-percent transfer efficiency to those with 65-percent transfer efficiency, the amount of coating reaching the part during spraying would increase by 30 percent, and the total amount of coating needed to complete the coating operation would be reduced by 23 percent, leading to a corresponding decrease in organic HAP emissions. Due to a combination of economic incentives and state rule requirements to use high-efficiency coating spray application equipment, we expect that facilities in this source category are already using high efficiency coating spray application equipment. However, we are specifically requesting information on any facilities not using high efficiency spray application equipment.

All 69 major sources in the three source categories would be required to comply with the relevant emission standards at all times without the SSM exemption. We were unable to quantify the specific emissions reductions associated with eliminating the SSM exemption. However, eliminating the SSM exemption has the potential to reduce emissions by requiring facilities to meet the applicable standard during SSM periods.

Indirect or secondary air emissions impacts are impacts that would result from the increased electricity usage associated with the operation of control devices (*e.g.,* increased secondary emissions of criteria pollutants from power plants). Energy impacts consist of the electricity and steam needed to operate control devices and other equipment. The proposed amendments would have no effect on the energy needs of the affected facilities in any of the three source categories and would, therefore, have no indirect or secondary air emissions impacts.

C. What are the cost impacts?

We estimate that each facility in the three source categories will experience costs as a result of these proposed amendments for reporting.

Facilities in the large appliances and metal furniture source categories transitioning to high efficiency spray equipment may experience costs to purchase new equipment. We do not have sufficient information on current use of this type of equipment to develop a potential industry-wide cost. However, based the following example from a similar coating operation, we expect the change to result in a net cost savings. Due to the increased transfer efficiency from 45 percent with conventional spray guns to 65 percent with high volume low pressure spray guns, the amount of coating used per part is expected to decrease by approximately 31 percent. See the memorandum titled, *Impacts of Prohibiting the Use of Conventional Spray Guns in the Wood Furniture Manufacturing Operations Source Category,* October 19, 2010, EPA Docket Number EPA–HQ–OAR–2010–0786. For either type of gun, the annual costs are equal to the sum of the cost of the spray gun and the cost of coatings. The cost of coatings is equal to the product of the cost per volume of coating, the volume of coating used, and the number of days. The capital cost of a convention spray gun is approximately $200 and the cost of an air-assisted airless spray gun is approximately $700.00. Invalid source specified. The cost differential between a conventional spray gun and an air-assisted spray gun is $500.00, and, and a typical coating costs $15.00 per gallon. If a facility operates five days per week and 50 weeks per year, a typical year will contain 250 days of operation. Complete cost recovery will occur when the air-assisted-airless gun is used at a rate of 1.21 gallons of coatings per day for a year. If the coating cost is higher, the cost recovery will occur in less than one year. For more information on this cost analysis, see the memorandum titled *Impacts of Prohibiting the Use of Conventional Spray Guns in the Wood Furniture Manufacturing Operations Source Category,* (EPA Docket Number EPA–HQ–OAR–2010–0786).

We are specifically soliciting comments on the current use of high efficiency spray equipment, the costs to transition from conventional spray application equipment to high efficiency spray application equipment (including costs for changes to coating delivery systems we may have overlooked), and the actual coating cost savings realized due to the change.

Each facility will experience costs to read and understand the rule amendments. Costs associated with elimination of the SSM exemption were estimated as part of the reporting and recordkeeping costs and include time for re-evaluating previously developed SSM record systems. Costs associated with the requirement to electronically submit notifications and semi-annual compliance reports using CEDRI were estimated as part of the reporting and recordkeeping costs and include time for becoming familiar with CEDRI and the reporting template for semi-annual compliance reports. The recordkeeping and reporting costs are presented in section V.III.C of this preamble.

We estimate that for the large appliances and metal furniture source categories, should a source need to purchase and begin using high efficiency spray equipment, the cost savings associated with less coating material may offset the incremental equipment costs in typical cases.

We are also soliciting comment on whether to require air emissions performance testing in each source category using the emission rate with add-on controls compliance option. We estimate that 15 facilities subject to the Printing, Coating, and Dyeing of Fabrics and Other Textiles NESHAP would incur costs to conduct air emissions performance testing because they are currently using the emission rate with add-on controls compliance option. These 15 facilities have a total of 18 add-on controls. This total does not include other facilities in this source category that have add-on controls and are already required to perform air emissions performance testing as a

condition of their state operating permit. The cost for a facility to conduct a destruction or removal efficiency air emissions performance test using EPA Method 25 or 25A is estimated to be about $19,000, and the total cost for all 15 facilities to test 18 add-on control devices in a single year would be $340,000. One facility subject to the Surface Coating of Large Appliances NESHAP is using the emission rate with add-on controls compliance option and is already required to perform air emissions performance testing as a condition of their state operating permit, and would have no added costs if air emissions performance testing were required under the NESHAP. No facilities subject to the Surface Coating of Metal Furniture NESHAP are expected to incur costs to conduct air emissions performance testing because none are using add-on controls. For further information on the potential costs, see the memoranda titled *Estimated Costs/Impacts of the 40 CFR part 63 Subparts NNNN, OOOO and RRRR Monitoring Reviews,* February 2018, in the Large Appliances Docket, Fabrics and Other Textiles Docket, and Metal Furniture Docket.

D. What are the economic impacts?

The economic impact analysis is designed to inform decision-makers about the potential economic consequences of a regulatory action. For the current proposals, the EPA estimated the cost of becoming familiar with the rule and re-evaluating previously developed SSM record systems. For the proposed revisions to the NESHAP for the Surface Coating of Large Appliances, the total cost is estimated to be $23,000 for the ten affected entities and is expected to range from 0.000002 to 0.02 percent of annual sales revenue per affected entity. For the proposed revisions to the NESHAP for the Printing, Coating, and Dyeing of Fabrics and Other Textiles, the total cost is estimated to be $90,000 for the 43 affected entities and is expected to range from 0.000005 to 0.42 percent of annual sales revenue per affected entity. For the proposed revisions to the NESHAP for the Surface Coating of Metal Furniture, the total cost is estimated to be $32,000 for the 16 affected entities and is expected to range from 0.00007 to 0.02 percent of annual sales revenue per affected entity. For each of these sectors, the costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

The EPA also prepared a small business screening assessment to determine if any of the identified affected entities are small entities, as defined by the U.S. Small Business Administration. One of the facilities potentially affected by the proposed revisions to the NESHAP for the Surface Coating of Large Appliances is a small entity. The annualized costs associated with the proposed requirements for this facility is 0.02 percent of the annual sales revenue for that facility. Eighteen of the facilities potentially affected by the proposed revisions to the NESHAP for the Printing, Coating, and Dyeing of Fabrics and Other Textiles are small entities. The annualized costs associated with the proposed requirements for these 18 affected small entities range from 0.00067 to 0.25 percent of annual sales revenues per affected entity. Six of the facilities potentially affected by the proposed revisions to the NESHAP for the Surface Coating of Metal Furniture are small entities. The annualized costs associated with the proposed requirements for these six affected small entities range from 0.001 to 0.02 percent of annual sales revenues per affected entity. For each of these sectors, there are no significant economic impacts on a substantial number of small entities from the proposed amendments. More information and details of this analysis is provided in the technical documents titled *Economic Impact and Small Business Screening Assessments for Proposed Amendments to the National Emission Standards for Hazardous Air Pollutants for the Surface Coating of Large Appliances (Subpart NNNN), Economic Impact and Small Business Screening Assessments for Proposed Amendments to the National Emission Standards for Hazardous Air Pollutants for the Printing, Coating and Dyeing of Fabrics and Other Textiles (Subpart OOOO),* and *Economic Impact and Small Business Screening Assessments for Proposed Amendments to the National Emission Standards for Hazardous Air Pollutants for the Surface Coating of Metal Furniture (Subpart RRRR),* available in the Large Appliances Docket, Fabrics and Other Textiles Docket, and Metal Furniture Docket, respectively.

E. What are the benefits?

As stated above in section V.B. of this preamble, we were unable to quantify the specific emissions reductions associated with eliminating the SSM exemption. We also are unable to quantify potential emissions reductions of organic HAP. However, any reduction in HAP emissions would be expected to provide health benefits in the form of improved air quality and less exposure to potentially harmful chemicals.

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, including the data to estimate the acute multipliers. 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.

We are also specifically soliciting comment on the following:

- Our assumptions regarding hour-to-hour variation in emissions and our methods of calculating the multiplier for estimating the peak 1-hour emissions for each source category and any additional information that could help refine our approach.
- The current use of high efficiency spray equipment, the costs to transition from conventional spray application equipment to high efficiency spray application equipment (including costs for changes to coating delivery systems we may have overlooked), and the actual coating cost savings realized due to the change. We also request information on aspects of facility decision making concerning use of high efficiency coating methods, and facility specific operational, coating adherence, coating drying time, material compatibility, or other reasons that a facility may not have chosen to switch to high-efficiency spray.
- The requirements for submitting electronic reports, including the draft templates developed for report submittal, and whether report frequency should be semiannual (as proposed) or annual for all three source categories. We specifically request comment on the format and usability of the template (*e.g.,* filling out and uploading a provided spreadsheet versus entering the required information into an on-line fillable CEDRI web form), as well as the content, layout, and overall design of the template.
- The need to establish a standard during periods of malfunction for the Fabric and Other Textiles source category in this action, and we are seeking the specific information described in section IV.B.4 of this preamble to support the standard. We also request public comment and information pertaining to malfunction

periods for all sources in these source categories.

- The need for ongoing compliance demonstrations, in addition to one-time initial emissions and capture efficiency testing through air emissions testing when a source uses an add-on control to comply with the regulation.
- The proposed compliance periods, and we specifically request submission of information from sources in this source category regarding specific actions that would need to be undertaken to comply with the proposed amended requirements and the time needed to make the adjustments for compliance with any of the revised requirements.
- Whether the agency should ban the use of ethylene oxide in the Fabric and Other Textiles source category under the technology review.
- The relationship between section 112(d)(6), technology review, and 112(f), residual risk review. Specifically, we solicit comment on the extent to which findings that underlie a section 112(f) determination should be considered in making any determinations under section 112(d)(6).

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 website at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.* The data files include detailed information for each HAP emissions release point for the facilities in these source categories.

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 website, 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).
4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Large Appliances Docket, Fabrics and Other Textiles Docket, or Metal Furniture Docket, as applicable (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 website at *https://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 *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to OMB for review. Any changes made in response to OMB recommendations have been documented in the docket.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA, as discussed for each source category covered by this proposal in sections VIII.C.1 through 3.

1. Surface Coating of Large Appliances

The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 1954.07. You can find a copy of the ICR in the Large Appliances Docket (Docket ID No. EPA–HQ–OAR–2017–0670), and it is briefly summarized here.

As part of the RTR for the Large Appliances NESHAP, the EPA is proposing to require that, for each coating operation for which coatings are spray applied, high efficiency spray equipment must be used, except when the facility is using the emission rate with add-on controls compliance option. In addition, the EPA is proposing revisions to the SSM provisions of the rule and proposing the use of electronic data reporting for future performance test data submittals and semi-annual reporting. This information would be collected to assure compliance with 40 CFR part 63, subpart NNNN.

Respondents/affected entities: Facilities performing surface coating of large appliances.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart NNNN).

Estimated number of respondents: In the 3 years after the amendments are final, approximately 10 respondents per year would be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

Frequency of response: The total number of responses in year 1 is 30. Years 2 and 3 would have no responses.

Total estimated burden: The average annual burden to the large appliance facilities over the 3 years if the amendments are finalized is estimated to be 77 hours (per year). The average annual burden to the Agency over the 3 years after the amendments are final is estimated to be 15 hours (per year) for the Agency. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The average annual cost to the large appliance facilities is $7,700 in labor costs, in the first 3 years after the amendments are final. There are no estimated capital and operation and maintenance (O&M) costs. The total average annual Agency cost over the first 3 years after the amendments are final is estimated to be $700.

2. Printing, Coating, and Dyeing of Fabrics and Other Textiles

The ICR document that the EPA prepared has been assigned EPA ICR number 2071.07. You can find a copy of the ICR in the Fabrics and Other Textiles Docket (Docket ID No. EPA–HQ–OAR–2017–0668), and it is briefly summarized here.

The EPA is not proposing to revise the emission limitation requirements for this subpart. The EPA is proposing revisions to the SSM provisions of the rule, and proposing the use of electronic data reporting for future performance test data submittals and semiannual reports. This information is being collected to assure compliance with 40 CFR part 63, subpart OOOO.

Respondents/affected entities: Facilities performing printing, coating, and dyeing of fabrics and other textiles.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart OOOO).

