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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

RIN 3206–AN52

Federal Employees' Group Life Insurance Program: Clarifying Annual Rates of Pay and Amending the Employment Status of Judges of the United States Court of Appeals for Veterans Claims

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to amend Federal Employees' Group Life Insurance Program (FEGLI) regulations to clarify the definition of annual rates of pay for insured employees and to address the status of judges of the United States Court of Appeals for Veterans Claims.

DATES: This final rule is effective September 24, 2020.

FOR FURTHER INFORMATION CONTACT: Ronald Brown, Policy Analyst, (202) 606–0004, or by email to *Ronald.Brown@opm.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FEGLI Program is administered by the Office of Personnel Management (OPM) in accordance with Chapter 87 of Title 5 of the U.S. Code and our implementing regulations (title 5, part 87, and title 48, part 21, of the Code of Federal Regulations). The FEGLI enabling legislation was signed August 17, 1954. Also, Congress enacted Public Law 84–356, on August 11, 1955, to provide continuation of life insurance during retirement.

The FEGLI Program covers approximately 4,261,000 employees and annuitants enrolled in Basic insurance, including approximately 1,229,000 employees and annuitants with Option B insurance that has not reduced to zero, approximately 1,160,000 employees and annuitants enrolled in Option A insurance, and approximately 924,000 employees and annuitants enrolled in Option C insurance that has not reduced to zero.

The FEGLI statute establishes the basic rules for benefits, enrollment, and participation, and provides that OPM ''shall specify the types of pay included in annual pay.'' See 5 U.S.C. 8704(c). In accordance, OPM has promulgated regulations defining the ''basic insurance amount'' for all FEGLI Program enrollees. Further, the ''basic insurance amount'' is defined by law using the term ''annual rate of basic pay.'' See 5 U.S.C. 8701(c). For FEGLI Program purposes, the basic insurance amount applies to Basic and Option B insurance.

This final regulation clarifies what is considered annual basic pay for FEGLI Program purposes but does not change how the annual rate of basic pay is computed, provide additional enrollment or change opportunities, or make other changes not in the existing FEGLI Program regulations. The final rule makes this clear in the revised sections of part 870 by aligning the FEGLI Program and retirement regulations, and, in the process, eliminating certain outdated regulatory provisions on annual rates of basic pay. This final regulation also includes a change enacted under Public Law 114–315 requiring that retired and current judges for the United States Court of Appeals for Veterans Claims be considered employees for purposes of FEGLI.

Discussion of Changes

On June 29, 2018, OPM published a proposed regulation (83 FR 30589) to clarify that annual basic pay for FEGLI includes any type of pay treated as basic pay for purposes of the retirement systems established under 5 U.S.C. chapters 83 and 84 consistent with applicable law or OPM regulation and to address the status of judges for the United States Court of Appeals for Veteran's Claims. OPM received no comments on the proposed rule. Accordingly, this final regulation adopts the proposed regulation with the changes pertaining to life insurance for Federal judges of the United States Court of Appeals for Veterans Claims referenced below.

The final regulation changes existing paragraphs 5 CFR 870.204(a)(1) and (a)(2) to clarify that basic pay for FEGLI purposes includes all payments that are retirement-creditable basic pay under 5 U.S.C. chapters 83 and 84. The final rule also deletes regulatory provisions that listed specific types of pay that are either obsolete or creditable as retirement basic pay. This includes revised paragraphs on locality pay and special pay supplements. These changes do not substantively affect pay that is creditable towards life insurance payment, but merely incorporate provisions that were previously contained in guidance into regulation through a reference to retirement law. This regulation codifies OPM's unwritten policy to consider pay that is creditable towards retirement as creditable towards life insurance payment.

The final regulation makes the required update at 5 CFR 870.101 to state that the United States Court of Appeals for Veterans Claims is now the employing office for judges of the United States Court of Appeals for Veterans Claims. This replaces the prior employing office, the United States Court of Veterans Appeals.

Also, the final regulation clarifies existing paragraph 5 CFR 870.703(e)(1) concerning certain Federal judges by adding the words ''a judge who retires under parts (i–vii)'' and striking ''one of the following.'' It also adds 5 CFR 870.703(e)(1)(vii) concerning retired Federal judges to reflect the statutory change under Public Law 114–315. The change reflects that 38 U.S.C. 7296 is amended by section 202 of Public Law 114–315 to state that a judge of the United States Court of Appeals for Veterans Claims who is retired is considered an employee under the FEGLI Program.

Expected Impact of the Final Rule

This rule clarifies the definition of annual rates of basic pay for the FEGLI Program and does not make substantive changes to its computation. It only affects the life insurance of a small number of federal employees and annuitants that are or have served as judges for the United States Court of Appeals for Veteran's Claims. The Court is authorized seven permanent active judges, and two additional judges,

appointed for 15-year terms as part of a temporary expansion provision.

Regulatory Procedures

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). This rule is not a significant regulatory action under Section 3(f) of Executive Order 12866 and was not reviewed by OMB.

Reducing Regulation and Controlling Regulatory Costs

This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 2, 2017) because this final rule is not significant under Executive Order 12866.

Regulatory Flexibility Act

The Office of Personnel Management certifies that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects a small number of Federal employees and annuitants.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3507(d); see 5 CFR part 1320) requires that the U.S. Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. OPM has determined this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 outside of an already approved existing collection under OMB Control No: 3206–0230, Life Insurance Election.

List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

For the reasons stated in the preamble, the Office of Personnel Management amends 5 CFR part 870 as follows:

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

■ 1. The authority citation for part 870 continues to read:

Authority: 5 U.S.C. 8716; Subpart J also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 870.302(a)(3)(ii) also issued under section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251, and section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 870.302(a)(3) also issued under section 145 of Pub. L. 106–522, 114 Stat. 2472; Secs. 870.302(b)(8), 870.601(a), and 870.602(b) also issued under Pub. L. 110–279, 122 Stat. 2604; Subpart E also issued under 5 U.S.C. 8702(c); Sec. 870.601(d)(3) also issued under 5 U.S.C. 8706(d); Sec. 870.703(e)(1) also issued under section 502 of Pub. L. 110–177, 121 Stat. Start Printed Page 773662542; Sec. 870.705 also issued under 5 U.S.C. 8714b(c) and 8714c(c); Public Law 104–106, 110 Stat. 521.

■ 2. Amend § 870.101 by revising paragraph (4) in the definition of *Employing Office,* to read as follows:

§ 870.101 Definitions.

* * * * *

Employing Office * * *

(4) The United States Court of Appeals for Veterans Claims is the employing office for judges of the United States Court of Appeals for Veterans Claims.

* * * * *

■ 3. Amend § 870.204 by revising paragraph (a) to read as follows:

§ 870.204 Annual rates of pay.

(a)(1) An employee's annual pay is the annual basic pay of the position as fixed by law or regulation, except as otherwise provided by specific provision of law or OPM regulation. Annual pay for this purpose includes the following:

(i) Any pay of a type that is treated as basic pay for purposes of the retirement systems established under 5 U.S.C. chapters 83 and 84, consistent with 5 U.S.C. 8331(3), and pay that is annual pay for purposes of the FEGLI Program as provided in Federal law and regulation;

(ii) Any geographic-based pay supplement that is equivalent to a locality-based comparability payment under 5 U.S.C. 5304; and

(iii) Any special pay supplement for a defined subcategory of employees that is equivalent to a special rate supplement under 5 U.S.C. 5305.

(2) Notwithstanding paragraph (a) (1) of this section, annual basic pay does not include the following:

(i) Bonuses, allowances, overtime pay, military pay, or any other pay to a covered civilian employee given in addition to the base pay of the position, except as otherwise provided by specific provision of law or OPM regulation.

(ii) Physicians comparability allowances under 5 U.S.C. 5948.

* * * * *

■ 4. Amend § 870.703 by revising paragraph (e)(1) introductory text and adding paragraph (e)(1)(vii) to read as follows:

§ 870.703 Election of Basic insurance.

* * * * *

(e)(1) For purposes of this part, a judge who retires under paragraphs (e)(1)(i) through (vii) of this section is considered to be an employee after retirement:

* * * * *

(vii) 38 U.S.C. 7296;

* * * * *

[FR Doc. 2020–18042 Filed 9–23–20; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6139; Product Identifier 2015–NM–061–AD; Amendment 39–21234; AD 2020–18–13]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This AD was prompted by the FAA's analysis of the Model 737 fuel system reviews conducted by the manufacturer. This AD requires modifying the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. This AD also provides alternative actions for cargo airplanes.

The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 29, 2020.

ADDRESSES:

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6139; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. The NPRM published in the **Federal Register** on May 3, 2016 (81 FR 26485). The NPRM was prompted by the FAA's analysis of the Model 737 fuel system reviews conducted by the manufacturer. The NPRM proposed to require modifying the FQIS to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. The NPRM also proposed to provide alternative actions for cargo airplanes.

The FAA is issuing this AD to address ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

The Air Line Pilots Association, International (ALPA) and National Air Traffic Controllers Association (NATCA) supported the intent of the NPRM. Additional comments from NATCA are addressed below.

Request To Withdraw NPRM: Unjustified by Risk

Airlines for America and the Cargo Airline Association, in consolidated comments (A4A/CAA), and KLM Royal Dutch Airlines (KLM) requested that the FAA withdraw the NPRM. A4A/CAA cited comments submitted by Boeing to Docket No. FAA–2012–0187 in which Boeing stated that the risk is ''less than extremely improbable'' and that Boeing does not believe that an unsafe condition exists. A4A/CAA noted that they consider the Boeing comments to be applicable to the airplane models in the NPRM. KLM stated that the NPRM does not clarify the necessity of additional actions beyond current requirements. KLM added that it understands that Boeing is not able to explain or substantiate the rationale behind the NPRM.

The FAA disagrees with the commenters' request. The FAA notes that Boeing's comments were addressed in the supplemental NPRM (SNPRM) for Docket No. FAA 2012–0187 (80 FR 9400, February 23, 2015) in the comment response for ''Request To Withdraw NPRM (77 FR 12506, March 1, 2012): Unjustified by Risk.'' As explained in that comment response, in addition to examining average risk and total fleet risk, the FAA examines the individual flight risk on the worst reasonably anticipated flights. In general, the FAA issues ADs in cases where reasonably anticipated flights with preexisting failures (either due to latent failure conditions or allowable dispatch configurations) are vulnerable to a catastrophic event due to an additional foreseeable single failure condition. This is because the FAA considers operation of flights vulnerable to a potentially catastrophic single failure condition to be an excessive safety risk to the passengers on those flights. The FAA has determined that the current requirements, including airworthiness limitations and critical design configuration control limitations (CDCCLs) do not adequately address the unsafe condition identified in this AD and therefore it is necessary to issue this final rule. The FAA has not changed this AD regarding this issue.

Request To Withdraw NPRM: Probability Analysis Inconsistent With Regulatory Requirements

A4A/CAA requested that the FAA withdraw the NPRM. A4A/CAA stated that the assumption of a single failure regardless of probability is inconsistent with 14 CFR part 25 regulatory requirements. A4A/CAA referred to the phrase ''regardless of probability'' associated with single failures. A4A/CAA acknowledged that the term is used with single failures in FAA Advisory Circular (AC) 25.981–1C,[1] ''Fuel Tank Ignition Source Prevention Guidelines,'' but since that term does not appear in 14 CFR 25.981(a)(3), the commenter considered its use arbitrary, possibly introducing additional requirements not included in that section. A4A/CAA stated that the ''worst reasonably anticipated flight'' is a flight with a latent FQIS failure and a high-flammability tank, and this ''latent plus one'' failure—regardless of probability of a single failure—is not consistent with 14 CFR 25.981(a)(3).

The FAA disagrees with the commenter's request. The FAA notes that the commenter's assertion about the intent of 14 CFR 25.981(a)(3) is incorrect based on both the language of the rule and on the published rulemaking documents. The absence of a probabilistic qualifier in both the ''from each single failure'' clause and in the ''from each single failure in combination with each latent failure not shown to be extremely remote'' clause in 14 CFR 25.981(a)(3) in fact means just that—there is no probabilistic qualifier intended by the regulation. The intent for single failures in these two scenarios to be considered regardless of probability of the single failure was explicitly stated in the NPRM for 14 CFR 25.981, as amended by amendment 25–102 (66 FR 23085, May 7, 2001) (''amendment 25–102''). That NPRM stated, in pertinent part, that it would also add a new paragraph (a)(3) to require that a safety analysis be performed to demonstrate that the presence of an ignition source in the fuel tank system could not result from ''any single failure, from any single failure in combination with any latent failure condition not shown to be extremely remote, or from any combination of failures not shown to be extremely improbable.'' These new requirements would define three scenarios that must be addressed in order to show compliance with the proposed paragraph (a)(3). ''The first scenario is that any single failure, regardless of the probability of occurrence of the failure, must not cause an ignition source. The second scenario is that any single failure, regardless of the probability occurrence, in combination with any latent failure condition not shown to be at least

[1] *https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_25.981-1C.pdf.*

extremely remote (*i.e.,* not shown to be extremely remote or extremely improbable), must not cause an ignition source. The third scenario is that any combination of failures not shown to be extremely improbable must not cause an ignition source.''

The preamble to the final rule for amendment 25–102 made a nearly identical statement, including the same uses of the phrase ''regardless of probability.'' The FAA has determined that it is necessary to proceed with issuance of this final rule as proposed. Further details and a description of the FAA's risk assessment can be found in responses to similar comments in a related SNPRM that addressed the same unsafe condition for Model 757 airplanes, in Docket No. FAA–2012–0187, and in the subsequently issued final rule, AD 2016–07–07, amendment 39–18452 (81 FR 19472, April 5, 2016) (''AD 2016–07–07''). No change to this AD was made in response to these comments.

Request To Withdraw NPRM: No New Data Since Fuel Tank Flammability Reduction (FTFR) Rulemaking

A4A/CAA requested that the FAA withdraw the NPRM based on a lack of new data since the issuance of the FTFR rule (73 FR 42444, July 21, 2008). A4A/CAA referred to the FTFR rule and decision to not require flammability reductions means (FRM) for all-cargo airplanes, and the FAA's intent to gather additional data and consideration of further rulemaking if flammability of these airplanes is excessive. A4A/CAA stated that since the FTFR rule, no additional data has been publicly introduced that would support or justify the applicability of this rulemaking to all-cargo aircraft. A4A/CAA also referred to the FAA's response to comments in the preamble to the SNPRM for Docket No. FAA–2012–0187, which documented the FAA's decision on applicability of FRM and cost estimates. A4A/CAA stated that the FAA response was misleading and not factual since manufacturers did not begin detailed designs to address the proposed unsafe condition until after the FTFR rule was published. A4A/CAA added that the FAA did not discuss other changes to the FQIS system in the FTFR rule.

The FAA disagrees with the commenter's request. The FAA notes that the FTFR rule and FQIS ADs are two different issues with separate FAA actions. The intent of the FTFR rule was to provide an order of magnitude reduction in the rate of fuel tank explosions for the airplanes affected by that rule through adding a new airworthiness standard for the flammability of fuel tanks. The FAA notes that the FTFR rule was never intended to be a replacement for the issuance of ADs to address identified unsafe conditions. An unsafe condition due to the identified FQIS latent-plus-single failure issue in high-flammability fuel tanks was determined to exist during the Special Federal Aviation Regulation (SFAR) 88 AD Board held by the FAA in 2003 using the guidance in FAA Policy Memorandum ANM100–2003–112–15, ''SFAR 88—Mandatory Action Decision Criteria,'' dated February 25, 2003,[2] for high-flammability fuel tanks, including the center fuel tank on Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. That same issue was not considered to be an unsafe condition in low-flammability wing fuel tanks based on that same policy memorandum. The FAA has not changed this AD regarding this issue.

Request To Withdraw NPRM: Arbitrary and Inconsistent Wire Separation Standards

A4A/CAA requested that the FAA withdraw the NPRM based on a lack of consistent design standards for FQIS wire separation. A4A/CAA assumed that the approved standard for the retrofit is a 2-inch wire separation minimum, which the commenter considered arbitrary and inconsistently applied. A4A/CAA reported that the amount of wiring capable of meeting that separation standard varies widely among airplane models. A4A/CAA also acknowledged that other separation methods were used in areas not meeting the 2-inch wire separation requirement.

The FAA does not agree with the commenter's request. The degree of physical isolation of FQIS wiring from other wiring, whether provided by physical distance or barrier methods, that is necessary to eliminate the potential for hot shorts due to wiring faults is dependent on the materials used, the wire securing methods, and the possible types of wiring faults. The FAA relied on the manufacturer to assess the details of the design and to propose the appropriate isolation measures. While 2 inches of physical separation may appear to be an arbitrary number, it was the distance proposed by the manufacturer as appropriate for their design based on analysis of the design details. The FAA has not changed this AD regarding this issue.

[2] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/dc94c3a46396950386256d5e006aed11/$FILE/Feb2503.pdf.*

Request To Withdraw NPRM: NPRM Arbitrary and Inconsistently Applied

A4A/CAA requested that the FAA withdraw the NPRM. A4A/CAA noted that airplanes with FRM are not included in the applicability, and the NPRM would therefore not fully address the unsafe condition. A4A/CAA added that the distinction between high- and low-flammability exposure time fuel tanks as used in the NPRM is arbitrary. A4A/CAA stated that an arbitrary differentiation of high- versus low-flammability as decisional criteria for the need for corrective action does not take into account the actual probability of the impact of the difference in flammability on the potential of catastrophic failure. A4A/CAA also stated that allowing the proposed alternative actions for cargo airplanes does not fully address the unsafe condition in the NPRM. A4A/CAA referenced the FAA's response to comments in AD 2016–07–07 regarding this issue. The commenter summarized numerical analysis showing no significant difference in risk between high- and low-flammability fuel tanks. A4A/CAA concluded that the FAA's risk analysis is arbitrary and an unsafe condition does not exist.

The FAA disagrees with the assertion that the NPRM is arbitrary and inconsistent. The NPRM follows defined policy in FAA Policy Memorandum ANM100–2003–112–15, and consistently applies the policy to several airplane models with similar unsafe conditions, similar to AD 2016–07–07. The FAA defined the difference between low- and high-flammability exposure time fuel tanks based on recommendations from the Aviation Rulemaking Advisory Committee Fuel Tank Harmonization Working Group (FTHWG). The preamble to the final rule for amendment 25–102, which amended 14 CFR 25.981, defined this difference as based upon comparison of ''the safety record of center wing fuel tanks that, in certain airplanes, are heated by equipment located under the tank, and unheated fuel tanks located in the wing.'' The FTHWG concluded that the safety record of fuel tanks located in the wings was adequate and that if the same level could be achieved in center wing fuel tanks, the overall safety objective would be achieved.

In the response to comments in the preamble to the final rule for AD 2016–07–07 referenced by the commenter, the FAA described why FRM or alternative actions for cargo airplanes provide an acceptable level of safety, even if they do not completely eliminate the non-compliance with 14 CFR 25.981(a)(3).

The fuel tank explosion history for turbojet/turbofan powered transport airplanes fueled with kerosene type fuels, outside of maintenance activity, has consisted of explosions of tanks that (1) are not conventional aluminum wing tanks and (2) spend a considerable amount of their operating time empty. The service history of conventional aluminum wing tanks has been acceptable. The intent of the difference in decision criteria in FAA Policy Memorandum ANM100–2003–112–15 was intended to give credit for this satisfactory service experience, and to differentiate between tanks with a level of flammability similar to that of a conventional wing tank and those with a significantly higher level of flammability.

The numerical analysis provided by the commenter is inconsistent with the fuel tank explosion service history. There are at least three identifiable physics-based reasons for that inconsistency. First, low-flammability tanks on most types of airplanes are main tanks that are the last tanks used. During a large portion of their operating time, the systems and structural features that have the potential to be ignition sources in the event of a failure condition are covered with liquid fuel, and an ignition source, if it occurs, is likely to be submerged. When a potential ignition source in a main tank is uncovered, it is likely to be later in the flight when the tank is cool and no longer flammable. The commenter's analysis does not account for this significant effect. Second, the numerical analysis used by the commenter assumes that any given ignition source has a random occurrence in time at the estimated probability, and that, in order for an explosion to occur, that random occurrence of an ignition source needs to coincide with the tank being in a flammable state. In fact, many of the identified ignition threats do not simply occur briefly and then go away. Instead, a fault occurs that, until it is discovered and corrected, repeatedly creates an ignition source, and repeatedly tests whether flammable conditions exist.

Third, the flammability of low-flammability fuel tanks is typically dependent on weather, and a low-flammability fuel tank may operate for months without ever becoming flammable. This is not true of most high-flammability fuel tanks, which typically have significant on-airplane heat sources driving their temperature. This factor can mean that, on some airplanes, an in-tank latent failure can occur and, after some period of time, be detected and corrected without the low-flammability tank ever having flammable conditions. The numerical analysis provided by the commenter does not account for these significant factors. The difference in likelihood of a failure that results in repeated ignition source events causing a tank explosion is not simply proportional to difference in the fleet average flammability of the tank for the reasons stated above. The FAA has not changed this AD regarding this issue.

Request To Withdraw NPRM: Overestimate of Fleet Average Flammability Exposure for All-Cargo Fleet in Alaska

A4A/CAA requested that the FAA withdraw the NPRM. The commenter stated that the FAA did not properly analyze the fleet average flammability for the center wing tank on Model 737–700 airplanes. The commenter stated that the known U.S. registered 737–700 all-cargo fleet without FRM installed will be operated almost solely in the state of Alaska for the foreseeable future. A4A/CAA noted that the mean average ambient temperature in Alaska is much lower than that used in the FAA's analysis. The commenter added that the air conditioning packs in an all-cargo configuration generate significantly less heat transfer to the center wing tank during normal operations than during the normal operations assumed by the FAA's analysis. A4A/CAA concluded that these factors reduce the fleet average flammability exposure for the all-cargo Model 737–700 airplanes to the level of the main wing tanks, and therefore, the unsafe condition does not exist.

The FAA does not agree to withdraw the NPRM. More than 1,100 Model 737–700 airplanes have been produced. The FAA foresees that, as these airplanes are replaced in passenger service by newer airplanes, a significant portion of them will be converted to all-cargo service and will eventually fly throughout the U.S. and the world. Multiple cargo-conversion designs for these airplanes have been approved, and other conversion designs are in the approval process. The FAA does not agree to base its decision about whether an AD is necessary for these airplanes on a flammability analysis based solely on the initial cargo conversions currently being largely operated in Alaska.

The FAA also does not agree that a new analysis considering operation of only the initial cargo-converted airplanes would result in a determination that the center fuel tank of those airplanes has a level of flammability comparable to a wing tank of conventional aluminum construction, and that the center fuel tank on those airplanes could therefore legitimately be classified as a low-flammability fuel tank. In addition, the FAA considers the unsafe condition determination described in the SNPRM for Docket No. FAA–2012–0187, in the response to comments section under, ''Request To Withdraw NPRM (77 FR 12506, March 1, 2012): Unjustified by Risk,'' to be applicable to these Model 737 airplanes.

Request To Remove Certain Business Jets From the Applicability

AMES Continuing Airworthiness Management Organization (AMES CAMO) requested that the proposed AD be revised to exclude Boeing Business Jets operated under 14 CFR part 91. AMES CAMO noted that the proposed AD excludes airplanes modified by the nitrogen generation system (NGS) system, but the NGS is mandated only on commercial airplanes operating under 14 CFR part 121. AMES CAMO suggested the proposed AD should only apply to airplanes operating under 14 CFR part 121.

The FAA disagrees with the commenter's request. Policy Memorandum ANM100–2003–112–15 is applicable to large transport airplanes except those specifically excluded by the Special Federal Aviation Regulation (SFAR) No. 88 regulation (in 14 CFR part 21). The FAA did not exclude non-air-carrier large transport airplanes from the other ADs determined to be necessary as a result of SFAR 88, and included non-air-carrier large transport airplanes in the FRM retrofit requirements added to 14 CFR part 125 in 2008. The unsafe condition addressed by this AD is applicable to Model 737 airplanes operated as business jets, except as specified in paragraph (c) of this AD. The FAA has not changed this AD regarding this issue.

Request To Require Cargo Airplane Option for All Airplanes

Boeing and All Nippon Airways (ANA) requested that the NPRM be revised to make the alternative actions for cargo airplanes specified in paragraph (h) of the proposed AD applicable to all airplanes. Boeing asked that the FAA provide a technical justification why the actions in paragraph (h) of the proposed AD apply only to cargo airplanes. ANA asked that the actions in paragraph (h) of the proposed AD be allowed for passenger airplanes not subject to the FTFR rule, suggesting this would provide more choices regarding how to comply with the proposed AD.

The FAA disagrees with the commenters' requests. As discussed in the comment response in the SNPRM

for Docket No. FAA–2012–0187, under the heading ''Requests To Withdraw NPRM (77 FR 12506, March 1, 2012) Based on Applicability'' the FAA does not consider the alternative action for cargo airplanes allowed by this AD to provide an adequate level of safety for passenger airplanes. The FAA is willing to accept a higher level of individual flight risk exposure for cargo flights that are not fail-safe due to the absence of passengers and the resulting significant reduction in occupant exposure on a cargo airplane versus a passenger airplane, and due to relatively low estimated individual flight risk that would exist on a cargo airplane after the corrective actions are taken. The FAA has not changed this AD regarding this issue.

Request To Exclude Certain Airplanes

United Airlines (UAL) noted that the FRM required by 14 CFR 121.1117 will have been installed on all affected airplanes in passenger configuration by December 26, 2018. The FAA infers UAL is requesting that the FAA revise the proposed AD to exclude airplanes that are affected by 14 CFR 121.1117. In addition, UAL suggested that the FAA either delete paragraph (g) of the proposed AD or make paragraph (g) of the proposed AD applicable only to airplanes in a cargo configuration that do not have an FRM installed and non-U.S.-registered airplanes that do not have to comply with FRM requirements.

The FAA disagrees with the commenter's request. There are other passenger-carrying airplanes operated under 14 CFR part 91 that are not required to install FRM. (The requirement to install FRM on all passenger-carrying airplanes operated by air carriers is in 14 CFR 121.1117.) The FAA notes that foreign air carriers may not have to comply with that requirement or similar requirements of their own civil aviation authority. The European Union Aviation Safety Agency (EASA), for example, has chosen not to require FRM to be retrofitted to in-service airplanes. This AD is intended to require any Model 737–600, –700, –700C, –800, –900, and –900ER series passenger airplane that does not have FRM, regardless of the rules under which it is operated, to address the FQIS latent-plus-one unsafe condition with a corrective action that fully complies with the FAA's airworthiness standards. This requirement fulfills the FAA's International Civil Aviation Organization to address unsafe conditions on all of the aircraft manufactured by the state of design, not just those aircraft whose operation is under the jurisdiction of the state of design. The FAA has not changed this AD regarding this issue.

Request To Clarify Certification Basis for Modification Requirements

NATCA recommended that the FAA revise paragraph (g) of the proposed AD to clearly state that the required FQIS design changes must comply with the fail-safe requirements of 14 CFR 25.901(c), as amended by amendment 25–46 (43 FR 50597, October 30, 1978); and 14 CFR 25.981(a) and (b), as amended by amendment 25–102; NATCA added that these provisions are required by SFAR 88.

The FAA does not agree to change paragraph (g) of this AD. While the FAA agrees that modifications to comply with paragraph (g) of this AD should be required to comply with the referenced regulations, that requirement already exists in 14 CFR part 21. No change to this AD is necessary.

Request To Address Unsafe Condition on All Fuel Tanks

NATCA recommended that the FAA require design changes that eliminate unsafe FQIS failure conditions on all fuel tanks on the affected models, regardless of fuel tank location or the percentage of time the fuel tank is flammable. NATCA referred to four fuel tank explosions in low-flammability exposure time fuel tanks identified by the FAA during FTFR rulemaking. NATCA stated that neither FRM nor alternative actions for cargo airplanes (*e.g.,* BITE checks (checks of built-in test equipment) followed by applicable repairs before further flight and modification of the center fuel tank FQIS wiring within 60 months) would bring the airplane into full regulatory compliance. NATCA added that the combination of failures described in the NPRM meets the criteria for ''known combinations'' of failures that require corrective action in FAA Policy Memorandum ANM100–2003–112–15.

The FAA disagrees with the commenter's request. The FAA has determined that according to Policy Memorandum ANM100–2003–112–15, the failure condition for the airplanes affected by this AD should not be classified as a ''known combination.'' While the FQIS design architecture is similar to that of the early Boeing Model 747 configuration that is suspected of contributing to the TWA Flight 800 fuel tank explosion, significant differences exist in the design of FQIS components and wire installations between the affected Boeing models and the early Model 747 airplanes such that the intent of the ''known combinations'' provision for low-flammability fuel tanks in the policy memorandum is not applicable. Therefore, this AD affects only the identified Boeing airplanes with high-flammability exposure time fuel tanks, as specified in paragraph (c) of this AD. The FAA provided a detailed response to similar comments in the preamble of the final rule for AD 2016–07–07. The FAA has not changed this final rule regarding this issue.

Request To Require Modification on All Production Airplanes

NATCA recommended that the FAA require designs that comply with 14 CFR 25.901(c) and 25.981(a)(3) on all newly produced transport airplanes. NATCA stated that continuing to grant exemptions to 14 CFR 25.901(c), as amended by amendment 25–40 (42 FR 15042, March 17, 1977); and 14 CFR 25.981(a)(3), as amended by amendment 25–102; has allowed continued production of thousands of airplanes with this known unsafe condition.

The FAA disagrees with the commenter's request. The recommendation to require production airplanes to fully comply with 14 CFR 25.901(c) and 14 CFR 25.981(a)(3) is outside the scope of this rulemaking. In addition, the FAA has implemented requirements for all large transport airplanes produced after September 2010 to include flammability reduction methods for tanks that would otherwise be high-flammability fuel tanks. Boeing incorporated this change into the Model 737 series airplanes that are still in production and the FAA has excluded those models from the applicability of this AD. The FAA has not changed this final rule regarding this issue.

Request To State That an Exemption is Required

Boeing requested that paragraph (h) of the proposed AD be revised to state that an exemption is required to accomplish the specified actions. Boeing stated that the FAA has identified that the BITE procedure and wire separation design changes specified in the proposed AD are not sufficient for compliance to 14 CFR 25.981(a) at the FQIS level. Boeing stated that an exemption is therefore needed prior to approval of the related design change.

The FAA agrees to clarify. The BITE check is not a type design change or alteration, so no exemption from the airworthiness standards is required for that action. The design data approval of any partial wire separation modification would require an exemption. That exemption would be obtained by the party seeking approval of the alteration data, and no further exemption would be required for the party using that data

to alter an aircraft. Obtaining such an exemption would be part of the certification process for such a change, so, the FAA does not find it necessary to include such information in paragraph (h) of this AD. In addition, some parties may choose to comply with the AD using a design change that fully complies with the airworthiness standards. The FAA also notes that the commenter appears to misunderstand why an exemption is needed for the required modification. The exemption is needed because, even with the modification, the FQIS does not comply with 14 CFR 25.901(c) and 14 CFR 25.981(a). The exemption does not authorize evaluation of a partial system for compliance with the system level requirement. The FAA has not changed this AD regarding this issue.