Estimated number of respondents: In the 3 years after the amendments are final, approximately 43 respondents per year will be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

Frequency of response: The total number of responses in year 1 is 129. Years 2 and 3 would have no responses.

Total estimated burden: The average annual burden to the fabrics and textiles coating facilities over the 3 years if the amendments are finalized is estimated to be 330 hours (per year). The average annual burden to the Agency over the 3 years after the amendments are final is estimated to be 32 hours (per year) for the Agency. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The average annual cost to the fabrics and textiles coating facilities is $30,000 in labor costs and no capital and O&M costs, in the first 3 years after the amendments are final. The average annual Agency cost over the first 3 years after the amendments are final is estimated to be $1,500.

3. Surface Coating of Metal Furniture

The ICR document that the EPA prepared has been assigned EPA ICR number 1952.07. You can find a copy of the ICR in the Metal Furniture Docket (Docket ID No. EPA–HQ–OAR–2017–0669), and it is briefly summarized here.

As part of the RTR for the Metal Furniture NESHAP, the EPA is proposing to require that, for each coating operation for which coatings are spray applied, high efficiency spray equipment must be used, except when the facility is using the emission rate with add-on controls compliance option. In addition, the EPA is proposing revisions to the SSM provisions of the rule and proposing the use of electronic data reporting for future performance test data submittals and semi-annual reporting. This information would be collected to assure compliance with 40 CFR part 63, subpart RRRR.

Respondents/affected entities: Facilities performing surface coating of metal furniture.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart RRRR).

Estimated number of respondents: In the 3 years after the amendments are final, approximately 16 respondents per year will be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

Frequency of response: The total number of responses in year 1 is 48. Years 2 and 3 would have no responses.

Total estimated burden: The average annual burden to the large appliance facilities over the 3 years if the amendments are finalized is estimated to be 123 hours (per year). The average annual burden to the Agency over the 3 years after the amendments are final is estimated to be 25 hours (per year) for the Agency. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The average annual cost to the metal furniture facilities is $11,000 in labor costs, in the first 3 years after the amendments are final. There are no estimated capital and O&M costs. The total average annual Agency cost over the first 3 years after the amendments are final is estimated to be $1,200.

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 dockets 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 October 12, 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. This action will not impose any requirements on small entities.

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 any of the industries that would be affected by this action (large appliances surface coating; printing, coating, and dyeing of fabrics and other textiles, surface coating of metal furniture). 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.A and C, IV.A.1 and 2, IV.B.1 and 2, and IV.C.1 and 2 of this preamble and are further documented in the *Large Appliances Risk Assessment Report, Fabrics and Other Textiles Risk Assessment Report, and Metal Furniture Risk Assessment Report* in the Large Appliances Docket, Fabrics and Other Textiles Docket, and Metal Furniture Docket, respectively.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action would not affect producers of energy (*e.g.,* coal, oil, or natural gas producers), and would not affect electricity producers. This action would also not increase the energy demands of the facilities potentially affected by this action because it includes no proposed requirements that would be met through the use of additional energy consuming equipment.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This rulemaking involves technical standards. The EPA is proposing to amend the three NESHAP in this action to provide owners and operators with the option of conducting EPA Method 18 of appendix A to 40 CFR part 60, ''Measurement of Gaseous Organic Compound Emissions by Gas Chromatography'' to measure and subtract methane emissions from measured total gaseous organic mass emissions as carbon.

We found three voluntary consensus standards (VCS) already allowed in the Surface Coating of Large Appliances NESHAP that have been replaced with newer versions of the methods. The first method, ASTM method Dl475–13, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products,'' has replaced ASTM D1475–90, and it covers the measurement of density of paints, inks, varnishes, lacquers, and components thereof, other than pigments, when in fluid form; secondly, ASTM D2697–03 (2014) ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings'' has replaced ASTM D2697–86 (1998), which is applicable to the determination of the volume of nonvolatile matter of a variety of coatings; and finally, ASTM D6093–97 (2016) ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using Helium Gas Pycnometer'' has replaced ASTM D6093–97(2003) which covers the determination of the percent volume nonvolatile matter of a variety of clear and pigmented coatings.

For the Surface Coating of Metal Furniture NESHAP, the Printing, Coating and Dyeing of Fabrics and Other Textiles NESHAP, and the Surface Coating of Large Appliances NESHAP, the EPA proposes to incorporate by reference ASTM D2369–10 (2015), ''Test Method for Volatile Content of Coatings,'' which describes a procedure for the determination of the weight percent volatile content of solvent borne and waterborne coatings, as an acceptable alternative to EPA Test Method 24.

The ASTM standards are available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959. See *https://www.astm.org/.*

The EPA is not proposing CARB Method 310, ''Determination of Volatile Organic Compounds in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products,'' as an alternative to EPA Method 24 because the EPA has approved the method only for consumer products and aerosol coatings, which do not apply to the rulemakings or source categories addressed in this action.

While the EPA has identified another 21 VCS each for Metal Furniture and Large Appliances, and two VCS for Fabrics Printing and Dyeing, as being potentially applicable to this proposed rule, we have decided not to use these VCS in this rulemaking. The use of these VCS would not be practical due to lack of equivalency, documentation, validation date, and other important technical and policy considerations. See the memoranda titled *Voluntary Consensus Standard Results for Surface Coating of Large Appliances,* March 2018, *Voluntary Consensus Standard Results for Printing, Coating, and Dyeing of Fabrics and Other Textiles,* March 2018, and *Voluntary Consensus Standard Results for Surface Coating of Metal Furniture,* March 2018, in the Large Appliances Docket (Docket ID No. EPA–HQ–OAR–2017–0670), Fabrics and Other Textiles Docket (Docket ID No. EPA–HQ–OAR–2017–0668), and Metal Furniture Docket (Docket ID No. EPA–HQ–OAR–2017–0669), respectively, for the reasons for these determinations.

Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule or any amendments.

The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable VCS and to explain why such standards should be used in this regulation.

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 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in sections IV.A.1 and 2, IV.B.1 and 2, and IV.C.1 and 2 of this preamble and the technical reports titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Large Appliances Source Category Operations,* September 2017, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Metal Furniture Source Category Operations,* October 2017, and *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Printing, Coating, and Dyeing of Fabrics and Other Textiles Source Category Operations,* September 2017, available in the Large Appliances Docket, Metal Furniture Docket, and Fabrics and Other Textiles Docket, respectively.

As discussed in sections IV.A.1, IV.B.1, and IV.C.1 of this preamble, we performed a demographic analysis for each source category, 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 Surface Coating of Large Appliances source category, Printing, Coating, and Dyeing of Fabrics and Other Textiles source category, and Surface Coating of Metal Furniture source category across different social, demographic, and economic groups within the populations living near operations identified as having the highest risks.

The results of the Surface Coating of Large Appliances source category demographic analysis indicate that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic noncancer HI greater than 1. The proximity results (irrespective of risk) indicate that the population within 5 km of facilities in the Surface Coating of Large Appliances source category are greater than the corresponding national percentage for the following demographic percentages: ''African American'' and ''Below the Poverty Level.''

The results of the Printing, Coating and Dyeing of Fabrics and Other Textiles source category demographic analysis indicate that emissions from the source category expose approximately 8,500 people to a cancer risk at or above 1-in-1 million and no one to a chronic noncancer HI greater than 1. The percentages of the at-risk population in the following specific demographic groups are higher than their respective nationwide percentages: ''African American,'' ''Over 25 Without a HS Diploma,'' and ''Below the Poverty Level.'' The proximity results (irrespective of risk) indicate that the population percentages for the below the poverty level demographic category within 5 km of facilities in the Printing, Coating, and Dying of Fabric and Other

Textiles source category are greater than the corresponding national percentage.

The results of the Surface Coating of Metal Furniture source category demographic analysis indicate that emissions from the source category expose approximately 2,100 people to a cancer risk at or above 1-in-1 million and no one to a chronic noncancer HI greater than 1. The percentages of the at-risk population in the following specific demographic groups are higher than their respective nationwide percentages: ''Hispanic or Latino,'' ''Over 25 Without a HS Diploma,'' and ''Below the Poverty Level.'' The proximity results (irrespective of risk) indicate that the population within 5 km of facilities in the Surface Coating of Metal Furniture source category are greater than the corresponding national percentage for the following demographic percentages: ''African American,'' ''Hispanic or Latino,'' ''Over 25 Without a HS Diploma,'' and ''Below the Poverty Level.''

We do not expect this proposal to achieve significant reductions in HAP emissions. 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 (59 FR 7629, February 16, 1994) because it does not significantly affect the level of protection provided to human health or the environment. The documentation for this decision is contained in section IV of this preamble and the technical reports, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Printing, Coating, and Dyeing of Fabrics and Other Textiles Source Category Operations,* September 2017; *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Metal Furniture Source Category Operations;* October 2017; and *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Surface Coating of Large Appliances Source Category Operations Demographic Analysis,* September 2017, which are available in the dockets for this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Surface Coating of Large Appliances, Surface Coating of Metal Furniture, Printing, Coating, and Dyeing of Fabrics and Other Textiles, Reporting and recordkeeping requirements, Appendix A.

Dated: August 8, 2018.

Andrew R. Wheeler,

Acting Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend part 63 of title 40, chapter I, 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 A—General Provisions

■ 2. Section 63.14 is amended by
■ a. Redesignating paragraphs (h)(13) through (h)(19) as paragraphs (h)(14) through (h)(20), respectively; and adding a new paragraph (h)(13);
■ b. Redesignating paragraphs (h)(20) through (h)(23) as paragraphs (h)(22) through (h)(25), respectively; and adding a new paragraph (h)(21);
■ c. Redesignating paragraphs (h)(24) through (h)(26) as paragraphs (h)(27) through (h)(29), respectively; and adding new paragraph (h)(26); and
■ d. Redesignating paragraphs (h)(27) through (h)(105) as paragraphs (h)(31) through (h)(109), respectively; and adding a new paragraph (h)(30).

The additions read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(h) * * *

(13) ASTM Method D1475–13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, IBR approved for §§ 63.4141(b) and (c), and 63.4941(b) and (c).

* * * * *

(21) ASTM D2111–10 (2015), Standard Test Methods for Specific Gravity of Halogenated Organic Solvents and Their Admixtures, IBR approved for §§ 63.4141(b) and (c).

* * * * *

(26) ASTM D2369–10 (2015), Test Method for Volatile Content of Coatings, IBR approved for §§ 63.4141(a) and (b), 63.4161(h), 63.4941(a) and (b), and 63.4961(j).

* * * * *

(30) ASTM D2697–03 (2014), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, IBR approved for §§ 63.4141(b) and 63.4941(b).

* * * * *

Subpart NNNN—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances

■ 3. Section 63.4094 is added to read as follows:

§ 63.4094 What transfer efficiency requirement must I meet?

(a) For any spray-applied coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, you are required to meet a transfer efficiency of 65 percent or use the spray coating application method specified in paragraph (b) of this section. For any spray-applied coating operation(s) for which you use the emission rate with add-on controls option, the transfer efficiency requirement does not apply.

(b) As an alternative to the transfer efficiency requirement in paragraph(a), for any spray-applied coating operation(s) for which you use you use the compliant material option or the emission rate without add-on controls option, you may apply all spray-applied coatings using high-volume, low-pressure (HVLP) spray equipment; electrostatic application; airless spray equipment; or air-assisted airless spray equipment, except as specified in paragraphs (b)(1) of this section. You must also meet the requirements in paragraph (b)(2) of this section.

(1) You may apply spray-applied coatings using an alternative coating spray application method if you demonstrate that the alternative method achieves a transfer efficiency equivalent to or better than 65 percent, using procedures equivalent to the California South Coast Air Quality Management District's ''Spray Equipment Transfer Efficiency Test Procedure for Equipment User, May 24, 1989'' (for availability, see § 63.14) and following guidelines equivalent to ''Guidelines for Demonstrating Equivalency with District Approved Transfer Efficient Spray Guns, September 26, 2002'' (for availability, see § 63.14). For the purposes of this section, when using these equivalent guidelines or procedures, you are not required to submit an application with the test plan or protocol to the Administrator, conduct the test in the presence of an Administrator, or submit test results to the Administrator for review or approval. Instead you must comply with the recordkeeping requirement in § 63.4130(l).

(2) All spray application equipment must be operated according to company procedures, local specified operating

procedures, and/or the manufacturer's specifications, whichever is most stringent, at all times. If you modify spray application equipment, you must maintain emission reductions or a transfer efficiency equivalent to HVLP spray equipment, electrostatic application, airless spray equipment, or air-assisted airless spray equipment, and you must demonstrate equivalency according to paragraph (b)(1) of this section and comply with the recordkeeping requirement in § 63.4130(l).