Request To Exclude Airplanes That Have Installed an Ignition Mitigation Means (IMM) or Flammability Impact Mitigation Means (FIMM)

AerSale stated that the Costs of Compliance section of the NPRM only cites the requirements in 14 CFR 121.1117 to install FRM, but 14 CFR 121.1117 paragraph (d)(1) states that IMM, FRM, or FIMM may be installed. AerSale suggested that all IMM, FRM, or FIMM installations with the approval of the FAA Oversight Office would meet the requirements of 14 CFR 121.1117. The FAA infers AerSale is requesting that the proposed AD be revised to exclude airplanes on which IMM or FIMM has been installed.

The FAA partially agrees with the commenter's request. The FAA agrees that IMM provides a level of risk reduction at least as great as that provided by FRM. The FAA does not agree that airplanes should be excluded from paragraph (c) of this AD based on the installation of FIMM alone. FIMM is applicable to design changes only, and is intended to ensure that, if a fuel tank design change would otherwise have increased the flammability of a fuel tank, the associated FIMM would ensure that the flammability of that tank is not increased by the design change. Therefore, FIMM itself does not address the need for FRM for the original tank design. The FAA has revised paragraph (c) of this AD to clarify that airplanes with an IMM approved by the FAA as compliant with certain regulations are excluded from this AD. This revision includes adding paragraphs (c)(1) and (2) of this AD.

Request To Record Only Certain Codes

Boeing requested that paragraph (h)(1) of the proposed AD be revised to only require corrective actions if a nondispatchable fault code pertaining to the center wing tank is recorded (as opposed to any nondispatchable fault code being recorded). Boeing stated that all FQIS wire separation changes in the proposed AD are limited to the center wing tank, therefore only built-in test equipment (BITE) check messages pertaining to the center wing tank are applicable to the proposed AD. In addition, Boeing stated that a final rule should be postponed until the FAA develops a list of ''nondispatchable fault codes'' in conjunction with Boeing.

The FAA agrees that the unsafe condition addressed by this AD is limited to the center wing tank. However, the FAA does not agree that the AD should be changed as proposed by Boeing. It is not clear to the FAA whether there may be FQIS BITE fault codes that are not clearly identified as related to the center wing tank but that may impact center tank circuits. Therefore, the FAA has determined that all nondispatchable fault codes recorded prior to the BITE check or as a result of the BITE check required by paragraph (h)(1) of this AD must be addressed. Operators or Boeing may request an alternative method of compliance (AMOC) under the provisions of paragraph (i) of this AD if they can provide sufficient data that a particular fault code does not pertain to the unsafe condition addressed by this AD.

Regarding the requirement to record and address fault codes read immediately prior to running the BITE check procedure, the FAA notes that the normal Boeing procedure for performing an FQIS BITE check is to first erase all of the existing fault codes, then perform the BITE check and troubleshoot any resulting new fault codes. For this AD, the FAA did not want any already stored fault codes to be potentially ignored due to erasure at the first step because some of the failures of concern can be intermittent. This AD therefore requires operators to record the existing codes before doing the BITE check, then do the BITE check and record the new codes that result from that BITE check, and then do the appropriate troubleshooting and corrective action for both sets of codes per the manufacturer's guidance. The FAA has not changed this AD regarding this issue.

Finally, the FAA does not agree to delay the final rule while Boeing proposes and obtains FAA agreement on a list of nondispatchable fault codes. The FAA requested service information from Boeing in 2016 to support the option for all-cargo airplanes on all of the Boeing models for which similar FQIS ADs were planned. Boeing chose at that time to develop service information only for the Model 747–400, 757, and 767 airplanes because at that time only those airplanes had affected cargo configuration for which Boeing was the design approval holder. The FAA agreed at that time to not require Boeing to develop a BITE check service bulletin for the Model 737 airplanes because Boeing had not yet developed a cargo conversion service bulletin or supplemental type certificate (STC) for the Model 737 airplanes. The FAA also considered that, because the BITE check instructions already existed in the Model 737 AMM, a BITE check service bulletin could be developed quickly at a later date if needed. In addition, the process for obtaining FAA agreement on a list of nondispatchable fault codes for the models Boeing chose to support took less than 30 days. If any service information is developed to support compliance with paragraph (h) of this AD it will be evaluated for approval using the AMOC process specified in paragraph (i) of this AD.

Request To Clarify Required Modification

ANA and Thomson Airways requested that the FAA provide clarification regarding how to accomplish the modification specified in paragraph (g) of the proposed AD. ANA noted that paragraph (h) of the proposed AD provides clear alternative actions for cargo airplanes. ANA stated that it could not identify how to modify the FQIS in passenger airplanes not subject to the FTFR rule. ANA noted that it contacted Boeing for clarification and Boeing stated that the FRM (which Boeing calls NGS) retrofit is the method of compliance for these airplanes. ANA asked that the FAA either clarify how to modify the FQIS system or accept an FRM retrofit as terminating action. Thomson Airways asked if the intent of the proposed AD is to install an NGS on affected airplanes. Thomson Airways also asked for clarification regarding the FQIS modification, stating that the proposed AD does not provide detail regarding modifying the FQIS itself, only the FQIS wiring.

The FAA agrees to clarify. As noted in paragraph (c) of this AD, airplanes on which FRM or IMM that meets certain FAA airworthiness standards is installed are excluded from this AD. Paragraph (g) of this AD requires modification of the FQIS on passenger airplanes to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions. The specifics of this modification may vary as long as the modification addresses the unsafe condition

identified in this AD and the procedures specified in paragraph (i) of this AD are used to approve the modification method. Operators may choose to install an FRM or IMM that meets the criteria specified in paragraph (c), which would then remove that airplane from the applicability of this AD, negating the need to do the modification specified in paragraph (g) of this AD. Otherwise, operators must obtain an AMOC as specified in paragraph (i) of this AD and modify their airplane accordingly. The FAA has not changed this AD regarding this issue.

Request To Provide a Detailed Cost-Effective Method of Compliance

Korean Air Lines (KAL), KLM, AMES CAMO, and Duco Schiere requested that the FAA provide a detailed and cost-effective method of compliance for passenger airplanes. KAL, AMES CAMO, and Duco Schiere noted that the proposed AD does not provide a clear means of compliance for the modification, such as a Boeing service bulletin. AMES CAMO noted that without a clear method of compliance, it is difficult to determine the extent of the required work. KAL and KLM noted that the majority of non-FAA operators are not required to retrofit the NGS system. KLM stated that since 2008 the level of fuel tank safety has been improved by the implementation of several costly SFAR 88 service bulletins, implementation of airworthiness limitations into the maintenance program and implementation of CDCCLs into maintenance documents. KLM mentioned that the modification would require an airplane to be out of service for a lengthy time. KLM added that the modification would add weight to the airplane and require additional fuel usage. KAL and KLM requested that the FAA encourage Boeing to develop an acceptable cost-effective method of compliance that does not require installation of an NGS.

The FAA agrees that the lack of service information for FQIS modifications makes it difficult to assess the required work to modify the FQIS, and acknowledges the high cost of NGS. However, the FAA disagrees with the commenters' requests. For passenger-carrying airplanes, the cost per airplane of providing a modification of the FQIS that fully complies with the airworthiness standards was estimated by Boeing and their FQIS vendor (Goodrich) prior to the issuance of the NPRM to be comparable to the cost of installing NGS. Based on that cost estimate, Boeing proposed that they not be required to develop a fully compliant FQIS modification for passenger airplanes because it would not provide significant savings to operators and NGS would provide a greater safety benefit. The FAA agreed.

The FAA's understanding is that Boeing's current position is the same, and that they do not plan to develop a fully compliant FQIS modification for passenger airplanes to address paragraph (g) of this AD. However, if service information is developed, approved, and available in the future, operators may request approval under the provisions of paragraph (i) of this AD to use approved service instructions as an AMOC for the requirements of this AD, or the FAA may approve the service information as a global AMOC for this AD.

Request To Clarify Intent of Different Requirements in Paragraphs (g) and (h) of the Proposed AD

Boeing asked that the FAA clarify the intent of the differences between the requirements in paragraphs (g) and (h) of the proposed AD. Boeing stated that it is unclear what change is expected for compliance with paragraph (g) of the proposed AD versus paragraph (h) of the proposed AD. Boeing suggested that one possibility is that paragraph (g) of the proposed AD is intended to cover development of transient suppression, while paragraph (h) of the proposed AD is intended to cover compliance via FQIS wire separation and BITE checks.

The FAA agrees to clarify. Paragraph (g) of this AD is intended to require, for passenger airplanes that are subject to this AD, a modification to the FQIS that makes it fully compliant with 14 CFR 25.981(a), as amended by amendment 25–102. A fully compliant FQIS modification might include wire separation or transient suppression devices, but due to the system design, either option would likely require changes to the FQIS processor.

Paragraph (h) of this AD is intended to allow, as an optional method of compliance for all-cargo airplanes only, a change that isolates the center fuel tank circuit wiring between the FQIS processor and the fuel tanks from other wiring that is connected to a sufficient power source to create an ignition source in the event of a hot short between the wiring. Such a change would not be fully compliant with the airworthiness regulations (hence the requirement to obtain a partial exemption from 14 CFR 25.901(c) and 14 CFR 25.981(a) for any such design change), but would provide a level of risk reduction that the FAA considers acceptable for all-cargo airplanes and would significantly reduce the costs relative to a fully compliant modification.

Request To Change Compliance Time

A4A/CAA and Thomson Airways requested that the FAA extend the compliance time for the modifications specified in paragraphs (g) and (h)(2) of the proposed AD to 72 months. A4A/CAA stated that the compliance time should match that of AD 2016–07–07 because the unsafe condition and corrective actions are similar. A4A/CAA stated that although service information was not yet available, the compliance time should align with major maintenance schedules, but should be not less than 72 months after service information is available. Thomson Airways noted that 72 months would provide operators a better opportunity to work within existing maintenance program schedules.

Conversely, NATCA recommended that the FAA reject requests for a compliance time longer than 5 years as proposed in the NPRM. Assuming final rule issuance in 2016, NATCA estimated that a 5-year compliance time would result in required compliance by 2021–25 years after the TWA Flight 800 fuel tank explosion that led to the requirements in SFAR 88, and 20 years after issuance of SFAR 88.

The FAA agrees with Thomson Airways and A4A/CAA's request to extend the compliance time, and disagrees with NATCA's request. The FAA received similar requests to extend the compliance time from several commenters regarding the NPRMs for the FQIS modification on other airplanes. The FAA disagrees with establishing a compliance time based on issuance of any service information that is not yet approved or available. The FAA has determined that a 72-month compliance time is appropriate and will provide operators adequate time to prepare for and perform the required modifications without excessive disruption of operations. The FAA has determined that the requested moderate increase in compliance time will continue to provide an acceptable level of safety. The FAA has changed paragraphs (g) and (h)(2) of this AD accordingly.

Request To Change Compliance Time Relative to Receipt of Exemption

Boeing requested that the FAA revise the compliance time for the proposed AD to ''60 months after an exemption from [14 CFR 25.981(a)(3)] is FAA-approved.'' Boeing suggested that it would take 6 months to develop an exemption petition and 6 months for the FAA to approve that exemption. Boeing

added that the FAA has previously identified that the BITE checks procedure and wire separation design were not sufficient for compliance with 14 CFR 25.981(a)(3).

The FAA disagrees with the commenter's request. An AD typically does not include a compliance time that is based on an optional action that an operator or manufacturer might choose to take. In addition, the FAA notes that Boeing has already received exemptions for the Model 747–400, 757, and 767 airplanes, and could quickly petition for and obtain approval of a similar exemption for the Model 737 airplanes using an almost identical petition. The FAA's flow time to disposition such a petition would be approximately 90 days, during which time Boeing could still proceed with development of the modification. In addition, as noted above, the compliance time for paragraph (h)(2) of this AD has been extended to 72 months, giving additional time for operators or manufacturers to obtain an exemption.

Request To Extend Repetitive BITE Check Interval

Boeing requested that paragraph (h)(1) of the proposed AD be revised to extend the repetitive check interval for the BITE checks. Boeing requested that the repetitive interval be extended to 750 flight hours to match the repetitive intervals specified in the service information for a related AD.

The FAA agrees for the reason provided, and because 750 flight hours better aligns with most operators' maintenance programs. The FAA intended to propose a 750 flight hour interval, but inadvertently specified 650 flight hour intervals in the proposed AD. The FAA has revised paragraph (h)(1) of this AD to specify repetitive intervals of 750 flight hours.

Request To Revise Costs of Compliance Section To Account for Cargo Conversions

A4A/CAA noted that the Costs of Compliance section in the NPRM stated all U.S.-registered airplanes are currently operated as passenger airplanes and that ''because of the requirement in 14 CFR 121.1117 to install FRM on U.S. air-carrier passenger airplanes by the end of 2017, it is likely that no U.S. airplanes would actually be affected by this proposed AD.'' A4A/CAA noted that 14 CFR 121.1117 does not require FRM to be installed on all-cargo airplanes. The commenter stated that U.S.-registered Model 737–700 all-cargo airplanes without FRM installed will be operated by 2017. The FAA infers that A4A/CAA is requesting that the Costs of Compliance section be revised to reflect the number of all-cargo U.S.-registered airplanes.

The FAA agrees that there are currently U.S.-registered Model 737–700 all-cargo airplanes operating without FRM installed. The FAA has revised the Costs of Compliance section of this AD to reflect these airplanes.

Request To Acknowledge Impacts on Intrastate Aviation in Alaska

A4A/CAA stated that the proposed AD will interrupt aviation transportation to remote Alaskan communities not serviced by other modes of transportation, contrary to the statement that the proposed AD ''will not affect intrastate aviation in Alaska.'' A4A/CAA noted that, beginning in 2017, Model 737–700 airplanes in an all-cargo configuration and without FRM installed will provide transportation to remote Alaskan communities. A4A/CAA added that these airplanes would be required to be removed from service for an extended time while accomplishing the proposed modification, which the FAA estimates would take 1,200 work-hours.

The FAA acknowledges that, since the NPRM was issued, at least one major operator began using converted Model 737–700 cargo airplanes for intrastate flights in Alaska. The few remote communities in Alaska that have airports suitable for a Model 737–700 are unlikely to be served solely by Model 737–700 airplanes. The FAA has considered the potential for impact to these communities due to Model 737–700 airplanes being temporarily out of service for the required modification actions, and considers the safety concern to outweigh those potential impacts. This AD was developed with regard to minimizing the economic impact on operators to the extent possible, consistent with the safety objectives of this AD. In any event, the Federal Aviation Regulations (14 CFR part 39) require operators to correct an unsafe condition identified on an airplane to ensure operation of that airplane in an airworthy condition. The FAA has determined in this case that the requirements are necessary and the indirect costs would be outweighed by the safety benefits of the AD. The FAA considers the 72 month compliance adequate time for operators to schedule the required modifications without excessive disruption of service to those communities. However, if an operator considers that a moderate delay in the incorporation of the required modification would significantly reduce the impact on their operations or the impact on service to a remote community in Alaska while still providing an acceptable level of safety, that operator can use the procedures in paragraph (i) of this AD to explain those impacts and request approval of an extension of the compliance time.

Request To Require Design Changes From Manufacturers

NATCA recommended that the FAA follow the agency's compliance and enforcement policy to require manufacturers to develop the necessary design changes soon enough to support operators' ability to comply with the proposed requirements. NATCA noted that SFAR 88 required manufacturers to develop all design changes for unsafe conditions identified by their SFAR 88 design reviews by December 2002, or within an additional 18 months if the FAA granted an extension.

The FAA acknowledges the commenter's concerns. However, any enforcement action is outside the scope of this rulemaking. The FAA has not changed this final rule regarding this issue.

Request To Clarify the Applicability

Duco Schiere stated the NPRM is not clear about which configurations (passenger/cargo, with/without NGS installed) of Model 737 airplanes are applicable to the AD. The FAA infers the commenter is requesting the FAA clarify the applicability.

The FAA agrees to clarify. This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes (including passenger and cargo airplanes) except for airplanes having configurations identified in paragraphs (c)(1) and (2) of this AD. Airplanes with an installed NGS that meets the criteria specified in paragraph (c)(1) of this AD are excluded from this AD. Airplanes with an installed IMM such as fuel tank explosion suppression foam that meets the criteria specified in paragraph (c)(2) of this AD are also excluded from this AD.

Clarification of BITE Check Compliance Time

The FAA has revised paragraph (h)(1) of this AD to clarify the compliance time for the BITE check relative to the requirement to record the fault codes. The FAA recognized that operators might interpret the proposed requirements for alternative actions for cargo airplanes as allowing additional flights prior to performing the BITE check after first recording the fault codes. The FAA intended for operators to perform the BITE check immediately after recording the fault codes to address

both the fault codes that exist prior to performing the BITE check and any new codes that are identified during the BITE check.

Clarification of Costs of Compliance

The FAA had previously determined, as specified in the NPRM, that the work involved for the cargo airplane wire separation modification would take 230 work-hours. Boeing has since provided an updated estimate of 74 work-hours for the alternative modification for cargo airplanes. The FAA has revised the cost estimate for the modification accordingly in this final rule.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. The FAA has determined that these minor changes:

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

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Costs of Compliance

There are approximately 1,393 U.S.-registered Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes in service. Several of those airplanes are currently operated as cargo airplanes. Beginning with line number 2620, however, Boeing has delivered airplanes with FRM/NGS installed. The FAA estimates that 831 affected airplanes on the U.S. Register were delivered without FRM installed, but the agency does not know the number of airplanes that have had FRM installed post-production. Because of the requirement in 14 CFR 121.1117 to install FRM on U.S. air-carrier passenger airplanes by the end of 2017, it is likely that no U.S. passenger airplanes would actually be affected by this AD. However, U.S.-registered cargo airplanes may be affected by this AD. For any affected airplane, the FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS: REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product
Modification	1,200 work-hours × $85 per hour = $102,000.	$200,000	$302,000.

ESTIMATED COSTS: ALTERNATIVE ACTIONS

Action	Labor cost	Parts cost	Cost per product
BITE check	1 work-hour × $85 per hour = $85 per check.	$0	$85 per check (4 checks per year, $340 per year).
Wire separation	74 work-hours × $85 per hour = $6,290	10,000	16,290.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–18–13 The Boeing Company: Amendment 39–21234; Docket No. FAA–2016–6139; Product Identifier 2015–NM–061–AD.

(a) Effective Date

This AD is effective October 29, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category, excluding airplanes identified in paragraphs (c)(1) and (2) of this AD.

(1) Airplanes equipped with a flammability reduction means (FRM) approved by the FAA as compliant with the fuel tank flammability reduction (FTFR) requirements of 14 CFR 25.981(b) or 26.33(c)(1).

(2) Airplanes equipped with an ignition mitigation means (IMM) approved by the FAA as compliant with the FTFR requirements of 14 CFR 25.981(c) or 26.33(c)(2).

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by the FAA's analysis of the Model 737 fuel system reviews conducted by the manufacturer. The FAA is issuing this AD to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Modification

Within 72 months after the effective date of this AD, modify the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the center fuel tank due to electrical fault conditions, using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(h) Alternative Actions for Cargo Airplanes

For airplanes used exclusively for cargo operations: As an alternative to the requirements of paragraph (g) of this AD, do the actions specified in paragraphs (h)(1) and (2) of this AD, using methods approved in accordance with the procedures specified in paragraph (i) of this AD. To exercise this alternative, operators must perform the first inspection required under paragraph (h)(1) of this AD within 6 months after the effective date of this AD. To exercise this alternative for airplanes returned to service after conversion of the airplane from a passenger configuration to an all-cargo configuration more than 6 months after the effective date of this AD, operators must perform the first inspection required under paragraph (h)(1) of this AD prior to further flight after the conversion.

(1) Within 6 months after the effective date of this AD, record the existing fault codes stored in the FQIS processor and before further flight thereafter do a BITE check (check of built-in test equipment) of the FQIS. If any nondispatchable fault code is recorded prior to the BITE check or as a result of the BITE check, before further flight, do all applicable repairs and repeat the BITE check until a successful test is performed with no nondispatchable faults found, using a method approved in accordance with the procedures specified in paragraph (i) of this AD. Repeat these actions thereafter at intervals not to exceed 750 flight hours. Modification as specified in paragraph (h)(2) of this AD does not terminate the repetitive BITE check requirement of this paragraph.

(2) Within 72 months after the effective date of this AD, modify the airplane by separating FQIS wiring that runs between the FQIS processor and the center tank wing spar penetrations, including any circuits that might pass through a main fuel tank, from other airplane wiring that is not intrinsically safe, using methods approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

For more information about this AD, contact Jon Regimbal, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3557; email: *Jon.Regimbal@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued on August 26, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–19809 Filed 9–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2020–0809]

14 CFR Parts 61, 63, 65 and 67

Settlement Policy for Legal Enforcement Actions Involving Medical Certificate-Related Fraud, Intentional Falsification, Reproduction, or Alteration

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

ACTION: Notification of enforcement policy.

SUMMARY: The FAA is adopting a policy for the prompt settlement of legal enforcement actions against individuals who have violated FAA regulations proscribing any: Fraudulent or intentionally false statement on an application for a medical certificate or other document used to show compliance with any requirement for a medical certificate; reproduction of a medical certificate for fraudulent purposes; or alteration of a medical certificate. The policy is expected to afford eligible individuals who hold an airman or ground instructor certificate and who are the subject of such a legal enforcement action the opportunity to apply for a new airman or ground instructor certificate sooner than in the absence of this policy.

DATES: This notification of enforcement policy is effective September 30, 2020.

FOR FURTHER INFORMATION CONTACT: James Barry, Manager, Policy/Audit/Evaluation, Enforcement Division, AGC–300, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–8198; *james.barry@faa.gov;* or Brandon Goldberg, Attorney, Enforcement Division, AGC–300, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–5230; *brandon.goldberg@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under longstanding FAA policy, the revocation of airman, ground instructor, and medical certificates, and the withdrawal of all special issuances or SODAs, is the appropriate sanction for violations of 14 CFR 67.403(a)(1) through (4).[1] The period between the discovery of an apparent violation of 14 CFR 67.403(a)(1) through (4) and, if appropriate, the issuance of an order revoking airman, medical, and ground instructor certificates can be lengthy, making the date on which an order of revocation will be issued uncertain. Investigative personnel compile an

[1] Under 14 CFR 67.403(a)(1)–(4), a person is prohibited from making or causing to be made: A fraudulent or intentionally false statement on any application for a medical certificate or on a request for any Authorization for Special Issuance of a Medical Certificate (Authorization) or Statement of Demonstrated Ability (SODA); a fraudulent or intentionally false entry in any logbook, record, or report that is kept, made, or used to show compliance with any requirement for any medical certificate or for any Authorization or SODA; a reproduction, for fraudulent purposes, of any medical certificate; or an alteration of any medical certificate. Under 14 CFR 67.403(b)(1)–(2), a violation of 14 CFR 67.403(a)(1)–(4) is a basis for: Suspending or revoking all airman, ground instructor, and medical certificates and ratings held by the violator and withdrawing all Authorizations or SODA's held by the violator. *See also* FAA Order 2150.3C, chap. 9, para. 8 (revocation is appropriate for a violation of 14 CFR 67.403(a)(1)–(4) since such a violation demonstrates a lack of qualification to hold a certificate).

enforcement investigative report (EIR) containing evidence relating to the apparent violation. Such investigations include gathering, among other evidence, legal and/or medical documentation from various governmental entities or healthcare providers. Investigative personnel also include as evidence letters of investigation (LOIs) to apparent violators and any information provided in response to LOIs. Following the compilation of evidence, investigative personnel provide analyses as to how the evidence relates to the violation and recommended sanction type. The EIR is subject to various levels of review within the FAA program office. If the program office deems the EIR sufficient, it transmits the EIR to the Office of the Chief Counsel's Enforcement Division (AGC–300) for evaluation and, if appropriate, initiation of legal enforcement action. Accordingly, a variety of factors affect the timing of the issuance of an order of revocation for an apparent violation of 14 CFR 67.403(a)(1) through (4).

In addition, FAA regulations generally proscribe individuals whose airman and ground instructor certificates have been revoked from applying for new airman and ground instructor certificates for one year following the effective date of an order of revocation. Under 14 CFR 61.13(d)(2), unless otherwise authorized by the Administrator, a person whose pilot, flight instructor, or ground instructor certificate has been revoked may not apply for any certificate, rating, or authorization for one year after the date of revocation. Under 14 CFR 63.11(d), unless the order of revocation provides otherwise, a person whose flight engineer or flight navigator certificate is revoked may not apply for the same kind of certificate for one year after the date of revocation. Under 14 CFR 65.11(d)(1) and (2), unless the order of revocation provides otherwise, a person whose air traffic control tower operator, aircraft dispatcher, or parachute rigger certificate is revoked may not apply for the same kind of certificate for one year after the date of revocation; and a person whose mechanic or repairman certificate is revoked may not apply for either of those kinds of certificates for one year after the date of revocation.[2] In short, following the requisite investigation and case evaluation processes that take place prior to the issuance of an order revoking airman and ground instructor certificates for a 14 CFR 67.403(a)(1) through (4) violation, an applicant may have to wait up to one year following the issuance of an order to make application for any new such certificate.

The prompt settlement policy announced in this notice for violations of 14 CFR 67.403(a)(1)–(4) will generally afford an individual eligible for the policy the opportunity to apply for any airman and ground instructor certificate sooner than had the case proceeded in the absence of the policy. The individual would still be subject to the one-year post-revocation bar applicable to applications for new airman or ground instructor certificates, but would have the opportunity to apply for such certificates generally sooner than under the current process because much of the investigation and evaluation processes would be abbreviated or eliminated. Moreover, this policy will generally add predictability as to when the FAA would issue the order and, accordingly, when an individual could submit an application for a new airman or ground instructor certificate.

The policy will also apply when any controlled substance conviction or motor vehicle action that is the basis for a violation of 14 CFR 61.15(a), (d), or (e) also forms the basis for an intentional falsification violation under 14 CFR 67.403(a)(1).[3] For example, the policy will apply to: (1) Violations of 14 CFR 67.403(a)(1) and 14 CFR 61.15(e) when the violations were related to the same driving under the influence conviction; (2) violations of 14 CFR 67.403(a)(1) and 14 CFR 61.15(a) when the violations were related to the same controlled substance conviction; and (3) violations of 14 CFR 67.403(a)(1) and 14 CFR 61.15(d) and (e) when the violations were related to the same motor vehicle action or actions.

In 2018, the FAA implemented a similar policy for commercial pilots who violate certain FAA drug and alcohol-related prohibitions, including those involving a disqualifying DOT drug or alcohol test result or refusal to submit to DOT drug or alcohol testing.[4] The appropriate sanction for such violations is the revocation of airman, ground instructor, and medical certificates held by the commercial pilot. As with violations of 14 CFR 67.403(a)(1) through (4), a violation of drug and alcohol testing regulations is subject to comprehensive investigation, which, in turn, is subject to program office and Office of the Chief Counsel review before the FAA issues a revocation order. Further, as mentioned above, an individual whose part 61 certificate is revoked may not apply for a new part 61 certificate, rating, or authorization for one year after the effective date of the revocation order.[5] The FAA's drug and alcohol prompt settlement policy allows eligible pilots to promptly settle their case with the FAA and avoid a potentially lengthy investigation and FAA case evaluation process. In turn, eligible pilots can benefit from an earlier start of the one-year application waiting period specified in 14 CFR 61.13(d)(2). Further, the policy affords both the pilot and FAA the opportunity to better allocate resources.

Statement of Policy

Under this prompt settlement policy, following the issuance of an LOI for violations of 14 CFR 67.403(a)(1)–(4), an eligible individual who is the subject of the legal enforcement action would have the opportunity to enter into a settlement agreement providing for (1) the acceptance of the prompt issuance of an order revoking the individual's airman or ground instructor certificates; (2) the immediate surrender of the affected certificates in response to the order; and (3) the waiver of appeal rights. This policy is expected to afford eligible individuals who are the subject of legal enforcement action for violating 14 CFR 67.403(a)(1)–(4) the opportunity to apply for a new airman certificate under 14 CFR parts 61, 63, and 65, or a new ground instructor certificate under 14 CFR part 61, sooner than in the absence of such a policy. The policy will also apply when any controlled substance conviction or motor vehicle action that was the basis for a violation of 14 CFR 61.15(a), (d), or (e) also forms the basis for an intentional falsification violation under 14 CFR 67.403(a)(1). Under this policy, the FAA will send notification to individuals who appear to have violated those provisions that they may contact the applicable

[2] The one-year application restriction applicable to revoked 14 CFR parts 61, 63, and 65 certificates does not apply to certificates issued under 14 CFR part 67.

[3] Under 14 CFR 61.15(a), a conviction for the violation of any Federal or State statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marijuana, or depressant or stimulant drugs or substances is grounds for suspension or revocation of any certificate, rating, or authorization issued under 14 CFR part 61. Under 14 CFR 61.15(d), except for a motor vehicle action that results from the same incident or arises out of the same factual circumstances, a motor vehicle action occurring within three years of a previous motor vehicle action is grounds for suspension or revocation of any certificate, rating, or authorization issued under 14 CFR part 61. Under 14 CFR 61.15(e), each person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA not later than 60 days after the motor vehicle action.

[4] *See* 83 FR 34040 (Jul. 19, 2018).

[5] 14 CFR 61.13(d)(2).

program office within ten days of receipt of the notice to request consideration for a prompt settlement of the legal enforcement action. The FAA will send the notification in conjunction with the LOI.

Following an individual's request to be considered for application of this policy, the FAA will determine the individual's eligibility for the policy. The policy is not available when there is a question about an individual's qualification to hold a part 61, 63, or 65 certificate other than that presented by the 14 CFR 67.403(a)(1) through (4) violation. It is also not available for individuals who the FAA has found to have previously violated 14 CFR 67.403(a)(1) through (4).

If the FAA deems application of the prompt settlement policy is appropriate, AGC–300 enforcement counsel will provide the individual, or his or her legal representative, a formal agreement that sets forth the conditions for prompt settlement. The terms of this settlement agreement will normally include the following provisions.

(1) The settlement agreement must be executed by the parties within ten days after the FAA sends the agreement to the individual.

(2) The FAA will issue an emergency order revoking all airman, ground instructor, and unexpired medical certificates the individual holds immediately upon receiving the fully executed settlement agreement.