■ 4. Section 63.4100 is amended by revising paragraph (b) and removing paragraph (d) to read as follows:

§ 63.4100 What are my general requirements for complying with this subpart?

* * * * *

(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.

* * * * *

■ 5. Section 63.4110 is amended by revising paragraph (b)(9) introductory text and removing paragraph (b)(9)(v) to read as follows:

§ 63.4110 What notifications must I submit?

* * * * *

(b) * * *

(9) For the emission rate with add-on controls option, you must include the information specified in paragraphs (b)(9)(i) through (iv) of this section, except that the requirements in paragraphs (b)(9)(i) through (iii) of this section do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4161(h).

* * * * *

■ 6. Section 63.4120 is amended by:

■ a. Revising paragraph (b) introductory text, paragraph (d) introductory text, and paragraphs (d)(1) and (d)(4);
■ b. Adding paragraph (d)(5);
■ c. Revising paragraphs (e) introductory text and (e)(3);
■ d. Adding paragraph (e)(4);
■ e. Revising paragraph (g) introductory text and paragraphs (g)(3), (g)(6) through (8), (g)(10), (g)(13), and (g)(14);
■ f. Adding paragraph (g)(15); and
■ g. Removing paragraphs (i) and (j).

The revisions and additions read as follows:

§ 63.4120 What reports must I submit?

* * * * *

(b) The semiannual compliance report must contain the information specified in paragraphs (b)(1) through (4) of this section and the information specified in paragraphs (c) through (h) of this section that is applicable to your affected source.

* * * * *

(d) If you use the compliant material option and there was a deviation from the applicable emission limit in § 63.4090, the semiannual compliance report must contain the information in paragraphs (d)(1) through (5) of this section.

(1) Identification of each coating used that deviated from the emission limit, each thinner and cleaning material used that contained organic HAP, and the date, time, and duration each was used.

* * * * *

(4) A statement of the cause of each deviation (including unknown cause, if applicable).

(5) The number of deviations and, for each deviation, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.4090, and a description of the method used to estimate the emissions.

(e) If you use the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.4090, the semiannual compliance report must contain the information in paragraphs (e)(1) through (4) of this section.

* * * * *

(3) A statement of the cause of each deviation (including unknown cause, if applicable).

(4) The number of deviations, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.4090, and a description of the method used to estimate the emissions.

* * * * *

(g) If you use the emission rate with add-on controls option and there was a deviation from the applicable emission limit in § 63.4090 or the applicable operating limit(s) in Table 1 to this subpart (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (g)(1) through (12), (g)(14) and (g)(15) of this section. If you use the emission rate with add-on controls option and there was a deviation from the work practice standards in § 63.4093(b), the semiannual compliance report must contain the information in paragraph (g)(13) of this section.

* * * * *

(3) The date and time that each malfunction of the capture system or add-on control devices started and stopped.

* * * * *

(6) For each instance that the CPMS was inoperative, except for zero (low-level) and high-level checks, the date, time, and duration that the CPMS was inoperative; the cause (including unknown cause) for the CPMS being inoperative; and descriptions of corrective actions taken.

(7) For each instance that the CPMS was out-of-control, as specified in § 63.8(c)(7), the date, time, and duration that the CPMS was out-of-control; the cause (including unknown cause) for the CPMS being out-of-control; and descriptions of corrective actions taken.

(8) The date, time, and duration of each deviation from an operating limit in Table 1 to this subpart; and the date, time, and duration of any bypass of the add-on control device.

* * * * *

(10) A breakdown of the total duration of the deviations from the operating limits in Table 1 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(13) For deviations from the work practice standards in § 63.4093(b):

(i) Number of deviations.

(ii) For each deviation:

(A) A description of the deviation; the date, time, and duration of the deviation; and the actions you took to minimize emissions in accordance with § 63.4100(b).

(B) The description required in paragraph (g)(13)(ii)(A) of this section must include a list of the affected sources or equipment for which a deviation occurred and the cause of the

deviation (including unknown cause, if applicable).

(14) For deviations from an emission limit in § 63.4090 or operating limit in Table 1 to this subpart, a statement of the cause of each deviation (including unknown cause, if applicable).

(15) For each deviation from an emission limit in § 63.4090 or operating limit in Table 1 to this subpart, a list of the affected sources or equipment for which a deviation occurred, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.4090, and a description of the method used to estimate the emissions.

* * * * *

■ 7. Section 63.4121 is added to read as follows:

§ 63.4121 What are my electronic reporting requirements?

(a) You must submit the results of the performance test required in § 63.4120(h) following the procedure specified in paragraphs (a)(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/electronic-reporting-air-emissions/electronic-reporting-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 (a)(1) of this section 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 Road, 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 (a)(1) of this section.

(b) Beginning on [date 2 years after date of publication of final rule in the **Federal Register**], the owner or operator shall submit the initial notifications required in § 63.9(b) and the notification of compliance status required in § 63.9(h) and § 63.4110(a)(2) and (b) to the EPA via the CEDRI. CEDRI can be accessed through the EPA's CDX (*https://cdx.epa.gov*). The owner or operator must upload to CEDRI an electronic copy of each applicable notification in portable document format (PDF). The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is confidential business information (CBI) shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the extensible markup language (XML) schema listed on the EPA's CEDRI 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 shall 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 Road, Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(c) Beginning on [date 2 years after date of publication of final rule in the **Federal Register**] or once the reporting template has been available on the CEDRI website for one year, whichever date is later, the owner or operator shall submit the semiannual compliance report required in § 63.4120 to the EPA via the CEDRI. CEDRI can be accessed through the EPA's CDX (*https://cdx.epa.gov*). The owner or operator must use the appropriate electronic template on the CEDRI website for this subpart or an alternate electronic file format consistent with the XML schema listed on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*). The date report templates become available will be listed on the CEDRI website. If the reporting form for the semiannual compliance report specific to this subpart is not available in CEDRI at the time that the report is due, you must submit the report to the Administrator at the appropriate addresses listed in § 63.13. Once the form has been available in CEDRI for one year, you must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is confidential business information (CBI) shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the extensible markup language (XML) schema listed on the EPA's CEDRI 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 shall 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 Road, Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(d) If you are required to electronically submit a report through the 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 five 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.

(e) 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 five 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.

■ 8. Section 63.4130 is amended by:

■ a. Revising paragraph (j) and paragraph (k) introductory text;

■ b. Removing and reserving paragraphs (k)(1) and (k)(2); and

■ c. Redesignating paragraphs (k)(8) and (9) as paragraphs (k)(7) and (8).

The revisions and additions read as follows:

§ 63.4130 What records must I keep?

* * * * *

(j) For each deviation from an emission limitation reported under § 63.4120(d), (e), and (g), a record of the information specified in paragraphs (j)(1) through (4) of this section, as applicable.

(1) The date, time, and duration of the deviation, as reported under § 63.4120(d), (e), and (g).

(2) A list of the affected sources or equipment for which the deviation occurred and the cause of the deviation, as reported under § 63.4120(d), (e), and (g).

(3) An estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.4090 or any applicable operating limit in Table 1 to this subpart, and a description of the method used to calculate the estimate, as reported under § 63.4120(d), (e), and (g).

(4) A record of actions taken to minimize emissions in accordance with § 63.4100(b) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(k) If you use the emission rate with add-on controls option, you must also keep the records specified in paragraphs (k)(1) through (8) of this section.

* * * * *

■ 9. Section 63.4131 is amended by revising paragraph (a) to read as follows:

§ 63.4131 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database. Any records required to be maintained by this subpart that are in reports that were 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.

* * * * *

■ 10. Section 63.4141 is amended by revising paragraphs (a)(1)(i), (a)(2), (a)(4), (b)(1), parameters ''$m_{volatiles}$'' and ''D_{avg}'' of Equation 1 in paragraph (b)(3), and paragraph (c) to read as follows:

§ 63.4141 How do I demonstrate initial compliance with the emission limitations?

* * * * *

(a) * * *

(1) * * *

(i) Count each organic HAP in Table 5 to this subpart that is measured to be present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other organic HAP compounds. For example, if toluene (not listed in Table 5 to this subpart) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (for example, 0.3791).

* * * * *

(2) *Method 24 in appendix A–7 of part 60.* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP. As an alternative to using Method 24, you may use ASTM D2369–10 (2015), ''Test Method for Volatile Content of Coatings'' (incorporated by reference, *see* § 63.14).

* * * * *

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data if they represent each organic HAP in Table 5 to this subpart that is present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other organic HAP compounds. For example, if toluene (not listed in Table 5 to this subpart) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence.

* * * * *

(b) * * *

(1) *ASTM Method D2697–03 (2014) or D6093–97.* You may use ASTM Method D2697–03 (2014), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' or D6093–97, ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer'' (incorporated by reference, *see* § 63.14) to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids.

* * * * *

(3) * * *

$m_{volatiles}$ = total volatile matter content of the coating, including HAP, volatile organic compounds (VOC), water, and exempt

compounds, determined according to Method 24 in appendix A–7 of part 60, or according to ASTM D2369–10 (2015) Standard Test Method for Volatile Content of Coatings (incorporated by reference, *see* § 63.14), grams volatile matter per liter coating.

D_{avg} = average density of volatile matter in the coating, grams volatile matter per liter volatile matter, determined from test results using ASTM Method D1475–13, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products'' (incorporated by reference, *see* § 63.14), ASTM D2111–10 (2015), ''Standard Test Methods for Specific Gravity of Halogenated Organic Solvents and Their Admixtures'' (incorporated by reference, *see* § 63.14; if you use this method, the specific gravity must be corrected to a standard temperature), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–13 or ASTM D2111–10 (2015) test results and other information sources, the test results will take precedence.

(c) *Determine the density of each coating.* Determine the density of each coating used during the compliance period from test results using ASTM Method D1475–13, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products'' (incorporated by reference, *see* § 63.14), ASTM D2111–10 (2015), ''Standard Test Methods for Specific Gravity of Halogenated Organic Solvents and Their Admixtures'' (incorporated by reference, *see* § 63.14; if you use this method, the specific gravity must be corrected to a standard temperature), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between test results from ASTM Method D1475–13 or ASTM D2111–10 (2015) and the supplier's or manufacturer's information, the test results will take precedence.

* * * * *

■ 11. Section 63.4160 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 63.4160 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) * * *

(1) All emission capture systems, add-on control devices, and CPMS you use to demonstrate compliance must be installed and operating no later than the applicable compliance date specified in § 63.4083. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4161(h), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.4164, 63.4165, and 63.4166, and establish the operating limits required by § 63.4092 no later than the compliance date specified in § 63.4083. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4161(h), you must initiate the first material balance no later than the compliance date specified in § 63.4083.

* * * * *

(b) * * *

(1) All emission capture systems, add-on control devices, and CPMS you use to demonstrate compliance must be installed and operating no later than the applicable compliance date specified in § 63.4083. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4161(h), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.4164, 63.4165, and 63.4166, and establish the operating limits required by § 63.4092 no later than 180 days after the applicable compliance date specified in § 63.4083. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4161(h), you must initiate the first material balance no later than 180 days after the applicable compliance date specified in § 63.4083.

* * * * *

■ 12. Section 63.4161 is amended by revising paragraph (g) introductory text and paragraph (h)(3) to read as follows:

§ 63.4161 How do I demonstrate initial compliance?

* * * * *

(g) *Calculate the organic HAP emissions reduction for controlled coating operations not using liquid-liquid material balance.* For each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate organic HAP emissions reduction, using Equation 1 of this section, by applying the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings, thinners, and cleaning materials that are used in the coating operation served by the emission capture system and add-on control device during the compliance period. For any period of time a deviation specified in § 63.4163(c) or (d) occurs in the controlled coating operation, you must assume zero efficiency for the emission capture system and add-on control device. For the purposes of completing the compliance calculations, you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation. You must not include those materials in the calculations of organic HAP emissions reduction in Equation 1 of this section.

* * * * *

(h) * * *

(3) Determine the mass fraction of volatile organic matter for each coating used in the coating operation controlled by the solvent recovery system during the compliance period, kilogram, volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using Method 24 in appendix A–7 of part 60, ASTM D2369–10 (2015), ''Test Method for Volatile Content of Coatings'' (incorporated by reference, *see* § 63.14), or an EPA approved alternative method. Alternatively, you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24, ASTM D2369–10 (2015), or an approved alternative method, the test method results will govern.

* * * * *

■ 13. Section 63.4163 is amended by revising paragraph (e) and removing and reserving paragraph (h) to read as follows:

§ 63.4163 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(e) You must demonstrate continuous compliance with the work practice standards in § 63.4093. If you did not develop a work practice plan, did not implement the plan, or did not keep the records required by § 63.4130(k)(8), this is a deviation from the work practice standards that must be reported as specified in §§ 63.4110(b)(6) and 63.4120(g).

* * * * *

■ 14. Section 63.4164 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 63.4164 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.4160 according to the requirements in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for

the coating operation. Operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 15. Section 63.4166 is amended by revising paragraph (b) introductory text to read as follows:

§ 63.4166 How do I determine the add-on control device emission destruction or removal efficiency?

* * * * *

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either Method 25 or 25A in appendix A–7 of part 60, as specified in paragraphs (b)(1) through (3) of this section. You must use the same method for both the inlet and outlet measurements. You may use Method 18 in appendix A–6 of part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

* * * * *

■ 16. Section 63.4168 is amended by revising paragraphs (a)(4), (a)(5), and (c)(3) introductory text to read as follows:

§ 63.4168 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) * * *

(4) You must maintain the CPMS at all times in accordance with § 63.4100(b) and have readily available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times in accordance with § 63.4100(b).

* * * * *

(c) * * *

(3) For each gas temperature monitoring device, you must comply with the requirements in paragraphs (c)(3)(i) through (vii) of this section. For the purposes of this paragraph (c)(3), a thermocouple is part of the temperature sensor.

* * * * *

■ 17. Section 63.4181 is amended by adding, in alphabetical order, definitions for ''Air-assisted airless spray'', ''Airless spray'', ''Electrostatic spray'', ''High-volume, Low-pressure spray'' and revising the definition for ''Deviation'' to read as follows:

§ 63.4181 What definitions apply to this subpart?

* * * * *

Air-assisted airless spray means any paint spray technology that spray uses compressed air to shape and distribute the fan of atomized paint, but still uses fluid pressure to create the atomized paint.

Airless spray means any paint spray technology that relies solely on the fluid pressure of the paint to create an atomized paint spray pattern and does not apply any atomizing compressed air to the paint before it leaves the paint nozzle.

* * * * *

Deviation means 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 limit, or operating limit, or work practice standard; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

* * * * *

Electrostatic spray is a method of applying a spray coating in which an electrical charge is applied to the coating and the substrate is grounded. The coating is attracted to the substrate by the electrostatic potential between them.

* * * * *

High-volume, low-pressure spray means spray equipment that is used to apply coating by means of a spray gun that operates at 10.0 psig of atomizing air pressure or less at the air cap.

* * * * *

■ 18. Table 2 to Subpart NNNN of Part 63 is revised to read as follows:

Table 2 to Subpart NNNN of Part 63—Applicability of General Provisions to Subpart NNNN

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart NNNN	Explanation
§ 63.1(a)(1)–(12)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart NNNN is also specified in § 63.4081.
§ 63.1(c)(1)	Applicability After Standard Established	Yes.	
§ 63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources	No	Area sources are not subject to subpart NNNN.
§ 63.1(c)(4)–(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are Specified in § 63.4181.
§ 63.3(a)–(c)	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Severability	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1)–(6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	

Citation	Subject	Applicable to subpart NNNN	Explanation
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.4083 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources	Yes	Section 63.4083 specifies the compliance dates.
§ 63.6(e)(1)(i)	Operation and Maintenance	No	*See* § 63.4900(b) for general duty requirement.
§ 63.6(e)(1)(ii)	Operation and Maintenance	No.	
§ 63.6(e)(1)(iii)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)	SSM Plan	No.	
§ 63.6(f)(1)	Compliance Except During Startup, Shutdown, and Malfunction.	No.	
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Yes.	
§ 63.6(g)(1)–(3)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission standards.	No	Subpart NNNN does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(16)	Extension of Compliance	Yes.	
§ 63.6(j)	Presidential Compliance Exemption	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.4164, 63.4165, and 63.4166.
§ 63.7(a)(2)	Performance Test Requirements—Dates	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standards. Section 63.4160 specifies the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)	Performance Tests Required By the Administrator.	Yes.	
§ 63.7(b)–(d)	Performance Test Requirements—Notification, Quality Assurance Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.7(e)(1)	Conduct of performance tests	No	*See* § 63.4164(a)(1).
§ 63.7(e)(2)–(4)	Conduct of performance tests	Yes.	
§ 63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.8(a)(1)–(3)	Monitoring Requirements—Applicability	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for monitoring are specified in § 63.4168.
§ 63.8(a)(4)	Additional Monitoring Requirements	No	Subpart NNNN does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)	Continuous Monitoring Systems (CMS) Operation and Maintenance.	No.	
§ 63.8(c)(2)–(3)	Continuous Monitoring Systems (CMS) Operation and Maintenance.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for CMS operations and maintenance are specified in § 63.4168.
§ 63.8(c)(4)	CMS	No	Section 63.4168 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart NNNN does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	Section 63.4168 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)	CMS Out-of-Control Periods	Yes.	
§ 63.8(c)(8)	CMS Out-of-Control Periods and Reporting	No	Section 63.4120 requires reporting of CMS out-of-control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart NNNN does not require the use of CEMS.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart NNNN does not require the use of CEMS.

Citation	Subject	Applicable to subpart NNNN	Explanation
§ 63.8(g)(1)–(5)	Data Reduction	No	Sections 63.4167 and 63.4168 specify monitoring data reduction.
§ 63.9(a)–(d)	Notification Requirements	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standard.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test	No	Subpart NNNN does not have opacity or visible emission standards.
§ 63.9(g)(1)–(3)	Additional Notifications When Using CMS	No	Subpart NNNN does not require the use of CEMS.
§ 63.9(h)	Notification of Compliance Status	Yes	Section 63.4110 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	Additional requirements are specified in §§ 63.4130 and 63.4131.
§ 63.10(b)(2)(i)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns.	No	*See* § 63.4130(j).
§ 63.10(b)(2)(ii)	Recordkeeping of Failures to Meet Standards	No	*See* § 63.4130(j).
§ 63.10(b)(2)(iii)	Recordkeeping Relevant to Maintenance of Air Pollution Control and Monitoring Equipment.	Yes.	
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During SSM.	No	*See* § 63.4130(j)(4) for a record of actions taken to minimize emissions during a deviation from the standard.
§ 63.10(b)(2)(vi)	Records for CMS malfunctions	No	*See* § 63.4130(j) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(b)(2)(vii)–(xi)	Records	Yes.	
§ 63.10(b)(2)(xii)	Records	Yes.	
§ 63.10(b)(2)(xiii)		No	Subpart NNNN does not require the use of CEMS.
§ 63.10(b)(2)(xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(7)–(8)	Additional Recordkeeping Requirements for Sources with CMS.	No	*See* § 63.4130(j)(1) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(c)(10)–(14)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(15)	Records Regarding the SSM Plan	No.	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.4120.
§ 63.10(d)(2)	Report of Performance Test Results	Yes	Additional requirements are specified in § 63.4120(h).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart NNNN does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports	No	*See* § 63.4120(g).
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart NNNN does not require the use of CEMS.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports	No	Section 63.4120(g) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart NNNN does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares	No	Subpart NNNN does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information/Confidentiality	Yes.	

■ 19. Subpart NNNN of Part 63 is amended by adding Table 5 to read as follows:

TABLE 5 TO SUBPART NNNN OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

Chemical name	CAS No.
1,1,2,2-Tetrachloroethane	79–34–5
1,1,2-Trichloroethane	79–00–5
1,1-Dimethylhydrazine	57–14–7
1,2-Dibromo-3-chloropropane	96–12–8
1,2-Diphenylhydrazine	122–66–7
1,3-Butadiene	106–99–0
1,3-Dichloropropene	542–75–6
1,4-Dioxane	123–91–1
2,4,6-Trichlorophenol	88–06–2
2,4/2,6-Dinitrotoluene (mixture)	25321–14–6
2,4-Dinitrotoluene	121–14–2
2,4-Toluene diamine	95–80–7
2-Nitropropane	79–46–9
3,3′-Dichlorobenzidine	91–94–1
3,3′-Dimethoxybenzidine	119–90–4
3,3′-Dimethylbenzidine	119–93–7
4,4′-Methylene bis(2-chloroaniline)	101–14–4
Acetaldehyde	75–07–0
Acrylamide	79–06–1
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
alpha-Hexachlorocyclohexane (a-HCH)	319–84–6
Aniline	62–53–3
Benzene	71–43–2
Benzidine	92–87–5
Benzotrichloride	98–07–7
Benzyl chloride	100–44–7
beta-Hexachlorocyclohexane (b-HCH)	319–85–7
Bis(2-ethylhexyl)phthalate	117–81–7
Bis(chloromethyl)ether	542–88–1
Bromoform	75–25–2
Captan	133–06–2
Carbon tetrachloride	56–23–5
Chlordane	57–74–9
Chlorobenzilate	510–15–6
Chloroform	67–66–3
Chloroprene	126–99–8
Cresols (mixed)	1319–77–3
DDE	3547–04–4
Dichloroethyl ether	111–44–4
Dichlorvos	62–73–7
Epichlorohydrin	106–89–8
Ethyl acrylate	140–88–5
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide	75–21–8
Ethylene thiourea	96–45–7
Ethylidene dichloride (1,1-Dichloroethane)	75–34–3
Formaldehyde	50–00–0
Heptachlor	76–44–8
Hexachlorobenzene	118–74–1
Hexachlorobutadiene	87–68–3
Hexachloroethane	67–72–1
Hydrazine	302–01–2
Isophorone	78–59–1
Lindane (hexachlorocyclohexane, all isomers)	58–89–9
m-Cresol	108–39–4
Methylene chloride	75–09–2
Naphthalene	91–20–3
Nitrobenzene	98–95–3
Nitrosodimethylamine	62–75–9
o-Cresol	95–48–7
o-Toluidine	95–53–4
Parathion	56–38–2
p-Cresol	106–44–5
p-Dichlorobenzene	106–46–7
Pentachloronitrobenzene	82–68–8
Pentachlorophenol	87–86–5
Propoxur	114–26–1
Propylene dichloride	78–87–5
Propylene oxide	75–56–9

TABLE 5 TO SUBPART NNNN OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical name	CAS No.
Quinoline	91–22–5
Tetrachloroethene	127–18–4
Toxaphene	8001–35–2
Trichloroethylene	79–01–6
Trifluralin	1582–09–8
Vinyl bromide	593–60–2
Vinyl chloride	75–01–4
Vinylidene chloride	75–35–4

Subpart OOOO—National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles

■ 20. Section 63.4300 is amended by revising paragraphs (a)(3)(i) and (b) and removing paragraph (c) to read as follows:

§ 63.4300 What are my general requirements for complying with this subpart?

(a) * * *

(3) * * *

(i) The web coating/printing or dyeing/finishing operation(s) must be in compliance with the applicable emission limit in Table 1 to 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.

■ 21. Section 63.4310 is amended by revising paragraph (c)(9)(iv) to read as follows:

§ 63.4310 What notifications must I submit?

* * * * *

(c) * * *

(9) * * *

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.4293.

■ 22. Section 63.4311 is amended by:

■ a. Revising paragraph (a)(5) introductory text and paragraphs (a)(5)(i) and (a)(5)(iv);

■ b. Adding paragraph (a)(5)(v);

■ c. Revising paragraph (a)(6) introductory text and paragraph (a)(6)(iii);

■ d. Adding paragraph (a)(6)(iv);

■ e. Revising paragraph (a)(7) introductory text and paragraphs (a)(7)(iv), (a)(7)(vii) through (ix), (a)(7)(xi), and (a)(7)(xiv) and (xv);

■ f. Adding paragraph (a)(7)(xvi);

■ g. Revising paragraph (a)(8) introductory text;

■ h. Adding paragraph (a)(8)(v);

■ i. Revising paragraph (c); and

■ j. Adding paragraphs (d) through (g).

The revisions and additions read as follows:

§ 63.4311 What reports must I submit?

(a) * * *

(5) *Deviations: Compliant material option.* If you use the compliant material option, and there was a deviation from the applicable organic HAP content requirements in Table 1 to this subpart, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (v) of this section.

(i) Identification of each coating, printing, slashing, dyeing or finishing material applied that deviated from the emission limit and each thinning or cleaning material applied in web coating/printing operations that contained organic HAP, and the date, time, and duration each was applied.

* * * * *

(iv) A statement of the cause of each deviation (including unknown cause, if applicable).

(v) The number of deviations and, for each deviation, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit in Table 1 to this subpart, and a description of the method used to estimate the emissions.

(6) *Deviations: Emission rate without add-on controls option.* If you use the emission rate without add-on controls option and there was a deviation from the applicable emission limit in Table 1 to this subpart, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iv) of this section.

* * * * *

(iii) A statement of the cause of each deviation (including unknown cause, if applicable).