(3) The order of revocation will (i) require the immediate surrender of all airman, ground instructor, and unexpired medical certificates the individual holds to enforcement counsel; (ii) notify the individual that the failure to immediately surrender these certificates could subject the individual to further legal enforcement action, including a civil penalty; and (iii) inform the individual that the FAA will not accept an application for any new airman or ground instructor certificate for a period of one year from the date of the issuance of the order of revocation.

(4) The individual will waive all appeal rights from the order of revocation.

(5) The individual acknowledges that this agreement only concerns this enforcement action brought by the FAA and does not affect any actions that might be brought by State or other Federal agencies (whether civil or criminal), and that this agreement does not prevent the FAA from providing information about this matter to State or other Federal agencies.

(6) The parties will agree to bear their own costs and attorney fees, if any, in connection with the matter.

(7) The individual will agree to not initiate any litigation before any court, tribunal, or administrative entity concerning any costs, damages, or attorney fees, including applications under the Equal Access to Justice Act, incurred as a result of the above-referenced matter.

(8) The individual will agree to waive any and all causes of action against the FAA and its current and/or former officials and employees relating to the above-referenced matter.

This policy is expected to allow eligible individuals to more quickly apply for new certificates under 14 CFR parts 61, 63, and 65 following violations of 14 CFR 67.403(a)(1)–(4). It will also reduce uncertainty about the date of issuance of orders of revocation related to such violations, eliminate the unpredictability of litigation, and promote better resource allocation.

Issued in Washington, DC, on September 21, 2020.

Naomi Tsuda,

Assistant Chief Counsel for Enforcement.

[FR Doc. 2020–21111 Filed 9–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 285

[Docket No.: 200128–0034]

RIN 0693–AB67

National Voluntary Laboratory Accreditation Program—Amendment to the Procedures and Requirements To Accredit Testing and Calibration Laboratories

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Final rule.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST) is issuing a final rule amending the regulations pertaining to the operation of the National Voluntary Laboratory Accreditation Program (NVLAP) and the operation of its accreditation programs. The regulations are being revised to include recognition of proficiency testing as an accreditation activity, add or revise terms, and update NVLAP mailing information, in accordance with the applicable international standard. These changes will not impact the public directly, and will only result in minor changes to NIST's internal practices.

DATES: This rule is effective on September 24, 2020. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 24, 2020.

ADDRESSES: Dana S. Leaman, Chief, National Voluntary Laboratory Accreditation Program, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899–2140 or by sending email to *nvlap@nist.gov.*

FOR FURTHER INFORMATION CONTACT: Dana S. Leaman, Chief, NIST/NVLAP, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899–2140, Phone: (301) 975–4016 or email: *dana.leaman@nist.gov.* Information regarding NVLAP and the accreditation process can be obtained from *http://www.nist.gov/nvlap.*

SUPPLEMENTARY INFORMATION:

I. Background

Title 15, part 285 of the Code of Federal Regulations sets out procedures and general requirements under which NVLAP operates as an unbiased third party to accredit both testing and calibration laboratories. The NVLAP procedures were first published in the **Federal Register** on February 25, 1976, and have been revised several times.

NVLAP currently operates in accordance with ISO/IEC 17011:2004, *Conformity assessment—Requirements for accreditation bodies accrediting conformity assessment bodies.* The Laboratory Accreditation Programs operated by NVLAP are established based on the criteria in ISO/IEC 17025, *General requirements for the competence of testing and calibration laboratories.* Revisions to ISO/IEC 17011 and ISO/IEC 17025 were published in November 2017 with a three-year implementation period. These revisions include recognition of proficiency testing as an accreditation activity, addition and/or revision of terms, and update of the NVLAP mailing information. The purpose of this amendment is to incorporate these revised requirements into the regulations.

II. Incorporation by Reference

NIST Handbook 150 presents the basic procedures under which NVLAP operates, and considers the requirements contained in ISO/IEC 17025, *General requirements for the competence of testing and calibration laboratories.* ISO/IEC 17025 and NIST Handbook 150 contain the general requirements that testing and calibration

laboratories must meet if they wish to demonstrate that they operate an appropriate management system, are technically competent, and are able to generate technically valid results.

The provisions of NIST Handbook 150 are being incorporated by reference into 15 CFR 285.8 and 285.14, as this will substantially reduce the volume of material published in the **Federal Register** and the CFR. NIST Handbook 150 is available at no-cost at *https://nvlpubs.nist.gov/nistpubs/hb/2020/NIST.HB.150-2020.pdf.*

III. Regulatory Analysis

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary. This final rule makes minor, technical amendments in order to conform the regulations to changes that were made to the applicable international standard. These changes will not impact the public directly, and will only result in minor changes to NIST's internal practices. None of these changes will have a substantive impact beyond those already considered in previous supporting documents. For the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

Executive Order 12866

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

Executive Order 13132

This final rule does not contain policies with Federalism implications as defined in Executive Order 13132.

Regulatory Flexibility Act

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* do not apply.

Paperwork Reduction Act

This final rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

This final rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 15 CFR Part 285

Accreditation, Business and industry, Calibration, Commerce, Conformity assessment, Incorporation by reference, Laboratories, Measurement standards, Testing.

For the reasons stated in the preamble, NIST amends 15 CFR part 285 as follows:

PART 285—NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM

■ 1. The authority citation for 15 CFR part 285 continues to read as follows:

Authority: 15 U.S.C. 272 *et seq.*

■ 2. Revise § 285.1 to read as follows:

§ 285.1 Purpose.

The purpose of this part is to set out procedures and general requirements under which the National Voluntary Laboratory Accreditation Program (NVLAP) operates as an unbiased third party to accredit both testing and calibration laboratories. Supplementary technical and administrative requirements are provided in supporting handbooks and documents as needed, depending on the criteria established for specific Laboratory Accreditation Programs (LAPs).

■ 3. Revise § 285.6 to read as follows:

§ 285.6 Application for accreditation.

A laboratory may apply for accreditation in any of the established LAPs. The applicant laboratory shall provide a completed application to NVLAP, pay all required fees and agree to certain conditions as set forth in the NVLAP Application for Accreditation, and provide management system documentation to NVLAP (or a designated NVLAP assessor) prior to the assessment process.

§ 285.7 [Amended]

■ 4. In § 285.7, remove the word ''deficiencies'' wherever it occurs and add in its place the word ''nonconformities.''

■ 5. Revise § 285.8 to read as follows:

§ 285.8 Proficiency testing.

(a) *Proficiency testing requirements.* Proficiency testing undertaken to meet the criteria for NVLAP accreditation shall be consistent with the provisions contained in NIST Handbook 150, *NVLAP Procedures and General Requirements* (incorporated by reference, see § 285.16), where applicable, including revisions from time to time. Laboratories must participate in proficiency testing as specified for each LAP in the NVLAP program handbooks.

(b) *Analysis and reporting.* Proficiency testing results are analyzed by NVLAP and results of the analysis are made known to the participants. Any result not meeting the criteria specified in the NVLAP LAP program handbook is identified as a nonconformity.

(c) *Proficiency testing nonconformities.* (1) Unsatisfactory participation in any proficiency testing program is a technical nonconformity which must be resolved in order to obtain initial accreditation or maintain accreditation.

(2) Proficiency testing nonconformities are defined as, but not limited to, one or more of the following:

(i) Failure to meet specified proficiency testing performance requirements prescribed by NVLAP;

(ii) Failure to participate in a regularly scheduled ''round'' of proficiency testing for which the laboratory has received instructions and/or materials;

(iii) Failure to submit laboratory control data as required; or

(iv) Failure to produce acceptable test or calibration results when using NIST Standard Reference Materials or special artifacts whose properties are well-characterized and known to NIST/NVLAP.

(3) NVLAP will notify the laboratory of proficiency testing nonconformities and actions to be taken to resolve the nonconformities. Denial or suspension of accreditation will result from failure to resolve nonconformities.

■ 6. Revise § 285.10(b) to read as follows:

§ 285.10 Renewal of accreditation.

* * * * *

(b) On-site assessments of currently accredited laboratories are performed in accordance with the procedures in § 285.7. If nonconformities are found during the assessment of an accredited laboratory, the laboratory must follow the procedures set forth in § 285.7(e)(2) or face possible suspension or revocation of accreditation.

■ 7. Revise § 285.12 to read as follows:

§ 285.12 Monitoring visits.

(a) In addition to regularly scheduled assessments, monitoring visits may be conducted by NVLAP at any time during the accreditation period. They may occur for cause or on a random selection basis. While most monitoring visits will be scheduled in advance with the laboratory, NVLAP may conduct unannounced monitoring visits.

(b) The scope of a monitoring visit may range from checking a few

designated items to a complete review. The assessors may review nonconformity resolutions, verify reported changes in the laboratory's personnel, facilities or operations, or evaluate proficiency testing activities, when appropriate.

■ 8. Revise § 285.14 to read as follows:

§ 285.14 Criteria for accreditation.

The requirements for laboratories to be recognized by the National Voluntary Laboratory Accreditation Program as competent to carry out tests and/or calibrations are contained in NIST Handbook 150, *NVLAP Procedures and General Requirements* (incorporated by reference, see § 285.16).

■ 9. Revise § 285.15(b) to read as follows:

§ 285.15 Obtaining documents.

* * * * *

(b) Copies of all ISO/IEC documents are available for purchase from the American National Standards Institute's eStandards Store at *http://webstore.ansi.org.* You may inspect copies of all applicable ISO/IEC documents at the National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, Room B119, Gaithersburg, MD. For access to the NIST campus, please contact NVLAP by phone at 301–975–4016 or by email at *NVLAP@nist.gov* to obtain instructions for visitor registration.

■ 10. Add § 285.16 to read as follows:

§ 285.16 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at National Institute of Standards and Technology, National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology, 100 Bureau Drive, Room B119, Gaithersburg, MD and is available from the source(s) listed in the following paragraph(s). It is also available for inspection at the National Archives and Records Administration (NARA). For access to the NIST campus, please contact NVLAP by phone at 301–975–4016 or by email at *NVLAP@nist.gov* to obtain instructions for visitor registration. For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(a) National Institute of Standards and Technology (NIST), U.S. Department of Commerce, 100 Bureau Drive, Room B119, Gaithersburg, MD, 301–975–4016 *NVLAP@nist.gov, www.nist.gov/publications/.*

(1) NIST Handbook 150, *National Voluntary Laboratory Accreditation Program Procedures (NVLAP) and General Requirements,* authored by Dana S. Leaman and Bethany Hackett, 2020 Edition, August 2020, 2020 (*NVLAP Procedures and General Requirements*) *https://nvlpubs.nist.gov/nistpubs/hb/2020/NIST.HB.150-2020.pdf;* into §§ 285.8(a) and § 285.14.

(2) [Reserved]

(b) [Reserved]

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2020–18294 Filed 9–23–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

15 CFR Chapter VII

[Docket Number 200917–0247]

RIN 0605–XD009

Identification of Prohibited Transactions To Implement Executive Order 13942 and Address the Threat Posed by TikTok and the National Emergency With Respect to the Information and Communications Technology and Services Supply Chain

AGENCY: Office of the Secretary, U.S. Department of Commerce.

ACTION: Identification of prohibited transactions.

SUMMARY: Pursuant to Executive Order 13942, the Secretary of Commerce is publishing the list of prohibited transactions by any person, or with respect to any property, subject to the jurisdiction of the United States, with ByteDance Ltd. (a.k.a. Zìjié Tiàodòng), Beijing, China, or its subsidiaries, including TikTok Inc., in which any such company has any interest, to address the national emergency with respect to the information and communications technology and services supply chain declared in Executive Order 13873, May 15, 2019 (Securing the Information and Communications Technology and Services Supply Chain), and particularly to address the threat identified in Executive Order 13942 posed by mobile application TikTok.

DATES: Transactions identified in paragraph 1 below will be prohibited at 11:59 p.m. eastern standard time on September 27, 2020; transactions identified in paragraphs 2, 3, 4, and 5 below will be prohibited at 11:59 p.m. eastern standard time on November 12, 2020.

FOR FURTHER INFORMATION CONTACT: Kathy Smith, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1859.

For media inquiries: Meghan Burris, Director, Office of Public Affairs, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4883.

SUPPLEMENTARY INFORMATION: In Executive Order 13873 of May 15, 2019 (Securing the Information and Communications Technology and Services Supply Chain), the President found that foreign adversaries are increasingly creating and exploiting vulnerabilities in information and communications technology and services (ICTS), which store and communicate vast amounts of sensitive information, facilitate the digital economy, and support critical infrastructure and vital emergency services, in order to commit malicious cyber-enabled actions, including economic and industrial espionage against the United States and its people. The President further found that the unrestricted acquisition or use in the United States of ICTS designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries augments the ability of foreign adversaries to create and exploit vulnerabilities in ICTS, with potentially catastrophic effects, and thereby constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and declared a national emergency with respect to this threat. The President directed that additional steps are required to protect the security, integrity, and reliability of ICTS provided and used in the United States.

On August 6, 2020, in Executive Order 13942 (Addressing the Threat Posed by TikTok, and Taking Additional Steps To Address the National Emergency With Respect to the Information and Communications Technology and Services Supply Chain), the President further found that the spread in the United States of mobile applications developed and owned by companies in the People's Republic of China (China) continues to threaten the national security, foreign policy, and economy of the United States. The President directed that action must be taken to address the threat posed by the mobile application TikTok.

Pursuant to Executive Order 13942, any transaction by any person, or with respect to any property, subject to the jurisdiction of the United States, with ByteDance Ltd. (a.k.a. Zìjié Tiàodòng), Beijing, China, or its subsidiaries, including TikTok Inc., in which any such company has any interest, as identified by the Secretary of Commerce (Secretary) within 45 days from the date of Executive Order 13942, shall be prohibited to the extent permitted under applicable law. This Identification of Prohibited Transactions implements that directive by the President.

Identifying Prohibited Transactions

Definitions

Content delivery service means a service that copies, saves, and delivers content, for a fee, from geographically dispersed servers to end-users for the purposes of enabling faster delivery of content.

Entity means a government or instrumentality of such government, partnership, association, trust, joint venture, corporation, group, subgroup, or other organization, including an international organization.

Information and communications technology or services means any hardware, software, or other product or service primarily intended to fulfill or enable the function of information or data processing, storage, retrieval, or communication by electronic means, including transmission, storage, and display.

Internet hosting service means a service through which storage and computing resources are provided to an individual or organization for the accommodation and maintenance of one or more websites or internet services. Services may include but are not limited to file hosting, domain name server hosting, cloud hosting, and virtual private server hosting.

Internet transit service means a service where a network operator provides connectivity, transport and routing for another network, enabling them to reach broader portions of the internet. A transit provider's routers also announce to other networks that they can carry traffic to the network that has purchased transit.

Mobile application means a software application designed to run on a mobile device such as a phone, tablet, or watch.

Mobile application store means any online marketplace where users can download, or update, and install software applications to a mobile device.

Peering means a relationship between internet service providers (ISP) where the parties directly interconnect to exchange internet traffic, most often on a no-cost basis.

Person means an individual or entity.

Subsidiary means a company that is owned or controlled by a parent or holding company.

Transaction means any acquisition, importation, transfer, installation, dealing in, or use of any information and communications technology or service.