(iv) The number of deviations, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit in Table 1 to this subpart, and a description of the method used to estimate the emissions.

(7) *Deviations: Add-on controls options.* If you use one of the add-on controls options in § 63.4291(a) or (c) and there was a deviation from the applicable emission limit in Table 1 to this subpart or the applicable operating limit(s) in Table 2 to this subpart (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiii), (a)(7)(xv), and (a)(7)(xvi) of this section. If you use the emission rate with add-on controls option and there was a deviation from the applicable work practice standards in § 63.4293(b), the semiannual compliance report must contain the information in paragraph (a)(7)(xiv) of this section.

* * * * *

(iv) The date and time that each malfunction of the capture system or add-on control devices started and stopped.

* * * * *

(vii) For each instance that the CPMS was inoperative, except for zero (low-level) and high-level checks, the date, time, and duration that the CPMS was inoperative; the cause (including

unknown cause) for the CPMS being inoperative; and descriptions of corrective actions taken.

(viii) For each instance that the CPMS was out-of-control, as specified in § 63.8(c)(7), the date, time, and duration that the CPMS was out-of-control; the cause (including unknown cause) for the CPMS being out-of-control; and descriptions of corrective actions taken.

(ix) The date, time, and duration of each deviation from an operating limit in Table 2 to this subpart, and the date, time, and duration of any bypass of the add-on control device.

* * * * *

(xi) A breakdown of the total duration of the deviations from the operating limits in Table 2 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(xiv) For deviations from the work practice standards, the number of deviations, and, for each deviation:

(A) A description of the deviation; the date, time, and duration of the deviation; and the actions you took to minimize emissions in accordance with § 63.4300(b).

(B) The description required in paragraph (a)(7)(xiv)(A) of this section must include a list of the affected sources or equipment for which a deviation occurred and the cause of the deviation (including unknown cause, if applicable.

(xv) For deviations from an emission limit in Table 1 to this subpart or operating limit in Table 2 to this subpart, a statement of the cause of each deviation (including unknown cause, if applicable).

(xvi) For each deviation from an emission limit in Table 1 to this subpart or operating limit in Table 2 to this subpart, a list of the affected sources or equipment for which a deviation occurred, an estimate of the quantity of each regulated pollutant emitted over any emission limit in Table 1 to this subpart, and a description of the method used to estimate the emissions.

(8) *Deviations: Equivalent Emission Rate Option.* If you use the equivalent emission rate option, and there was a deviation from the operating scenarios, as defined in § 63.4371, used to demonstrate initial compliance, the semiannual compliance report must specify the number of deviations during the compliance period and contain the information in paragraphs (a)(8)(i) through (v) of this section.

* * * * *

(v) For each deviation, the date, time, and duration of the deviation, a list of the affected sources or equipment, and a statement of the cause of the deviation (including an unknown cause, if applicable).

* * * * *

(c) You must submit the results of the performance test required in paragraph (b) of this section following the procedure 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/electronic-reporting-air-emissions/electronic-reporting-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) of this section 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/OAPQS/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.

(d) Beginning on [date 2 years after date of publication of final rule in the **Federal Register**], the owner or operator shall submit the initial notifications required in § 63.9(b) and the notification of compliance status required in § 63.9(h) and § 63.4310(c) to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX (*https://cdx.epa.gov*).) The owner or operator must upload to CEDRI an electronic copy of each applicable notification in portable document format (PDF). The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is confidential business information (CBI) shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the extensible markup language (XML) schema listed on the EPA's CEDRI 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 shall 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 Road, Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(e) Beginning on [date 2 years after date of publication of final rule in the **Federal Register**] or once the reporting template has been available on the CEDRI website for one year, whichever date is later, the owner or operator shall submit the semiannual compliance report required in paragraph (a) of this section to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX (*https://cdx.epa.gov*).). The owner or operator must use the appropriate electronic template on the CEDRI website for this subpart or an alternate electronic file format consistent with the XML schema listed on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*). The date report templates become available will be listed on the CEDRI website. If the reporting form for the semiannual compliance report specific to this subpart is not available in CEDRI at the time that the report is due, you must submit the report to the Administrator at the appropriate addresses listed in § 63.13. Once the form has been

available in CEDRI for one year, you must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is confidential business information (CBI) shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the extensible markup language (XML) schema listed on the EPA's CEDRI 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 shall 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 Road, Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(f) 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 five 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.

(g) 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 five 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.

■ 23. Section 63.4312 is amended by revising paragraph (i) and paragraph (j) introductory text, and removing and reserving paragraphs (j)(1) and (2) to read as follows:

§ 63.4312 What records must I keep?

* * * * *

(i) For each deviation from an emission limitation reported under § 63.4311(a)(5) through (8), a record of the information specified in paragraphs (i)(1) through (4) of this section, as applicable:

(1) The date, time, and duration of the deviation, as reported under § 63.4311(a)(5) through (8).

(2) A list of the affected sources or equipment for which the deviation occurred and the cause of the deviation, as reported under § 63.4311(a)(5) through (8).

(3) An estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in Table 1 to this subpart or any applicable operating limit in Table 2 to this subpart, and a description of the method used to calculate the estimate, as reported under § 63.4311(a)(5) through (8). If you use the equivalent emission rate option to comply with this subpart, a record of the applicable information specified in § 63.4311(a)(8)(ii) through (iv) satisfies this recordkeeping requirement.

(4) A record of actions taken to minimize emissions in accordance with § 63.4300(b) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(j) If you use the emission rate with add-on controls option, the organic HAP overall control efficiency option, or the oxidizer outlet organic HAP concentration option, you must also keep the records specified in paragraphs (j)(1) through (8) of this section.

* * * * *

■ 24. Section 63.4313 is amended by revising paragraph (a) to read as follows:

§ 63.4313 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database. Any records required to be maintained by this subpart that are in reports that were 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.

* * * * *

■ 25. Section 63.4321 is amended by revising paragraphs (e)(1)(i)(A) and (e)(1)(iv) to read as follows:

§ 63.4321 How do I demonstrate initial compliance with the emission limitations?

* * * * *

(e) * * *

(1) * * *

(i) * * *

(A) Count each organic HAP in Table 6 to this subpart that is measured to be

present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in Table 6 to this subpart) is measured to be 0.5 percent of the material by mass, you don't have to count it. Express the mass fraction of each organic HAP you count as a value truncated to no more than four places after the decimal point (*e.g.,* 0.3791).

* * * * *

(iv) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (e)(1)(i) through (iii) of this section, such as manufacturer's formulation data, if it represents each organic HAP in Table 6 to this subpart that is present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other compounds. For example, if toluene (not listed in Table 6 to this subpart) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (e)(1)(i) through (iii) of this section on coating, thinning, or cleaning material, then the test method results will take precedence. Information from the supplier or manufacturer of the printing, slashing, dyeing, or finishing material is sufficient for determining the mass fraction of organic HAP.

* * * * *

■ 26. Section 63.4341 is amended by revising paragraph (e)(4) introductory text and paragraph (f)(4) introductory text to read as follows:

§ 63.4341 How do I demonstrate initial compliance?

* * * * *

(e) * * *

(4) *Calculate the organic HAP emission reduction for each controlled web coating/printing operation not using liquid-liquid material balance.* For each controlled web coating/printing operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emissions reductions using Equation 1 of this section. The equation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coating, printing, thinning, and cleaning materials applied in the web coating/printing operation served by the emission capture system and add-on control device during the compliance period. For any period of time a deviation specified in § 63.4342(c) or (d) occurs in the controlled web coating/printing operation, then you must assume zero efficiency for the emission capture system and add-on control device. Equation 1 of this section treats the coating, printing, thinning, and cleaning materials applied during such a deviation as if they were used on an uncontrolled web coating/printing operation for the time period of the deviation.

* * * * *

(f) * * *

(4) *Calculate the organic HAP emission reduction for each controlled dyeing/finishing operation not using liquid-liquid material balance.* For each controlled dyeing/finishing operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emissions reductions using Equation 5 of this section. The equation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the dyeing and finishing materials applied in the dyeing/finishing operation served by the emission capture system and add-on control device during the compliance period. For any period of time a deviation specified in § 63.4342(c) or (d) occurs in the controlled dyeing/finishing operation, then you must assume zero efficiency for the emission capture system and add-on control device. Equation 5 of this section treats the dyeing and finishing materials applied during such a deviation as if they were applied on an uncontrolled dyeing/finishing operation for the time period of the deviation.

* * * * *

■ 27. Section 63.4342 is amended by revising paragraph (f) and removing and reserving paragraph (h) to read as follows:

§ 63.4342 How do I demonstrate continuous compliance with the emission limitations?

* * * * *

(f) As part of each semiannual compliance report required in § 63.4311, you must identify the coating/printing and dyeing/finishing operation(s) for which you use the emission rate with add-on controls option. If there were no deviations from the applicable emission limitations in §§ 63.4290, 63.4292, and 63.4293, you must submit a statement that, as appropriate, the web coating/printing operations or the dyeing/finishing operations were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in Table 1 to this subpart, and you achieved the operating limits required by § 63.4292 and the work practice standards required by § 63.4293 during each compliance period.

* * * * *

■ 28. Section 63.4351 is amended by revising paragraph (d)(4) to read as follows:

§ 63.4351 How do I demonstrate initial compliance?

* * * * *

(d) * * *

(4) *Calculate the organic HAP emissions reductions for controlled web coating/printing operations not using liquid-liquid material balance.* For each controlled web coating/printing operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emissions reductions using Equation 1 of § 63.4341. The equation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coating, printing, thinning, and cleaning materials applied in the web coating/printing operation served by the emission capture system and add-on control device during the compliance period. For any period of time a deviation specified in § 63.4352(c) or (d) occurs in the controlled web coating/printing operation, then you must assume zero efficiency for the emission capture system and add-on control device. Equation 1 of § 63.4341 treats the coating, printing, thinning, and cleaning materials applied during such a deviation as if they were applied on an uncontrolled web coating/printing operation for the time period of the deviation.

* * * * *

§ 63.4352 [Amended]

■ 29. Section 63.4352 is amended by removing and reserving paragraph (h).

■ 30. Section 63.4360 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows.

§ 63.4360 What are the general requirements for performance tests?

(a) You must conduct each performance test required by §§ 63.4340 or 63.4350 according to the requirements in this section, unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative web coating/printing or dyeing/finishing operation operating conditions.* You must conduct the performance test under representative operating conditions for the web coating/printing or dyeing/finishing operation. Operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 31. Section 63.4362 is amended by revising paragraph (b) introductory text to read as follows:

§ 63.4362 How do I determine the add-on control device emission destruction or removal efficiency?

* * * * *

(b) Measure the volatile organic matter concentration as carbon at the inlet and outlet of the add-on control device simultaneously, using Method 25 or 25A in appendix A–7 of part 60. If you are demonstrating compliance with the oxidizer outlet organic HAP concentration limit, only the outlet volatile organic matter concentration must be determined. The outlet volatile organic matter concentration is determined as the average of the three test runs. You may use Method 18 in appendix A–6 of part 60 to subtract methane emissions from measured volatile organic matter concentration as carbon.

* * * * *

■ 32. Section 63.4364 is amended by revising paragraphs (a)(6) through (8) to read as follows:

§ 63.4364 What are the requirements for CPMS installation, operation, and maintenance?

(a) * * *

(6) At all times, you must maintain the monitoring system in accordance with § 63.4300(b) and in proper working order including, but not limited to, keeping readily available necessary parts for routine repairs of the monitoring equipment.

(7) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times in accordance with § 63.4300(b). Data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities shall not be used for purposes of calculating the emissions concentrations and percent reductions specified in Table 1 to this subpart. You must use all the data collected during all other periods in assessing compliance of the control device and associated control system. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(8) Except for periods of required quality assurance or control activities, any averaging period during which the CPMS fails to operate and record data continuously as required by paragraph (a)(1) of this section, or which generates data that cannot be included in calculating averages as specified in paragraph (a)(7) of this section, constitutes a deviation, and you must notify the Administrator in accordance with § 63.4311(a).

* * * * *

■ 33. Section 63.4371 is amended by adding, in alphabetical order, definitions for ''Air-assisted airless spray'', ''Airless spray'', ''Electrostatic spray'', ''High-volume, Low-pressure spray'' and revising the definitions of ''Deviation'' and ''No organic HAP'' to read as follows:

§ 63.4371 What definitions apply to this subpart?

* * * * *

Air-assisted airless spray means any paint spray technology that spray uses compressed air to shape and distribute the fan of atomized paint, but still uses fluid pressure to create the atomized paint.

Airless spray means any paint spray technology that relies solely on the fluid pressure of the paint to create an atomized paint spray pattern and does not apply any atomizing compressed air to the paint before it leaves the paint nozzle.

* * * * *

Deviation means 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 limit, or operating limit, or work practice standard; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

* * * * *

Electrostatic spray is a method of applying a spray coating in which an electrical charge is applied to the coating and the substrate is grounded. The coating is attracted to the substrate by the electrostatic potential between them.

* * * * *

High-volume, low-pressure spray means spray equipment that is used to apply coating by means of a spray gun that operates at 10.0 psig of atomizing air pressure or less at the air cap.

* * * * *

No organic HAP means no organic HAP in Table 5 to this subpart is present at 0.1 percent by mass or more and no organic HAP not listed in Table 5 to this subpart is present at 1.0 percent by mass or more. The organic HAP content of a regulated material is determined according to § 63.4321(e)(1).

* * * * *

■ 34. Table 3 to Subpart OOOO is revised to read as follows:

Table 3 to Subpart OOOO of Part 63—Applicability of General Provisions to Subpart OOOO

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart OOOO	Explanation
§ 63.1(a)(1)–(12)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart OOOO is also specified in § 63.4281.
§ 63.1(c)(1)	Applicability After Standard Established	Yes.	
§ 63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources	No	Area sources are not subject to subpart OOOO.
§ 63.1(c)(4)–(5)	Extensions and Notifications	Yes.	

Citation	Subject	Applicable to subpart OOOO	Explanation
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.4371.
§ 63.3(a)–(c)	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Severability	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1)–(6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.4283 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources	Yes	Section 63.4283 specifies the compliance dates.
§ 63.6(e)(1)(i)	Operation and Maintenance	No	*See* § 63.4300(b) for general duty requirement.
§ 63.6(e)(1)(ii)	Operation and Maintenance	No.	
§ 63.6(e)(1)(iii)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	No.	
§ 63.6(f)(1)	Compliance Except During Startup, Shutdown, and Malfunction.	No.	
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Yes.	
§ 63.6(g)(1)–(3)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart OOOO does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(16)	Extension of Compliance	Yes.	
§ 63.6(j)	Presidential Compliance Exemption	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.4360, 63.4361, and 63.4362.
§ 63.7(a)(2)	Performance Test Requirements—Dates	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standard.
§ 63.7(a)(3)	Performance Tests Required by the Administrator.	Yes.	
§ 63.7(b)–(d)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standard.
§ 63.7(e)(1)	Conduct of performance tests	No	*See* § 63.4360.
§ 63.7(e)(2)–(4)	Conduct of performance tests	Yes.	
§ 63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.8(a)(1)–(3)	Monitoring Requirements—Applicability	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for monitoring are specified in § 63.4364.
§ 63.8(a)(4)	Additional Monitoring Requirements	No	Subpart OOOO does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)	Continuous Monitoring Systems (CMS) Operation and Maintenance.	No	Section 63.4364 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(2)–(3)	CMS Operation and Maintenance	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for CMS operations and maintenance are specified in § 63.4364.

Citation	Subject	Applicable to subpart OOOO	Explanation
§ 63.8(c)(4)	CMS	No	Section 63.4364 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart OOOO does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	Section 63.4364 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)	CMS Out of Control Periods	Yes.	
§ 63.8(c)(8)	CMS Out of Control Periods and Reporting	No	Section 63.4311 requires reporting of CMS out-of-control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart OOOO does not require the use of CEMS.
§ 63.8(f)(1)–(5)	Use of Alternative Monitoring Method	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart OOOO does not require the use of CEMS.
§ 63.8(g)(1)–(5)	Data Reduction	No	Sections 63.4342 and 63.4352 specify monitoring data reduction.
§ 63.9(a)	Applicability and General Information	Yes.	
§ 63.9(b)	Initial Notifications	No	Subpart OOOO provides 1 year for an existing source to submit an initial notification.
§ 63.9(c)	Request for Extension of Compliance	Yes.	
§ 63.9(d)	Notification that Source is Subject to Special Compliance Requirements.	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standards.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test	No	Subpart OOOO does not have opacity or visible emission standards.
§ 63.9(g)(1)–(3)	Additional Notifications When Using CMS	No	Subpart OOOO does not require the use of CEMS.
§ 63.9(h)	Notification of Compliance Status	Yes	Section 63.4310 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	Additional Requirements are specified in §§ 63.4312 and 63.4313.
§ 63.10(b)(2)(i)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns based on EPA Guidance.	No	*See* § 63.4312(i)
§ 63.10(b)(2)(ii)	Recordkeeping of Failures to Meet Standards	No	*See* § 63.4312(i).
§ 63.10(b)(2)(iii)	Recordkeeping Relevant to Maintenance of Air Pollution Control and Monitoring Equipment.	Yes.	
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During Startup, Shutdown, and Malfunction.	No	*See* § 63.4312(i)(5) for a record of actions taken to minimize emissions during a deviation from the standard.
§ 63.10(b)(2)(vi)	Recordkeeping for CMS malfunctions	No	*See* § 63.4312(i) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(b)(2)(vii)–(xi)	Records	Yes.	
§ 63.10(b)(2)(xii)	Records	Yes.	
§ 63.10(b)(2)(xiii)		No	Subpart OOOO does not require the use of CEMS.
§ 63.10(b)(2)(xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(7)–(8)	Additional Recordkeeping Requirements for Sources with CMS.	No	See § 63.4312(i)(1) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(c)(10)–(14)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(15)	Records Regarding the Startup, Shutdown, and Malfunction Plan.	No.	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Addtional requirements are specified in § 63.4311.
§ 63.10(d)(2)	Report of Performance Test Results	Yes	Additional requirements are specified in § 63.4311(b).

Citation	Subject	Applicable to subpart OOOO	Explanation
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart OOOO does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports	No	*See* § 63.4311(a)(7).
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart OOOO does not require the use of CEMS.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports	No	Section 63.4311(a) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart OOOO does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares	No	Subpart OOOO does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes	ASNI/ASME PTC 19.10–1981, Part 10
§ 63.15	Availability of Information/Confidentiality	Yes.	

■ 35. Subpart OOOO of Part 63 is amended by adding Table 6 to read as follows:

TABLE 6 TO SUBPART OOOO OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

Chemical name	CAS No.
1,1,2,2-Tetrachloroethane	79–34–5
1,1,2-Trichloroethane	79–00–5
1,1-Dimethylhydrazine	57–14–7
1,2-Dibromo-3-chloropropane	96–12–8
1,2-Diphenylhydrazine	122–66–7
1,3-Butadiene	106–99–0
1,3-Dichloropropene	542–75–6
1,4-Dioxane	123–91–1
2,4,6-Trichlorophenol	88–06–2
2,4/2,6-Dinitrotoluene (mixture)	25321–14–6
2,4-Dinitrotoluene	121–14–2
2,4-Toluene diamine	95–80–7
2-Nitropropane	79–46–9
3,3′-Dichlorobenzidine	91–94–1
3,3′-Dimethoxybenzidine	119–90–4
3,3′-Dimethylbenzidine	119–93–7
4,4′-Methylene bis(2-chloroaniline)	101–14–4
Acetaldehyde	75–07–0
Acrylamide	79–06–1
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
alpha-Hexachlorocyclohexane (a-HCH)	319–84–6
Aniline	62–53–3
Benzene	71–43–2
Benzidine	92–87–5
Benzotrichloride	98–07–7
Benzyl chloride	100–44–7
beta-Hexachlorocyclohexane (b-HCH)	319–85–7
Bis(2-ethylhexyl)phthalate	117–81–7
Bis(chloromethyl)ether	542–88–1
Bromoform	75–25–2
Captan	133–06–2
Carbon tetrachloride	56–23–5
Chlordane	57–74–9
Chlorobenzilate	510–15–6
Chloroform	67–66–3
Chloroprene	126–99–8
Cresols (mixed)	1319–77–3
DDE	3547–04–4
Dichloroethyl ether	111–44–4
Dichlorvos	62–73–7
Epichlorohydrin	106–89–8
Ethyl acrylate	140–88–5

TABLE 6 TO SUBPART OOOO OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical name	CAS No.
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide	75–21–8
Ethylene thiourea	96–45–7
Ethylidene dichloride (1,1-Dichloroethane)	75–34–3
Formaldehyde	50–00–0
Heptachlor	76–44–8
Hexachlorobenzene	118–74–1
Hexachlorobutadiene	87–68–3
Hexachloroethane	67–72–1
Hydrazine	302–01–2
Isophorone	78–59–1
Lindane (hexachlorocyclohexane, all isomers)	58–89–9
m-Cresol	108–39–4
Methylene chloride	75–09–2
Naphthalene	91–20–3
Nitrobenzene	98–95–3
Nitrosodimethylamine	62–75–9
o-Cresol	95–48–7
o-Toluidine	95–53–4
Parathion	56–38–2
p-Cresol	106–44–5
p-Dichlorobenzene	106–46–7
Pentachloronitrobenzene	82–68–8
Pentachlorophenol	87–86–5
Propoxur	114–26–1
Propylene dichloride	78–87–5
Propylene oxide	75–56–9
Quinoline	91–22–5
Tetrachloroethene	127–18–4
Toxaphene	8001–35–2
Trichloroethylene	79–01–6
Trifluralin	1582–09–8
Vinyl bromide	593–60–2
Vinyl chloride	75–01–4
Vinylidene chloride	75–35–4

Subpart RRRR—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture

■ 36. Section 63.4894 is added to read as follows:

§ 63.4894 What transfer efficiency requirement must I meet?

(a) For any spray-applied coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, you are required to meet a transfer efficiency of 65 percent or use the spray coating application method specified in paragraph (b) of this section. For any spray-applied coating operation(s) for which you use the emission rate with add-on controls option, the transfer efficiency requirement does not apply.

(b) As an alternative to the transfer efficiency requirement in paragraph (a) of this section, for any spray-applied coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, you may apply all spray-applied coatings using high-volume, low-pressure (HVLP) spray equipment; electrostatic application; airless spray equipment; or air-assisted airless spray equipment, except as specified in paragraphs (b)(1) of this section. You must also meet the requirements in paragraph (b)(2) of this section.

(1) You may apply spray-applied coatings using an alternative coating spray application method if you demonstrate that the alternative method achieves a transfer efficiency equivalent to or better than 65 percent, using a procedure equivalent to the California South Coast Air Quality Management District's ''Spray Equipment Transfer Efficiency Test Procedure for Equipment User, May 24, 1989'' (incorporated by reference, see § 63.14 of subpart A of this part) and following guidelines equivalent to ''Guidelines for Demonstrating Equivalency with District Approved Transfer Efficient Spray Guns, September 26, 2002'' (incorporated by reference, see § 63.14 of subpart A of this part). For the purposes of this section, when using these equivalent guidelines or procedures, you are not required to submit an application with the test plan or protocol to the Administrator, conduct the test in the presence of an Administrator, or submit test results to the Administrator for review or approval. Instead you must comply with the recordkeeping requirement in § 63.4130(l).

(2) All spray application equipment must be operated according to company procedures, local specified operating procedures, and/or the manufacturer's specifications, whichever is most stringent, at all times. If you modify spray application equipment, you must maintain emission reductions or a transfer efficiency equivalent to HVLP spray equipment, electrostatic application, airless spray equipment, or air-assisted airless spray equipment, and you must demonstrate equivalency according to paragraph (b)(1) of this section and comply with the recordkeeping requirement in § 63.4130(l).

■ 37. Section 63.4900 is revised to read as follows:

§ 63.4900 What are my general requirements for complying with this subpart?

(a) The affected source must be in compliance at all times with the applicable emission limitations specified in §§ 63.4890, 63.4892, and 63.4893.

(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.

(c) Reserved.

■ 38. Section 63.4910 is amended by revising paragraph (c)(9) introductory text and removing paragraph (c)(9)(v) to read as follows:

§ 63.4910 What notifications must I submit?

* * * * *

(c) * * *

(9) For the emission rate with add-on controls option, you must include the information specified in paragraphs (c)(9)(i) through (iv) of this section. However, the requirements in paragraphs (c)(9)(i) through (iii) of this section do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4961(j).

* * * * *

■ 39. Section 63.4920 is amended by:

■ a. Revising paragraph (a)(3) introductory text, paragraph (a)(4), and paragraphs (a)(5)(i) and (iv);

■ b. Adding new paragraph (a)(5)(v);

■ c. Revising paragraph (a)(6) introductory text and paragraph (a)(6)(v);

■ d. Adding new paragraph (a)(6)(vi);

■ e. Revising paragraph (a)(7) introductory text and paragraphs (a)(7)(vi), (a)(7)(ix) through (xi), and (a)(7)(xiii), (xvi), and (xvii);

■ f. Adding new paragraph (a)(7)(xviii); and

■ g. Removing and reserving paragraph (c).