Identification of Prohibited Transactions

Pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701, et seq., Executive Order 13873 (84 FR 22689, May 15, 2019), and as set forth and provided for in Executive Order 13942 (85 FR 48637, August 6, 2020), the Secretary has identified the following prohibited transactions:

Any transaction by any person, or with respect to any property, subject to the jurisdiction of the United States, with ByteDance Ltd. (a.k.a. Zìjié Tiàodòng), Beijing, China, or its subsidiaries, including TikTok Inc., in which any such company has any interest, involving:

1. Any provision of services, occurring on or after 11:59 p.m. eastern standard time on September 27, 2020, to distribute or maintain the TikTok mobile application, constituent code, or application updates through an online mobile application store, or any online marketplace where mobile users within the land or maritime borders of the United States and its territories may download or update applications for use on their mobile devices;

2. Any provision of internet hosting services, occurring on or after 11:59 p.m. eastern standard time on November 12, 2020, enabling the functioning or optimization of the TikTok mobile application within the land and maritime borders of the United States and its territories;

3. Any provision of content delivery network services, occurring on or after 11:59 p.m. eastern standard time on November 12, 2020, enabling the functioning or optimization of the TikTok mobile application within the land and maritime borders of the United States and its territories;

4. Any provision of directly contracted or arranged internet transit or peering services, occurring on or after 11:59 p.m. eastern standard time on November 12, 2020, enabling the functioning or optimization of the TikTok mobile application within the land and maritime borders of the United States and its territories;

5. Any utilization, occurring on or after 11:59 p.m. eastern standard time on November 12, 2020, of the TikTok mobile application's constituent code, functions, or services in the functioning of software or services developed and/or accessible within the land and maritime borders of the United States and its territories; or

6. Any other transaction by any person, or with respect to any property, subject to the jurisdiction of the United States, with ByteDance Ltd., or its subsidiaries, including TikTok Inc., in which any such company has any interest, as may be identified at a future date under the authority delegated under Executive Order 13942.

The identified prohibitions herein only apply to the parties to business-to-business transactions, and apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to Executive Order 13942, and notwithstanding any contract entered into or any license or permit granted before the date of Executive Order 13942.

These identified prohibitions do not apply to:

(1) Payment of wages, salaries, and benefit packages to employees or contractors;

(2) The exchange between or among TikTok mobile application users of personal or business information using the TikTok mobile application;

(3) Activities related to mobile applications intended for distribution, installation or use outside of the United States by any person, including but not limited to any person subject to U.S. jurisdiction, and all ancillary activities, including activities performed by any U.S. person, which are ordinarily incident to, and necessary for, the distribution, installation, and use of mobile applications outside of the United States; or

(4) The storing of TikTok mobile application user data in the United States.

Nothing in this Identification of Prohibited Transactions shall prohibit any transaction necessary to effectuate the divestment required by Order of August 14, 2020 (85 FR 51297) (Regarding the Acquisition of Musical.ly by ByteDance Ltd.). Any other transaction with ByteDance Ltd. or its subsidiaries is permitted under Executive Order 13942, as implemented by the Secretary, unless identified as prohibited or otherwise contrary to law.

Authority

International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.;*

National Emergencies Act, 50 U.S.C. 1601 *et seq.;* Executive Order 13942, Addressing the Threat Posed by TikTok, August 6, 2020; Executive Order 13873, Securing the Information and Communications Technology and Services Supply Chain, May 15, 2019.

Dated: September 21, 2020

This document of the Department of Commerce was signed on September 21, by Wilbur Ross, Secretary of Commerce. That document with the original signature and date is maintained by the Department of Commerce. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned Department of Commerce Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Commerce. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 22, 2020.

Asha Mathew,

Federal Register Liaison Officer, U.S. Department of Commerce.

[FR Doc. 2020–21193 Filed 9–22–20; 1:30 pm]

BILLING CODE 3510–20–P

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

RIN 3316–AA23

Promoting the Rule of Law Through Improved Agency Guidance Documents

AGENCY: Tennessee Valley Authority.

ACTION: Direct final rule.

SUMMARY: The Tennessee Valley Authority (TVA) issues this final rule to implement procedures for the issuance of TVA guidance documents in accordance with Executive Order 13891. This final rule would, among other things, establish internal agency requirements for guidance documents, as well as public engagement procedures surrounding guidance documents.

DATES: This final rule is effective October 26, 2020. The comment period will conclude on October 26, 2020. Subject to review of the public comments received, TVA may delay the final effective date and, if so, will publish a document in the **Federal Register** to that effect.

FOR FURTHER INFORMATION CONTACT: Robin M. Daugherty, 423–751–3207, Email: *rmdaugherty@tva.gov,* Mail address: Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6 Knoxville, TN 37902.

SUPPLEMENTARY INFORMATION: TVA issues this final rule to incorporate into the Code of Federal Regulations a new 18 CFR 130.70 Subpart F, which would implement the requirements of Executive Order 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents.'' 84 FR 55235 (October 9, 2019) (E.O. 13891). E.O. 13891 requires agencies to provide more transparency around the issuance and use of guidance documents, including by promulgating procedures to increase public involvement in the TVA guidance document process. As noted in E.O. 13891, the Administrative Procedure Act (APA) generally requires agencies to provide public notice of proposed regulations, allow interested parties an opportunity to comment, consider and respond to significant comments, and publish final regulations in the **Federal Register** (See 5 U.S.C. 553). Such regulations, also known as legislative rules, have the force and effect of law and are legally binding upon the public. In addition to legislative rules, agencies may clarify existing obligations of regulated entities through nonbinding guidance documents, which the APA exempts from notice-and-comment requirements. (5 U.S.C. 553(b)(A)). E.O. 13891 defines ''guidance document'' as ''an agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation,'' with a few noted exceptions listed in E.O. 13891, the APA and associated regulation. Guidance documents do not have the force and effect of law, and are intended only to provide clarity to the public of existing statutory and regulatory obligations. However, as noted in E.O. 13891, some agency guidance documents may impose obligations beyond those required by statute or regulation, or carry a threat of enforcement if the guidance is not followed by regulated parties. Additionally, the public may not have sufficient notice of guidance documents, which are not always published in the **Federal Register** or distributed to all regulated parties. See 84 FR 55235. Accordingly, E.O. 13891 requires agencies to provide more transparency for their guidance documents by creating a searchable online database for current guidance documents, by requiring agencies to establish procedures to allow the public to comment on significant guidance documents, and authorizing the public to petition the agency to withdraw or modify guidance documents. Moreover, E.O. 13891 requires agencies to clearly state in their guidance documents that such guidance Does not have the force and effect of law and is not legally binding, except as authorized by law or as incorporated into a contract. This final rule would implement the requirements of E.O. 13891. This final rule would apply to all TVA guidance documents, which TVA proposes to define in the same manner as that term is defined in E.O. 13891, the APA and associated regulations, and OMB memo M–20–02 Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions, Dominic J. Mancini, OIRA Acting Director (Oct. 31, 2019). The final rule would also adopt the same definition of ''significant guidance document'' as that term is defined in E.O. 13891 Section 2. In accordance with E.O. 13891, TVA will require that all TVA guidance documents clearly state that they do not have the force and effect of law and are not legally binding on the public, and that they are only intended to provide clarity to the public regarding existing statutory and regulatory requirements. Moreover, TVA guidance documents will be required to be written clearly, and to refrain from using mandatory language, such as the terms ''shall'' or ''must.'' If a guidance document purports to describe, approve, or recommend specific conduct that is beyond what is required by existing statute, legislative or judicial rule, TVA's final regulation would require that TVA's guidance document will not be used as an independent basis for enforcement. TVA also proposes in this new rule to require that all TVA guidance documents be reviewed and cleared by the Office of the General Counsel before public availability. Additionally, the final rule would require that significant guidance documents be approved by the TVA Board of Directors or by delegation to a TVA Executive. This will ensure that the requirements and intent of E.O. 13891 are met, and that guidance documents are issued in accordance with relevant laws and regulations.

The final rule also provides procedures for the public to petition the agency to modify or withdraw guidance documents. With this final rule, TVA

would effectuate the requirements of E.O. 13891 and ensure that TVA's process for the issuance of guidance documents is transparent and accessible to the public. The final rule also assures regulated parties that such guidance is not legally binding and does not affect the rights and obligations of regulated parties.

Legal Authority

This final rule is promulgated under the authority of the TVA Act, as amended, 16 U.S.C. 831 *et seq.* and the Administrative Procedures Act, 5 U.S.C. 553 *et seq.*

Background

The Tennessee Valley Authority is a multi-purpose corporate agency of the United States that provides electricity for business customers and local power companies serving 10 million people in parts of seven southeastern states. TVA provides flood control, navigation and land management for the Tennessee River system and assists local power companies and state and local governments with economic development and job creation.

Public Participation

TVA will accept comments, data, and information regarding this final rule on or before the date provided in **DATES**. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via *http://www.regulations.gov.* The *http://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to TVA General Counsel staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, TVA will use this information to contact you. If TVA cannot read your comment due to technical difficulties and cannot contact you for clarification, TVA may not be able to consider your comment. However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments. Do not submit to *http://www.regulations.gov* information the disclosure of which is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below. TVA processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment. Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments. Include contact information each time you submit comments, data, documents, and other information to TVA. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted. Comments, data, and other information submitted to TVA electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author. Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that they believe to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' that deletes the information believed to be confidential.

Submit these documents via email or on a CD, if feasible. TVA will make its own determination about the confidential status of the information and will treat it according to its determination. It is TVA's policy that all comments, including any personal information provided in the comments, may be included in the public docket, without change and as received, except for information deemed to be exempt from public disclosure.

Regulatory Analysis

A. Review Under Executive Order 12866, ''Regulatory Planning and Review''

TVA sought informal review and support from the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB). TVA does not anticipate that this rulemaking will have an economic impact on regulated entities. This is a proposed rule of agency procedure and practice. The proposed rule describes TVA's internal procedures for the promulgation and processing of guidance documents, to ensure that guidance documents only clarify existing statutory and regulatory obligations and do not impose any new obligations. TVA proposes to adopt these internal procedures as part of its implementation of E.O. 13891, and does not anticipate incurring significant additional resource costs in doing so. Moreover, it is anticipated that the public will benefit from the resulting increase in efficiency and transparency in the issuance of guidance documents, and more opportunities to comment on guidance documents.

B. Review Under Executive Order 13771

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' at 82 FR 9339 (January 30, 2017), states that the policy of the executive branch is to be prudent and

financially responsible in the expenditure of funds, from both public and private sources. E.O. 13771 states that it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. More specifically, section 2 of E.O. 13771 requires, amongst other things, that the costs of any new regulation be offset by the elimination of existing costs associated with at least 2 prior regulations.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The final rule would codify internal agency procedures regarding TVA's issuance of guidance documents. Additionally, as noted previously, guidance documents do not have the force and effect of law and are not legally binding on regulated entities. This rule would establish procedures to ensure that TVA guidance only clarifies existing statutory and regulatory obligations, rather than imposing any new obligations. TVA therefore does not anticipate any significant economic impacts from this final rule. For these reasons, TVA certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, TVA did not prepare an IRFA for this rulemaking.

D. Review Under the Paperwork Reduction Act of 1995

The final rule would impose no new information or record keeping requirements. Accordingly, Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act of 1969

TVA has determined that the final rule would be covered under the Categorical Exclusion found in TVA's National Environmental Policy Act regulations at paragraph 7 of appendix A to subpart C, 18 CFR part 1318. This Categorical Exclusion applies to actions that are administrative actions consisting solely of paperwork. The final rule would codify internal agency procedures for issuing guidance documents. The action would not have direct environmental impacts. Accordingly, TVA does not intend to prepare an environmental assessment or an environmental impact statement.

F. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. E.O. 13132 requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The E.O. also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. TVA examined this final rule and determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of Government.

G. Review Under Executive Order 13175 ''Consultation and Coordination With Indian Tribal Governments''

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications; that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The final rule would not significantly or uniquely affect the communities of the Indian tribal governments, or impose substantial direct compliance costs on them, therefore the funding and consultation requirements of E.O. 13175 do not apply.

H. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements:

(1) Eliminate drafting errors and ambiguity;

(2) Write regulations to minimize litigation; and

(3) Provide a clear legal standard for affected conduct, rather than a general standard and promote simplification and burden reduction.

Section 3(b) of E.O. 12988 specifically requires Executive agencies to make every reasonable effort to ensure that the proposed regulation:

(1) Clearly specifies its preemptive effect, if any;

(2) Clearly specifies any effect on existing Federal law or regulation;

(3) Provides a clear legal standard for affected conduct, while promoting simplification and burden reduction;

(4) Specifies its retroactive effect, if any;

(5) Adequately defines key terms; and

(6) Addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

E.O. 12988 Section 3(c) requires Executive agencies to review regulations to determine whether the E.O. requirements are met, or the agency determines that it is unreasonable to meet one or more of them. TVA has completed the required review and determined that, to the extent permitted by law, the final rule would meet the E.O. 12988 relevant standards.

I. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a) and (b)). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. This final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or

more in any year by State, local, and tribal governments, in the aggregate, or by the private sector, so UMRA requirements do not apply.

J. Review Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that:

(1) Is a significant regulatory action under E.O. 12866, or any successor order; and

(2) Is likely to have a significant adverse effect on the supply, distribution, or use of energy, or

(3) Is designated by the Administrator of OIRA as a significant energy action.

For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. The final rule would codify internal agency procedures and does not meet any of the three criteria listed above. Accordingly, the requirements of E.O. 13211 do not apply.

Approval of the Agency Head

The Tennessee Valley Authority's Chief Executive Officer approved the publication of this final rule, via delegation to the General Counsel.

Signing Authority

This document of the Tennessee Valley Authority was approved on August 28, 2020, by Sherry A. Quirk, General Counsel, pursuant to delegated authority from the Chief Executive Officer. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned TVA Federal Register Liaison Officer has been authorized to sign and submit the document for publication, as an official document of the Tennessee Valley Authority. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Knoxville, Tennessee, on August 28, 2020.

Dillis D. Freeman, Jr.

Federal Register Liaison Officer, Tennessee Valley Authority.

List of Subjects in 18 CFR Part 1301

Freedom of information, Privacy, Sunshine Act.

For the reasons stated previously, TVA is amending part 1301 of title 18 of the Code of Federal Regulations as set forth below:

PART 1301—PROCEDURES

■ 1. The authority citation for part 1301 continues to read as follows:

Authority: 5 U.S.C. 552 and 552a; 16 U.S.C. 831–831dd.

■ 2. Add subpart F, consisting of § 1301.70 through 1301.80, to read as follows:

Subpart F—General

Sec.

1301.70 Purpose and scope.
1301.71 Guidance document definition.
1301.72 Review and clearance by TVA's Office of the General Counsel.
1301.73 Public access to effective guidance documents.
1301.74 Good faith cost estimates.
1301.75 Designation procedures.
1301.76 Notice-and-comment procedures.
1301.77 Petitions.
1301.78 Rescinded guidance.
1301.79 Emergency situations, exigent circumstances, and legal requirement.
1301.80 No judicial review or enforceable rights.

Subpart F—General

§ 1301.70 Purpose and scope.

(a) This subpart governs all Tennessee Valley Authority (TVA) employees and contractors involved with all phases of developing, drafting and issuing TVA guidance documents.

(b) Subject to the qualifications and exemptions contained in this subpart, these procedures apply to all TVA guidance documents, as defined by the Administrative Procedures Act, Executive Order 13891 and the Office of Management and Budget memo M–20–02, *Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions,* Dominic J. Mancini, OIRA Acting Director (Oct. 31, 2019).

§ 1301.71 Guidance document definition.

(a)(1) For purposes of this subpart, the term ''guidance document'' includes any statement of agency policy or interpretation concerning a statute, regulation, or technical matter within TVA's jurisdiction that is intended to have general applicability and future effect on the public, but which is not intended to have the force or effect of law in its own right and is not otherwise required by statute to satisfy the rulemaking procedures specified in 5 U.S.C. 553 or 5 U.S.C. 556. See OMB Bulletin 07–02, ''Agency Good Guidance Practices,'' See Office of Management and Budget (OMB) Bulletin 07–02, ''Agency Good Guidance Practices,'' (January 25, 2007) (''OMB Good Guidance Bulletin'').