The revisions and additions read as follows:

§ 63.4920 What reports must I submit?

(a) * * *

(3) *General requirements.* The semiannual compliance report must contain the information specified in paragraphs (a)(3)(i) through (v) of this section, and the information specified in paragraphs (a)(4) through (7) of this section that is applicable to your affected source.

* * * * *

(4) *No deviations.* If there were no deviations from the emission limits, operating limits, and work practice standards in §§ 63.4890, 63.4892, and 63.4893, respectively, that apply to you, the semiannual compliance report must include an affirmative statement that there were no deviations from the emission limits, operating limits, or work practice standards in §§ 63.4890, 63.4892, and 63.4893 during the reporting period. If there were no deviations from these emission limitations, the semiannual compliance report must include the affirmative statement that is described in either § 63.4942(c), § 63.4952(c), or § 63.4962(f), as applicable. If you used the emission rate with add-on controls option and there were no periods during which the continuous parameter monitoring systems (CPMS) were out-of-control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out-of-control during the reporting period as specified in § 63.8(c)(7).

(5) * * *

(i) Identification of each coating used that deviated from the emission limit, and of each thinner and cleaning material used that contained organic HAP, and the date, time, and duration each was used.

* * * * *

(iv) A statement of the cause of each deviation (including unknown cause, if applicable).

(v) The number of deviations and, for each deviation, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.4890, and a description of the method used to estimate the emissions.

(6) *Deviations: Emission rate without add-on controls option.* If you used the emission rate without add-on controls option, and there was a deviation from any applicable emission limit in § 63.4890, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (vi) of this section. You do not need to submit background data supporting these calculations, for example, information provided by materials suppliers or manufacturers, or test reports.

* * * * *

(v) A statement of the cause of each deviation (including unknown cause, if applicable).

(vi) The number of deviations, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.4890, and a description of the method used to estimate the emissions.

(7) *Deviations: Emission rate with add-on controls option.* If you used the emission rate with add-on controls option, and there was a deviation from the applicable emission limit in § 63.4890 or the applicable operating limit(s) in Table 1 to this subpart (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xv), (a)(7)(xvii), and (a)(7)(xviii) of this section. If you use the emission rate with add-on controls option and there was a deviation from the work practice standards in § 63.4893(b), the semiannual compliance report must contain the information in paragraph (a)(7)(xvi) of this section. You do not need to submit background data supporting these calculations, for example, information provided by materials suppliers or manufacturers, or test reports.

* * * * *

(vi) The date and time that each malfunction of the capture system or add-on control devices started and stopped.

* * * * *

(ix) For each instance that the CPMS was inoperative, except for zero (low-level) and high-level checks, the date, time, and duration that the CPMS was inoperative; the cause (including unknown cause) for the CPMS being inoperative, and descriptions of corrective actions taken.

(x) For each instance that the CPMS was out-of-control, as specified in § 63.8(c)(7), the date, time, and duration that the CPMS was out-of-control; the cause (including unknown cause) for the CPMS being out-of-control; and descriptions of corrective actions taken.

(xi) The date, time, and duration of each deviation from an operating limit in Table 1 to this subpart; and the date,

time, and duration of any bypass of the add-on control device.

* * * * *

(xiii) A breakdown of the total duration of the deviations from the operating limits in Table 1 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to control equipment problems, process problems, other known causes, and other unknown causes.

* * * * *

(xvi) For deviations from the work practice standards in § 63.4893(b), the number of deviations, and, for each deviation:

(A) A description of the deviation; the date, time, and duration of the deviation; and the actions you took to minimize emissions in accordance with § 63.4900(b).

(B) The description required in paragraph (a)(7)(xvi)(A) of this section must include a list of the affected sources or equipment for which a deviation occurred and the cause of the deviation (including unknown cause, if applicable).

(xvii) For deviations from an emission limit in § 63.4890 or operating limit in Table 1 to this subpart, a statement of the cause of each deviation (including unknown cause, if applicable).

(xviii) For each deviation from an emission limit in § 63.4890 or operating limit in Table 1 to this subpart, a list of the affected sources or equipment for which a deviation occurred, an estimate of the quantity of each regulated pollutant emitted over any emission limit in § 63.4890, and a description of the method used to estimate the emissions.

* * * * *

■ 40. Section 63.4921 is added to read as follows:

§ 63.4921 What are my electronic reporting requirements?

(a) You must submit the results of the performance test required § 63.4920(b) following the procedure specified in paragraphs (a)(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/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test, you must submit the results of the performance test to the EPA via the 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 (a)(1) of this section 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 Road, 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 (a)(1) of this section.

(b) Beginning on [date 2 years after date of publication of final rule in the **Federal Register**], the owner or operator shall submit the initial notifications required in § 63.9(b) and the notification of compliance status required in § 63.9(h) and § 63.4910(c) to the EPA via the CEDRI. CEDRI can be accessed through the EPA's CDX (*https://cdx.epa.gov*). The owner or operator must upload to CEDRI an electronic copy of each applicable notification in portable document format (PDF). The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is Confidential Business Information (CBI) shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the extensible markup language (XML) schema listed on the EPA's CEDRI 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 shall 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 Road, Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(c) Beginning on [date 2 years after date of publication of final rule in the **Federal Register**] or once the reporting template has been available on the CEDRI website for one year, whichever date is later, the owner or operator shall submit the semiannual compliance report required in § 63.4920 to the EPA via the CEDRI. CEDRI can be accessed through the EPA's CDX (*https://cdx.epa.gov*). The owner or operator must use the appropriate electronic template on the CEDRI website for this subpart or an alternate electronic file format consistent with the XML schema listed on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*). The date report templates become available will be listed on the CEDRI website. If the reporting form for the semiannual compliance report specific to this subpart is not available in CEDRI at the time that the report is due, you must submit the report to the Administrator at the appropriate addresses listed in § 63.13. Once the form has been available in CEDRI for one year, you must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted. Owners or operators who claim that some of the information required to be submitted via CEDRI is CBI shall submit a complete report generated using the appropriate form in CEDRI or an alternate electronic file consistent with the extensible markup language (XML) schema listed on the EPA's CEDRI 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 shall 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 Road, Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(d) If you are required to electronically submit a report through the 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 five 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.

(e) 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 five 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.

■ 41. Section 63.4930 is amended by revising paragraph (j) and paragraph (k) introductory text, and removing and reserving paragraphs (k)(1) and (2) to read as follows:

§ 63.4930 What records must I keep?

* * * * *

(j) For each deviation from an emission limitation reported under § 63.4920(a)(5), (a)(6), and (a)(7), a record of the information specified in paragraphs (j)(1) through (4) of this section, as applicable.

(1) The date, time, and duration of each deviation, as reported under § 63.4920(a)(5), (a)(6), and (a)(7).

(2) A list of the affected sources or equipment for which the deviation occurred and the cause of the deviation, as reported under § 63.4920(a)(5), (a)(6), and (a)(7).

(3) An estimate of the quantity of each regulated pollutant emitted over any applicable emission limit in § 63.4890 or any applicable operating limit(s) in Table 1 to this subpart, and a description of the method used to calculate the estimate, as reported under § 63.4920(a)(5), (a)(6), and (a)(7).

(4) A record of actions taken to minimize emissions in accordance with § 63.4900(b) and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(k) If you use the emission rate with add-on controls option, you must also keep the records specified in paragraphs (k)(3) through (8) of this section.

* * * * *

■ 42. Section 63.4931 is amended by revising paragraph (a) introductory text to read as follows:

§ 63.4931 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database. Any records required to be maintained by this subpart that are in reports that were 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.

* * * * *

■ 43. Section 63.4941 is amended by revising paragraphs (a)(1)(i), (a)(2) and (4), (b)(1), parameters ''$m_{volatiles}$'' and ''D_{avg}'' of Equation 1 of paragraph (b)(3), and paragraph (c) to read as follows:

§ 63.4941 How do I demonstrate initial compliance with the emission limitations?

* * * * *

(a) * * *

(1) * * *

(i) Count each organic HAP in Table 5 to this subpart that is measured to be present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other organic HAP compounds. For example, if toluene (not listed in Table 5 to this subpart) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (for example, 0.3791).

* * * * *

(2) *Method 24 in appendix A–7 of part 60.* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP. As an alternative to using Method 24, you may use ASTM D2369–10 (2015), ''Test Method for Volatile Content of Coatings'' (incorporated by reference, *see* § 63.14).

* * * * *

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP in Table 5 to this subpart that is present at 0.1 percent by mass or more and at 1.0 percent by mass or more for other organic HAP compounds. For example, if toluene (not listed in Table 5 to this subpart) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence.

* * * * *

(b) * * *

(1) *Test results.* You may use ASTM Method D2697–03 (2014), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings'' (incorporated by reference, *see* § 63.14), or D6093–97, ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer'' (incorporated by reference, *see* § 63.14), to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids. Alternatively, you may use another test method once you obtain approval from the Administrator according to the requirements of § 63.7(f).

* * * * *

(3) * * *

* * * * *

$M_{volatiles}$ = Total volatile matter content of the coating, including HAP, volatile organic compounds (VOC), water, and exempt compounds, determined according to Method 24 in appendix A–7 of part 60, or according to ASTM D2369–10 (2015) Standard Test Method for Volatile Content of Coatings (incorporated by reference, *see* § 63.14), grams volatile matter per liter coating.

D_{avg} = Average density of volatile matter in the coating, grams volatile matter per liter volatile matter, determined from test results using ASTM Method D1475–13, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products'' (incorporated by reference, *see* § 63.14), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–13 test results and other information sources, the test results will take precedence.

(c) *Determine the density of each coating.* You must determine the density of each coating used during the compliance period from test results using ASTM Method D1475–13, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products'' (incorporated by reference, *see* § 63.14), or information from the supplier or manufacturer of the material. If there is disagreement between ASTM Method D1475–13 test results and the supplier's or manufacturer's information, the test results will take precedence.

* * * * *

■ 44. Section 63.4951 is amended by revising paragraph (c) to read as follows:

§ 63.4951 How do I demonstrate initial compliance with the emission limitations?

* * * * *

(c) *Determine the density of each material.* You must determine the density of each coating, thinner, and cleaning material used during the compliance period according to the requirements in § 63.4941(c).

* * * * *

■ 45. Section 63.4961 is amended by revising paragraph (h) introductory text and paragraph (j)(3) to read as follows:

§ 63.4961 How do I demonstrate initial compliance?

* * * * *

(h) *Calculate the organic HAP emission reduction for controlled coating operations not using liquid-liquid material balance.* For each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction, using Equation 1 of this section. The calculation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings, thinners, and cleaning materials that are used in the coating operation served by the emission capture system and add-on control device during the compliance period. For any period of time a deviation specified in § 63.4962(c) or (d) occurs in the controlled coating operation, you must assume zero efficiency for the emission capture system and add-on control device. Equation 1 of this section treats the materials used during such a deviation as if they were used on an uncontrolled coating operation for the time period of the deviation:

* * * * *

(j) * * *

(3) Determine the mass fraction of volatile organic matter for each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the compliance period. You may determine the volatile organic matter mass fraction using Method 24 in appendix A–7 of part 60, ASTM D2369–10 (2015), ''Test Method for Volatile Content of Coatings'' (incorporated by reference, see § 63.14), or an EPA-approved alternative method. Alternatively, you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24, ASTM D2369–10 (2015), or an approved alternative method, the test method results will govern.

* * * * *

■ 46. Section 63.4963 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 63.4963 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.4960 according to the requirements in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or nonoperation do not constitute representative conditions for purposes of conducting a performance test. The owner or operator may not conduct performance tests during periods of malfunction. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 47. Section 63.4965 is amended by revising the paragraph (b) introductory text to read as follows:

§ 63.4965 How do I determine the add-on control device emission destruction or removal efficiency?

* * * * *

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either Method 25 or 25A in appendix A–7 of part 60, as specified in paragraphs (b)(1) through (3) of this section. You must use the same method for both the inlet and outlet measurements. You may use Method 18 in appendix A–6 of part 60 to subtract methane emissions from measured total gaseous organic mass emissions as carbon.

* * * * *

■ 48. Section 63.4967 is amended by revising paragraphs (a)(4) and (5) and paragraph (c)(3) introductory text to read as follows:

§ 63.4967 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) * * *

(4) You must maintain the CPMS at all times in accordance with § 63.4900(b) and have readily available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at

all times in accordance with § 63.4900(b).