(2) The term ''guidance document'' Does not include:

(i) Rules exempt from rulemaking requirements under 5 U.S.C. 553(a);

(ii) Rules of agency organization, procedure, or practice;

(iii) Decisions of agency adjudications under 5 U.S.C. 554 or similar statutory provisions;

(iv) Internal executive branch legal advice or legal advisory opinions addressed to executive branch officials;

(v) Agency statements of specific applicability, including advisory or legal opinions directed to particular parties about circumstance-specific questions (*e.g.,* case or investigatory letters responding to complaints, warning letters), notices regarding particular locations or facilities (*e.g.,* guidance pertaining to the use, operation, or control of a government facility or property), and correspondence with individual persons or entities (*e.g.,* congressional correspondence), except documents ostensibly directed to a particular party but designed to guide the conduct of the broader regulated public;

(vi) Legal briefs, other court filings, or positions taken in litigation or enforcement actions;

(vii) Agency statements that do not set forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statute or regulation, including speeches and individual presentations, editorials, media interviews, press materials, or congressional testimony that do not set forth for the first time a new regulatory policy;

(viii) Guidance pertaining to military or foreign affairs functions;

(ix) Grant solicitations and awards;

(x) Contract solicitations and awards;

(xi) Purely internal agency policies or guidance directed solely to TVA employees or contractors or to other public entities or agencies that are not intended to have substantial future effect on the behavior of regulated parties; or

(xii) Documents associated with matters relating to agency management

or personnel or to public property, loans, grants, benefits, or contracts.

(b) The term ''TVA'' refers to the Tennessee Valley Authority, a corporate agency of the United States, subject to applicable federal and state statutes and regulations and charged with a diverse mission. Congress tasked TVA with, among other things, providing flood control, navigation, and land management for the Tennessee River system; management and stewardship for TVA lands and waterways; producing and distributing electricity; regulating local power companies; and assisting local power companies and state and local governments in the Tennessee Valley with economic development and job creation.

(c) The term ''BU'' refers to a Business Unit, the organizational structure into which the various responsibilities associated with TVA's mission is divided.

(d) The term ''OGC'' refers to TVA's Office of the General Counsel, a BU within TVA.

(e)(1) The term ''significant guidance document'' means a guidance document that will be disseminated to regulated entities or the general public and that may reasonably be anticipated:

(i) To lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the U.S. economy, a sector of the U.S. economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(ii) To create serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency;

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

(iv) To raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866, as further amended.

(2) The term ''significant guidance document'' does not include the categories of documents excluded by section 2 of Executive Order 12866 or any other category of guidance documents exempted by the Office of Management and Budget. Even if not ''significant,'' a guidance document will be considered ''otherwise of importance to the TVA's interests'' within the meaning of this paragraph, if it may reasonably be anticipated:

(i) To relate to a major program, policy, or activity of TVA or a high profile issue pending for decision before TVA;

(ii) To involve one of the CEO or Board of Directors' top policy priorities;

(iii) To garner significant press or congressional attention; or

(iv) To raise significant questions or concerns from constituencies of importance to the TVA, such as Committees of Congress, States or Indian tribes, the White House or other departments of the Executive Branch, courts, consumer or public interest groups, or leading representatives of industry.

§ 1301.72 Review and clearance by TVA's Office of the General Counsel.

The Office of the General Counsel (OGC)'s review and clearance of all TVA guidance documents shall ensure that each guidance document proposed to be issued by TVA satisfies the following requirements:

(a) The guidance document complies with all relevant statutes and regulations;

(b) The guidance document identifies or includes:

(1) The term ''guidance'' or its functional equivalent in the title of the document;

(2) A unique identifier, including, at a minimum, the date of issuance and title of the document, if applicable;

(3) The activity or entities to which the guidance applies;

(4) Citations to applicable statutes and regulations;

(5) A statement noting whether the guidance is intended to revise or replace any previously issued guidance and, if so, sufficient information to identify the previously issued guidance; and

(6) A short summary of the subject matter covered at the beginning of the guidance document.

(c) The guidance document generally avoids using mandatory language, such as ''shall,'' ''must,'' ''required,'' or ''requirement,'' unless the language of the document is describing an established statutory or regulatory requirement or is addressed to TVA staff, and will not foreclose consideration of positions advanced by affected private parties;

(d) The guidance document is written in plain and understandable English; and

(e) The guidance document includes a clear and prominent statement declaring that the contents of the document do not have the force and effect of law and are not meant to bind the public in any way, and the document is intended only to provide clarity to the public regarding existing requirements under the law or TVA policies.

§ 1301.73 Public access to effective guidance documents.

(a) TVA shall ensure that:

(1) All effective guidance documents are loaded onto TVA's guidance portal website, available at *https://www.tva.com/about-tva/guidelines-and-reports/tva-guidance-documents,* in a single, searchable, indexed database, and available to the public in accordance with the Freedom of Information Act and associated regulations;

(2) All effective guidance documents are identified by a unique identifier which includes, at a minimum, the document's title and date of issuance or revision.

(b) The TVA guidance document website will identify a TVA BU to receive and address complaints from the public that TVA is not following the requirements of the Administrative Procedures Act or Executive Order 13891, or is improperly treating a guidance document as a binding requirement.

§ 1301.74 Good faith cost estimates.

Even though not legally binding, some TVA guidance documents could result in significant economic impact. For example, guidance documents could induce private parties to alter their conduct to conform to recommended standards or practices, thereby incurring costs beyond the costs of complying with existing statutes and regulations. While it may be difficult to predict with precision the economic impact of guidance documents, the proposing TVA BU shall, to the extent practicable, make a good faith effort to estimate the likely economic cost impact of the guidance document to determine whether the document might meet the definition of a significant guidance document. When the proposing TVA BU is assessing or explaining whether it believes a guidance document is a significant guidance document, it shall comply with the analytic requirements that would otherwise be required for a major determination under the Congressional Review Act.

§ 1301.75 Designation procedures.

(a) TVA may prepare a designation request to OMB's OIRA for certain guidance documents. Designation requests must include at least the following information:

(1) A summary of the guidance document; and

(2) The TVA recommended designation of ''not significant'' or ''significant,'' as well as a justification for that designation.

(b) Except as otherwise provided in paragraph (c) of this section, TVA may seek significance determinations from OIRA for guidance documents, as appropriate, in the same manner as for rulemakings. Prior to publishing these guidance documents, and with sufficient time to allow OIRA to review the document in the event that a significance determination is made, TVA will generally provide OIRA with an opportunity to review the designation request or the guidance document, if requested, to determine if it meets the definition of ''significant'' or ''economically significant'' under Executive Order 13891.

(c) Guidance documents that do not otherwise present novel issues, significant risks, interagency considerations, unusual circumstances, or other unique issues that could reasonably be considered as significant or economically significant, within the meanings of Executive Order 13891, will not typically require a designation by OIRA.

§ 1301.76 Notice-and-comment procedures.

(a) Except as provided in paragraph (b) of this section, all proposed TVA guidance documents determined to be a ''significant guidance document'' shall be subject to the following informal notice-and-comment procedures. TVA shall publish a document in the **Federal Register** announcing that a draft of the proposed significant guidance document is publicly available, shall post the draft significant guidance document on the TVA guidance portal site, shall invite public comment on the draft document for at least 30 days, and shall prepare and post a public response to significant concerns raised in the comments, as appropriate, on the TVA guidance portal site, either before or when the guidance document is finalized and issued.

(b) The requirements of paragraph (a) of this section will not apply to any significant guidance document or categories of significant guidance documents for which OGC finds, in consultation with OIRA, and the vice president of the proposing TVA BU, good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest (and incorporates the finding of good cause and a brief statement of reasons therefor in the guidance issued).

(c) Where appropriate, OGC and the vice president of the proposing TVA BU may recommend to the TVA Chief Executive Officer (CEO) that a particular guidance document that is otherwise of importance to TVA's interests shall also be subject to the informal notice-and-comment procedures described in paragraph (a) of this section.

§ 1301.77 Petitions.

Any person may petition the TVA Board of Directors to withdraw or modify a particular guidance document by submitting a written petition, addressed to the TVA Board of Directors, to OGC. TVA will endeavor to respond to all requests in a timely manner, and no later than 90 days after receipt of the request.

§ 1301.78 Rescinded guidance.

No TVA BU may cite, use, or rely on guidance documents that are rescinded, except to establish historical facts.

§ 1301.79 Emergency situations, exigent circumstances, and legal requirement.

In emergency situations or exigent circumstances, or when TVA is required by statutory deadline or court order to act more quickly than normal review procedures allow, TVA shall notify OIRA of the circumstances that foreclose compliance with these procedures, and shall comply with the requirements of this subpart, to the extent practicable, at the earliest opportunity after the exigent circumstances have ceased. Wherever practicable, TVA should schedule its guidance document review proceedings to permit sufficient time to comply with the procedures set forth in this subpart, given the nature and extent of the exigent circumstances.

§ 1301.80 No judicial review or enforceable rights.

The regulations in this subpart are intended to improve TVA's issuance of guidance documents and processes and procedures that govern TVA's guidance documents. As such, this subpart is for the use of TVA personnel and contractors only, and is not intended to, and Does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, TVA, its agencies, agents, contractors, or other entities, officers, employees, or any other person.

[FR Doc. 2020–19546 Filed 9–23–20; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Cuban Assets Control Regulations to further implement portions of the President's foreign policy toward Cuba to deny the Cuban regime sources of revenue. Specifically, this rule: Adds a new prohibition for persons subject to U.S. jurisdiction regarding lodging and related transactions at certain properties in Cuba identified on a new list maintained by the State Department, and amends an interpretive provision and several general licenses to incorporate this new prohibition; amends four general licenses to restrict the importation into the United States of Cuban-origin alcohol and tobacco products; amends a general license to remove the authorization for persons subject to U.S. jurisdiction to attend or organize professional meetings or conferences in Cuba; and removes a general license that authorizes persons subject to U.S. jurisdiction to participate in or organize certain public performances, clinics, workshops, other athletic or non-athletic competitions, and exhibitions, and replaces it with a specific licensing policy. OFAC is also making a number of technical and conforming changes.

DATES: This rule is effective September 24, 2020.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480, Assistant Director for Regulatory Affairs, 202–622–4855, or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website (*www.treasury.gov/ofac*).

Background

The Department of the Treasury issued the Cuban Assets Control Regulations, 31 CFR part 515 (the ''Regulations''), on July 8, 1963, under various authorities, including the Trading With the Enemy Act (50 U.S.C. 4301–41). OFAC has amended the Regulations on numerous occasions, including to implement National Security Presidential Memorandum–5, ''Strengthening the Policy of the United States Toward Cuba,'' signed by the President on June 16, 2017, and the President's foreign policy toward Cuba.

Today, OFAC, in consultation with the State Department, is taking

additional action to implement the Administration's foreign policy toward Cuba, as set forth in more detail below.

Restrictions on Lodging, Paying for Lodging, or Making Reservations for Lodging, at Certain Properties in Cuba

OFAC is incorporating a new prohibition at § 515.210 of the Regulations to prohibit any person subject to U.S. jurisdiction from lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property in Cuba that the Secretary of State has identified as a property that is owned or controlled by the Cuban government, a prohibited official of the Government of Cuba, as defined in § 515.337, a prohibited member of the Cuban Communist Party, as defined in § 515.338, a close relative, as defined in § 515.339, of a prohibited official of the Government of Cuba, or a close relative of a prohibited member of the Cuban Communist Party. Concurrent with this regulatory amendment, the State Department is creating a new list, the Cuba Prohibited Accommodations List (CPA List), to publish the names, addresses, or other identifying details, as relevant, of properties identified as meeting such criteria, as well as the basis for the listing. The CPA List will be maintained by the State Department and published in the **Federal Register**. It will also be accessible through the following page on the State Department's website: *www.state.gov/cuba-sanctions/cuba-prohibited-accommodations.*

OFAC is making conforming edits to § 515.421, which provides interpretive guidance with respect to transactions ordinarily incident to a licensed transaction, to incorporate the new prohibition in § 515.210. This interpretive provision provides that any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized except in certain scenarios. OFAC is adding a provision at § 515.421(a)(6) to exclude from the scope of the interpretative provision lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the CPA List to the extent prohibited by § 515.210, where the terms of the applicable general or specific license expressly exclude such transactions.

OFAC is also amending several general licenses in Subpart E of the Regulations to exclude from the scope of such authorizations the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the CPA List to the extent prohibited by § 515.210. More specifically, OFAC is amending the following sections to incorporate the exclusion related to § 515.210: (i) In § 515.533, which relates to exportations from the United States to Cuba, reexportations to Cuba, and the importation and servicing or repair of certain items previously exported or reexported to Cuba; (ii) in § 515.545, which relates to transactions involving information and informational materials; (iii) in § 515.559, which relates to certain export and import transactions by U.S.-owned or -controlled foreign firms; (iv) in § 515.560, which relates to travel-related transactions to, from, and within Cuba by persons subject to U.S. jurisdiction; (v) in § 515.561, which relates to family visits; (vi) in § 515.563, which relates to journalistic activity in Cuba; (vii) in § 515.564, which relates to professional research and professional meetings in Cuba; (viii) in § 515.565, which relates to educational activities; (ix) in § 515.566, which relates to religious activities in Cuba; (x) in § 515.567, which relates to certain public performances, clinics, workshops, competitions, and exhibitions in Cuba; (xi) in § 515.572, which relates to the provision of travel, carrier, and other transportation-related, and remittance forwarding services; (xii) in § 515.574, which relates to support for the Cuban people; (xiii) in § 515.575, which relates to humanitarian projects in Cuba; and (xiv) in § 515.576, which relates to activities of private foundations or research or educational institutes. In addition, OFAC is making technical and conforming changes related to these amendments in a number of the above sections.

Restrictions on Importation Into the United States of Cuban-Origin Alcohol and Tobacco Products

OFAC is amending four provisions of the Regulations to restrict the importation into the United States of Cuban-origin alcohol and tobacco products. More specifically, OFAC is amending the following authorizations to exclude the importation into the United States of Cuban-origin alcohol and tobacco products: (i) § 515.560(c)(3), which authorizes the purchase or other acquisition in Cuba and importation as accompanied baggage into the United States of Cuban-origin merchandise for personal use; (ii) § 515.569, which authorizes the importation of merchandise by any person arriving in the United States other than a citizen or resident of the United States, provided the importation is not in commercial quantities and are not imported for resale; (iii) § 515.571(a)(1), which authorizes the importation into the United States of accompanied baggage for personal use by or on behalf of a Cuban national who is present in the United States; and (iv) § 515.585(d), which authorizes the importation into the United States as accompanied baggage certain Cuban-origin goods that are purchased or acquired in a third country for personal use. OFAC is also making technical and conforming changes to § 515.571(a).

Professional Research and Professional Meetings in Cuba

OFAC is eliminating the authorization in § 515.564(a)(2) of the Regulations related to attendance at, or organization of, professional meetings or conferences in Cuba. Persons subject to U.S. jurisdiction are no longer authorized via general license to attend or organize professional meetings or conferences in Cuba pursuant to this section. OFAC is also amending § 515.564 to clarify that specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions in § 515.560(c) and other transactions that are related to (i) professional research in Cuba that does not qualify for the general license under § 515.564(a) or (ii) professional meetings or conferences in Cuba that are not authorized under other travel-related authorizations and that relate to activities otherwise authorized pursuant to the Regulations. Finally, to reflect this change, OFAC is making technical and conforming edits in this section, as well as conforming edits in §§ 515.534, 515.542, 515.547, 515.560, 515.572, 515.577, and 515.591.