* * * * *

(c) * * *

(3) For each gas temperature monitoring device, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (vi) of this section for each gas temperature monitoring device. For the purposes of this paragraph (c)(3), a thermocouple is part of the temperature sensor.

* * * * *

■ 49. Section 63.4981 is amended by revising the definition of ''Deviation'' to read as follows:

§ 63.4981 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:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limit, or operating limit, or work practice standard; or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

* * * * *

■ 50. Table 2 to Subpart RRRR of Part 63 is revised to read as follows:

Table 2 to Subpart RRRR of Part 63—Applicability of General Provisions to Subpart RRRR

You must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Applicable to subpart	Explanation
§ 63.1(a)(1)–(12)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart RRRR is also specified in § 63.4881.
§ 63.1(c)(1)	Applicability After Standard Established	Yes.	
§ 63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources	No	Area sources are not subject to subpart RRRR.
§ 63.1(c)(4)–(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.4981.
§ 63.3(a)–(c)	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Severability	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1)–(6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.4883 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources	Yes	Section 63.4883 specifies the compliance dates.
§ 63.6(e)(1)(i)	Operation and Maintenance	No	*See* § 63.4900(b) for general duty requirement.
§ 63.6(e)(1)(ii)	Operation and Maintenance	No.	
§ 63.6(e)(1)(iii)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)	SSM Plan	No.	
§ 63.6(f)(1)	Compliance Except During Startup, Shutdown, and Malfunction.	No.	
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Yes.	
§ 63.6(g)(1)–(3)	Use of Alternative Standards	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart RRRR does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(16)	Extension of Compliance	Yes.	
§ 63.6(j)	Presidential Compliance Exemption	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability	Yes	Applies to all affected sources using an add-on control device to comply with the standards. Additional requirements for performance testing are specified in §§ 63.4963, 63.4964, and 63.4965.
§ 63.7(a)(2)	Performance Test Requirements—Dates	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standards. Section 63.4960 specifies the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)	Performance Tests Required by the Administrator.	Yes.	

Citation	Subject	Applicable to subpart	Explanation
§ 63.7(b)–(d)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.7(e)(1)	Conduct of performance tests	No	*See* § 63.4963(a)(1).
§ 63.7(e)(2)–(4)	Conduct of performance tests	Yes.	
§ 63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standards.
§ 63.8(a)(1)–(3)	Monitoring Requirements—Applicability	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for monitoring are specified in § 63.4967.
§ 63.8(a)(4)	Additional Monitoring Requirements	No	Subpart RRRR does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)	Continuous Monitoring Systems (CMS) Operation and Maintenance.	No.	
§ 63.8(c)(2)–(3)	CMS Operation and Maintenance	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standards. Additional requirements for CMS operations and maintenance are specified in § 63.4967.
§ 63.8(c)(4)	CMS	No	Section 63.4967 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart RRRR does not have opacity or visible emissions standards.
§ 63.8(c)(6)	CMS Requirements	No	Section 63.4967 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)	CMS Out-of-Control Periods	Yes.	
§ 63.8(c)(8)	CMS Out-of-Control Periods Reporting	No	Section 63.4920 requires reporting of CMS out-of-control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart RRRR does not require the use of CEMS.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method	Yes	§ 63.8(f)(1)–(5).
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart RRRR does not require the use of CEMS.
§ 63.8(g)(1)–(5)	Data Reduction	No	Sections 63.4966 and 63.4967 specify monitoring data reduction.
§ 63.9(a)–(d)	Notification Requirements	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standards.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test	No	Subpart RRRR does not have opacity or visible emission standards.
§ 63.9(g)(1)–(3)	Additional Notifications When Using CMS	No	Subpart RRRR does not require the use of CEMS.
§ 63.9(h)	Notification of Compliance Status	Yes	Section 63.4910 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	Additional requirements are specified in §§ 63.4930 and 63.4931.
§ 63.10(b)(2)(i)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns.	No	*See* § 63.4930(j).
§ 63.10(b)(2)(ii)	Recordkeeping of Failures to Meet Standards	No	*See* § 63.4930(j).
§ 63.10(b)(2)(iii)	Recordkeeping Relevant to Maintenance of Air Pollution Control and Monitoring Equipment.	Yes.	
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During SSM.	No	*See* § 63.4930(j)(4) for a record of actions taken to minimize emissions during a deviation from the standard.

Citation	Subject	Applicable to subpart	Explanation
§ 63.10(b)(2)(vi)	Recordkeeping for CMS malfunctions	No	*See* § 63.4930(j) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(b)(2)(vii)–(xi)	Records	Yes.	
§ 63.10(b)(2)(xii)	Records	Yes.	
§ 63.10(b)(2)(xiii)		No	Subpart RRRR does not require the use of CEMS.
§ 63.10(b)(2)(xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(7)–(8)	Additional Recordkeeping Requirements for Sources with CMS.	No	*See* § 63.4930(j)(1) for records of periods of deviation from the standard, including instances where a CMS is inoperative or out-of-control.
§ 63.10(c)(10)–(14)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(15)	Records Regarding the SSM Plan	No.	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.4920.
§ 63.10(d)(2)	Report of Performance Test Results	Yes	Additional requirements are specified in § 63.4920(b).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart RRRR does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports	No	*See* § 63.4920(a)(7).
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart RRRR does not require the use of CEMS.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports	No	Section 63.4920(b) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart RRRR does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares	No	Subpart RRRR does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information/Confidentiality	Yes.	

■ 51. Subpart RRRR of Part 63 is amended to add Table 5 to read as follows:

TABLE 5 TO SUBPART RRRR OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS

Chemical name	CAS No.
1,1,2,2-Tetrachloroethane	79–34–5
1,1,2-Trichloroethane	79–00–5
1,1-Dimethylhydrazine	57–14–7
1,2-Dibromo-3-chloropropane	96–12–8
1,2-Diphenylhydrazine	122–66–7
1,3-Butadiene	106–99–0
1,3-Dichloropropene	542–75–6
1,4-Dioxane	123–91–1
2,4,6-Trichlorophenol	88–06–2
2,4/2,6-Dinitrotoluene (mixture)	25321–14–6
2,4-Dinitrotoluene	121–14–2
2,4-Toluene diamine	95–80–7
2-Nitropropane	79–46–9
3,3'-Dichlorobenzidine	91–94–1
3,3'-Dimethoxybenzidine	119–90–4
3,3'-Dimethylbenzidine	119–93–7
4,4'-Methylene bis(2-chloroaniline)	101–14–4
Acetaldehyde	75–07–0
Acrylamide	79–06–1
Acrylonitrile	107–13–1

TABLE 5 TO SUBPART RRRR OF PART 63—LIST OF HAZARDOUS AIR POLLUTANTS THAT MUST BE COUNTED TOWARD TOTAL ORGANIC HAP CONTENT IF PRESENT AT 0.1 PERCENT OR MORE BY MASS—Continued

Chemical name	CAS No.
Allyl chloride	107–05–1
alpha-Hexachlorocyclohexane (a-HCH)	319–84–6
Aniline	62–53–3
Benzene	71–43–2
Benzidine	92–87–5
Benzotrichloride	98–07–7
Benzyl chloride	100–44–7
beta-Hexachlorocyclohexane (b-HCH)	319–85–7
Bis(2-ethylhexyl)phthalate	117–81–7
Bis(chloromethyl)ether	542–88–1
Bromoform	75–25–2
Captan	133–06–2
Carbon tetrachloride	56–23–5
Chlordane	57–74–9
Chlorobenzilate	510–15–6
Chloroform	67–66–3
Chloroprene	126–99–8
Cresols (mixed)	1319–77–3
DDE	3547–04–4
Dichloroethyl ether	111–44–4
Dichlorvos	62–73–7
Epichlorohydrin	106–89–8
Ethyl acrylate	140–88–5
Ethylene dibromide	106–93–4
Ethylene dichloride	107–06–2
Ethylene oxide	75–21–8
Ethylene thiourea	96–45–7
Ethylidene dichloride (1,1-Dichloroethane)	75–34–3
Formaldehyde	50–00–0
Heptachlor	76–44–8
Hexachlorobenzene	118–74–1
Hexachlorobutadiene	87–68–3
Hexachloroethane	67–72–1
Hydrazine	302–01–2
Isophorone	78–59–1
Lindane (hexachlorocyclohexane, all isomers)	58–89–9
m-Cresol	108–39–4
Methylene chloride	75–09–2
Naphthalene	91–20–3
Nitrobenzene	98–95–3
Nitrosodimethylamine	62–75–9
o-Cresol	95–48–7
o-Toluidine	95–53–4
Parathion	56–38–2
p-Cresol	106–44–5
p-Dichlorobenzene	106–46–7
Pentachloronitrobenzene	82–68–8
Pentachlorophenol	87–86–5
Propoxur	114–26–1
Propylene dichloride	78–87–5
Propylene oxide	75–56–9
Quinoline	91–22–5
Tetrachloroethene	127–18–4
Toxaphene	8001–35–2
Trichloroethylene	79–01–6
Trifluralin	1582–09–8
Vinyl bromide	593–60–2
Vinyl chloride	75–01–4
Vinylidene chloride	75–35–4

[FR Doc. 2018–19018 Filed 9–11–18; 8:45 am]

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FEDERAL REGISTER

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Part III

The President

Federal Register
Vol. 83, No. 177
Wednesday, September 12, 2018

Presidential Documents

Title 3—

The President

Proclamation 9781 of September 7, 2018

National Days of Prayer and Remembrance, 2018

By the President of the United States of America

A Proclamation

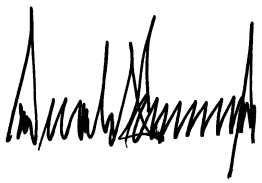
During the National Days of Prayer and Remembrance, we pause to honor the memory of the nearly 3,000 innocent people who were murdered by radical Islamist terrorists in the brutal attacks of September 11, 2001. We come together to pray for those whose lives were forever changed by the loss of a loved one. We strengthen our resolve to stand together as one Nation.

Darkness, hatred, and death marred that fateful September morning, 17 years ago. Our Nation watched with stunned silence, tears, anger, and utter disbelief as multiple tragedies unfolded. Although shaken and heartbroken, we were not defeated. Even in the midst of the devastation and sorrow, the indomitable spirit of our country emerged, as first responders selflessly rushed into the heart of danger. The evil attacks, intended to warp our way of life, instead ignited a flame of national unity, strengthened our will, and mobilized our volunteer spirit. The faith of our Nation may have been tested in the avenues of New York City, on the shores of the Potomac, and in a field near Shanksville, Pennsylvania, but our strength never faltered and our resilience never wavered.

The passage of time cannot ever lessen our commitment to freedom, our heartbreak for those who perished, our compassion for those who lost a friend or loved one, and our gratitude for the first responders and other heroes who braved death to save so many. We must recommit ourselves to ensuring that future generations of Americans always understand this defining moment in our Nation's history. During these annual days of prayer and remembrance, we pray that all find peace in the love of God, courage to face the future, and comfort in the knowledge that those who were lost will never be forgotten. We pray for guidance, wisdom, and protection for the men and women in uniform who fight each day to protect America from terrorism, and we pray for the unity of our Nation, both in times of peril and peace.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Friday, September 7, through Sunday, September 9, 2018, as National Days of Prayer and Remembrance. I ask that the people of the United States mark these National Days of Prayer and Remembrance with prayer, contemplation, memorial services, the visiting of memorials, the ringing of bells, and evening candle-light remembrance vigils. I invite all people around the world to share in these Days of Prayer and Remembrance.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of September, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2018–20012
Filed 9–11–18; 11:15 am]
Billing code 3295–F8–P

Presidential Documents

Presidential Determination No. 2018–11 of September 10, 2018

Continuation of the Exercise of Certain Authorities Under the Trading With the Enemy Act

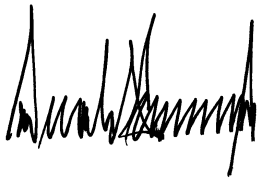
Memorandum for the Secretary of State [and] the Secretary of the Treasury

Under section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. 4305 note), and a previous determination on September 8, 2017 (82 *FR* 42927, September 13, 2017), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to expire on September 14, 2018.

I hereby determine that the continuation of the exercise of those authorities with respect to Cuba for 1 year is in the national interest of the United States.

Therefore, consistent with the authority vested in me by section 101(b) of Public Law 95–223, I continue for 1 year, until September 14, 2019, the exercise of those authorities with respect to Cuba, as implemented by the Cuban Assets Control Regulations, 31 C.F.R. part 515.

The Secretary of the Treasury is authorized and directed to publish this determination in the *Federal Register.*



THE WHITE HOUSE,
Washington, September 10, 2018

[FR Doc. 2018–20014
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Federal Register

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