Public Performances, Clinics, Workshops, Athletic and Other Competitions, and Exhibitions

OFAC is removing the authorization in § 515.567(b) of the Regulations related to public performances, clinics, workshops, other athletic or non-athletic competitions, and exhibitions; however, OFAC may issue specific licenses, on a case-by-case basis, for transactions that are directly incident to participation in, or organization of, a public performance, clinic, workshop, athletic competition not covered by § 515.567(a), non-athletic competition, or exhibition in Cuba, subject to certain conditions. Upon this rule taking effect, the only athletic-related travel transactions authorized via general license in § 515.567 will be in connection with athletic competitions that qualify for the authorization in § 515.567(a).

Other Technical and Conforming Changes

Finally, OFAC is making a number of other technical and conforming changes as follows: (i) In § 515.101, OFAC is updating an outdated citation to the Trading With the Enemy Act; (ii) in §§ 515.209 and 515.582, OFAC is updating links to certain pages on the State Department's website that are out of date; (iii) in § 515.560, OFAC is removing the second occurrence of paragraph (e), which was previously included in error; and (iv) in § 515.570, OFAC is adjusting two cross-references to § 515.565 that previously referred to the wrong paragraphs of that section.

Public Participation

Because the amendment of the Regulations involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of Executive Order 13771, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–12) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations'') and § 515.572 of this part. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information are covered by the Office of Management and Budget under control numbers 1505–0164, 1505–0167, and 1505–0168. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Alcohol, Athletics, Banks, Banking, Blocking of assets, Conferences, Cuba, Export, Financial transactions, Import, Remittances, Reporting and recordkeeping requirements, Tobacco, Travel restrictions.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 515 as follows:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

■ 1. The authority citation for part 515 is revised to read as follows:

Authority: 22 U.S.C. 2370(a), 6001–6010, 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 4301–4341; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 22 U.S.C. 6021–6091; Pub. L. 105–277, 112 Stat. 2681; Pub. L. 111–8, 123 Stat. 524; Pub. L. 111–117, 123 Stat. 3034; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 515.101 [Amended]

■ 2. In § 515.101 paragraph (b), remove ''50 U.S.C. App. 5(b), as amended'' and add in its place ''50 U.S.C. 4301–4341''.

Subpart B—Prohibitions

§ 515.209 [Amended]

■ 3. In § 515.209, in the note to paragraph (a), remove ''website: *http://www.state.gov/e/eb/tfs/spi/cuba/cubarestrictedlist/index.htm*'' and add in its place ''website: *https://www.state.gov/cuba-sanctions/cuba-restricted-list/*''.

■ 4. Add § 515.210 to read as follows:

§ 515.210 Restrictions on lodging, paying for lodging, or making reservations at certain properties in Cuba.

(a) Except as otherwise authorized pursuant to this part, no person subject to U.S. jurisdiction may lodge, pay for lodging, or otherwise make any reservation for or on behalf of a third party to lodge, at any property in Cuba that the Secretary of State has identified as a property that is owned or controlled by the Cuban government, a prohibited official of the Government of Cuba, as defined in § 515.337, a prohibited member of the Cuban Communist Party, as defined in § 515.338, a close relative, as defined in § 515.339, of a prohibited official of the Government of Cuba, or a close relative of a prohibited member of the Cuban Communist Party. Such properties are identified on the State Department's Cuba Prohibited Accommodations List (CPA List). This prohibition does not apply to certain transactions set forth in paragraph (b) of this section.

Note 1 to paragraph (a): The names, addresses, or other identifying details, as relevant, of properties that the Secretary of State has identified as meeting the criteria set forth in this section are incorporated in the CPA List as published in the **Federal Register**. The CPA List is also accessible through the following page on the State Department's website: *www.state.gov/cuba-sanctions/cuba-prohibited-accommodations.*

(b) The prohibition in paragraph (a) of this section does not apply to lodging-related transactions initiated prior to the date that the property was added to the CPA List as published in the **Federal Register**.

Subpart D—Interpretations

■ 5. Amend § 515.421 as follows:

■ a. In paragraph (a)(4), remove ''or'' at the end of the paragraph.

■ b. In paragraph (a)(5), remove the period at the end of the paragraph and add in its place ''; or''.

■ c. Add paragraph (a)(6).

The addition reads as follows:

§ 515.421 Transactions ordinarily incident to a licensed transaction.

(a) * * *

(6) Lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210, where the terms of the applicable general or specific license expressly exclude such a transaction.

* * * * *

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 6. Amend § 515.533 as follows:

■ a. Redesignate paragraph (d) as paragraph (e).

■ b. Add new paragraph (d).

The addition reads as follows:

§ 515.533 Exportations from the United States to Cuba; reexportations to Cuba; importation and servicing or repair of certain items previously exported or reexported to Cuba.

* * * * *

(d) *Certain travel-related transactions restricted.* Nothing in paragraph (c) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

* * * * *

§ 515.534 [Amended]

■ 7. In Note to § 515.534, remove '', and § 515.564(a)(2) for a general license authorizing travel-related and other transactions incident to attending or organizing professional meetings in Cuba, which include professional meetings relating to the negotiation of contingent contracts authorized by this section''.

§ 515.542 [Amended]

■ 8. In note 1 to § 515.542, remove the last sentence.

■ 9. Amend § 515.545 as follows:

■ a. Redesignate paragraph (d) as paragraph (e).

■ b. Add new paragraph (d).

The addition reads as follows:

§ 515.545 Transactions related to information and informational materials.

* * * * *

(d) *Certain travel-related transactions restricted.* Nothing in paragraph (b) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

* * * * *

§ 515.547 [Amended]

■ 10. In note 2 to paragraph (a), in the second sentence, remove ''and professional meetings''.

■ 11. Amend § 515.559 as follows:

■ a. Redesignate paragraph (e) as paragraph (f).

■ b. Add new paragraph (e).

The addition reads as follows:

§ 515.559 Certain export and import transactions by U.S.-owned or -controlled foreign firms.

* * * * *

(e) *Certain travel-related transactions restricted.* Nothing in paragraph (d) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

* * * * *

■ 12. Amend § 515.560 as follows:

■ a. In paragraph (c)(3), add a new second sentence.

■ b. In paragraph (d), add '', and nothing in paragraph (c)(2) of this section authorizes the lodging, paying for lodging, or otherwise making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210, in each case'' after ''§ 515.209''.

■ c. Remove the reserved paragraph (e).

The addition reads as follows:

§ 515.560 Travel-related transactions to, from, and within Cuba and by persons subject to U.S. jurisdiction.

* * * * *

(c) * * *

(3) * * * This paragraph does not apply to the importation into the United States of Cuban-origin alcohol or tobacco products. * * *

* * * * *

§ 515.561 [Amended]

■ 13. Amend § 515.561, in paragraph (a) by adding '', or the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210'' after ''§ 515.209''.

■ 14. Amend § 515.563 as follows:

■ a. Redesignate paragraph (c) as paragraph (d).

■ b. Add new paragraph (c).

The addition reads as follows:

§ 515.563 Journalistic activities in Cuba.

* * * * *

(c) *Certain travel-related transactions restricted.* Nothing in paragraph (a) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

* * * * *

■ 15. Amend § 515.564 as follows:

■ a. Revise paragraph (a).

■ b. Redesignate paragraph (d) as paragraph (e).

■ c. Add new paragraph (d).

■ d. Revise newly redesignated paragraph (e).

The revisions and addition read as follows:

§ 515.564 Professional research and professional meetings in Cuba.

(a) *General license for professional research.* The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to professional research are authorized, provided that:

(1) The purpose of the research directly relates to the traveler's profession, professional background, or area of expertise, including area of graduate-level full-time study; and

(2) The traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule of professional research.

Example to § 515.564(a): The making of a documentary film in Cuba would qualify for the general license in this section if it is a vehicle for presentation of the research conducted pursuant to this section.

Note 1 to paragraph (a): A person does not qualify as engaging in professional research merely because that person is a professional who plans to travel to Cuba.

Note 2 to paragraph (a): Each person relying on the general authorization in this paragraph must retain specific records related to the authorized travel transactions. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

* * * * *

(d) *Certain travel-related transactions restricted.* Nothing in paragraph (a) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

(e) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are related to either: professional research in Cuba that does not qualify for the general license under paragraph (a) of this section, or professional meetings or conferences in Cuba that are not otherwise authorized pursuant to other travel-related authorizations and relate to activities otherwise authorized pursuant to this part.

■ 16. Amend § 515.565 as follows:

■ a. Redesignate paragraphs (f) and (g) as paragraphs (g) and (h).

■ b. Add new paragraph (f).

The addition reads as follows:

§ 515.565 Educational activities.

* * * * *

(f) *Certain travel-related transactions restricted.* Nothing in paragraph (a), (b), (d), or (e) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

* * * * *

§ 515.566 [Amended]

■ 17. Amend § 515.566, in paragraph (a) introductory text by adding '', or the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210'' after ''§ 515.209''.

■ 18. Amend § 515.567 as follows:

■ a. Add notes 1 and 2 to paragraph (a).

■ b. Revise paragraph (b).

■ b. Remove examples 1 and 2 to § 515.567(a) and (b).

■ c. Remove notes 1 and 2 to § 515.567(a) and (b).

■ d. In paragraph (c), remove ''or (b)''.

■ e. In paragraph (d), remove ''or (b)''.

■ f. Revise paragraph (e).

The additions and revisions read as follows:

§ 515.567 Public performances, clinics, workshops, athletic and other competitions, and exhibitions.

(a) * * *

Note 1 to paragraph (a): Each person relying on the general license described in paragraph (a) must retain specific records related to the authorized travel transactions. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

Note 2 to paragraph (a): Transactions incident to the organization of amateur and semi-professional international sports federation competitions described in paragraph (a) include marketing related to such events in Cuba.

(b) *Public performances, clinics, workshops, other athletic or non-athletic competitions, and exhibitions.* Specific licenses, including for multiple trips to Cuba over an extended period of time, may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and such other transactions as are directly incident to participation in or organization of a public performance, clinic, workshop, athletic competition not covered by paragraph (a) of this section, non-athletic competition, or exhibition in Cuba by participants in or organizers of such activities, provided that the event is open for attendance, and in relevant situations, participation, by the Cuban public.

* * * * *

(e) *Certain travel-related transactions restricted.* Nothing in paragraph (a) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

■ 19. In § 515.569, add a sentence to the end to read as follows:

§ 515.569 Foreign passengers' baggage.

* * * This authorization does not apply to the importation into the United States of Cuban-origin alcohol or tobacco products.

§ 515.570 [Amended]

■ 20. Amend § 515.570, in paragraph (d), by removing ''§ 515.565(d)'' in both places it appears and adding in its place ''§ 515.565(h)''.

■ 21. Amend § 515.571 as follows:

■ a. In paragraph (a)(1), add a sentence to the end.

■ b. In paragraph (a)(3), remove ''and'' after ''accompanied baggage''.

■ c. In paragraph (a)(4), remove the period and add in its place ''; and''.

The addition reads as follows:

§ 515.571 Certain transactions incident to travel to, from, and within the United States by Cuban nationals.

(a) * * *

(1) * * * This paragraph (a)(1) does not apply to the importation into the United States of Cuban-origin alcohol or tobacco products.

* * * * *

§ 515.572 [Amended]

■ 22. Amend § 515.572 as follows:

■ a. In paragraph (a)(1), add '', or the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210,'' after ''§ 515.209''.

■ b. Remove Note to § 515.572(a).

■ 23. Amend § 515.574 as follows:

■ a. Redesignate paragraph (d) as paragraph (e).

■ b. Add new paragraph (d).

■ c. In Example 1 to § 515.574, add a new third sentence.

■ d. In Example 2 to § 515.574, add a new third sentence.

■ e. In Example 3 to § 515.574, add '', and will not lodge, or pay for lodging, at any property on the CPA List to the extent prohibited by § 515.210'' after ''(see § 515.209)''.

The additions read as follows:

§ 515.574 Support for the Cuban people.

* * * * *

(d) *Certain travel-related transactions restricted.* Nothing in paragraph (a) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List (CPA List) to the extent prohibited by § 515.210.

* * * * *

Example 1 to § 515.574: * * * The traveler will not lodge, or pay for lodging, at any property on the CPA List to the extent prohibited by § 515.210. * * *

Example 2 to § 515.574: * * * The travelers will not lodge, or pay for lodging, at any property on the CPA List to the extent prohibited by § 515.210. * * *

* * * * *

■ 24. Amend § 515.575 as follows:

■ a. Redesignate paragraph (d) as paragraph (e).

■ b. Add new paragraph (d).

The addition reads as follows:

§ 515.575 Humanitarian projects.

* * * * *

(d) *Certain travel-related transactions restricted.* Nothing in paragraph (a) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

* * * * *

■ 25. Amend § 515.576 as follows:

■ a. Redesignate paragraph (d) as paragraph (e).

■ b. Add new paragraph (d).

The addition reads as follows:

§ 515.576 Activities of private foundations or research or educational institutes.

* * * * *

(d) *Certain travel-related transactions restricted.* Nothing in paragraph (a) of this section authorizes the lodging, paying for lodging, or making any reservation for or on behalf of a third party to lodge, at any property on the Cuba Prohibited Accommodations List to the extent prohibited by § 515.210.

* * * * *

§ 515.577 [Amended]

■ 26. Amend § 515.577 by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

§ 515.582 [Amended]

■ 27. Amend § 515.582 by removing ''*http://www.state.gov/e/eb/tfs/spi/*'' and adding in its place ''*https://www.state.gov/the-state-departments-section-515-582-list/*''.

■ 28. Amend § 515.585, in paragraph (d), by adding a sentence at the end.'''' after ''personal use only.''.

§ 515.585 Certain transactions in third countries.

* * * * *

(d) * * * This paragraph does not apply to the importation into the United States of Cuban-origin alcohol or tobacco products.

* * * * *

§ 515.591 [Amended]

■ 29. In Note 2 to § 515.591, remove ''and professional meetings'' after ''professional research''.

Dated: September 21, 2020.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–21084 Filed 9–23–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 802, 809, 841, 842, and 852

RIN 2900–AQ38

VA Acquisition Regulation: Contractor Qualifications; Acquisition of Utility Services; and Contract Administration and Audit Services

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending and updating its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, VA will publish them in the **Federal Register**. In particular, this rulemaking revises VAAR concerning Contractor Qualifications, Acquisition of Utility Services, and Contract Administration and Audit Services, and affected parts Definitions of Words and Terms and Solicitation Provisions and Contract Clauses.

DATES: This rule is effective on October 26, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street NW, Washington, DC 20001, (202) 382–2787. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2020, VA published a proposed rule in the **Federal Register** (85 FR 21811) which announced VA's intent to amend regulations for VAAR Case RIN 2900–AQ38 (Parts 809, 841 and 842). VA provided a 60-day comment period for the public to respond to the proposed rule and submit comments. The comment period for the proposed rule ended on June 19, 2020 and VA received no comments. This rule adopts as a final rule, without changes, the proposed rule published in the **Federal Register** on April 20, 2020.

Executive Orders 12866, 13563 and 13771

Executive Orders (E.O.s) 12866 and 13563 direct agencies 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 effects, distributive impacts; and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its Regulatory Impact Analysis (RIA) are available on VA's website at *http://www.va.gov/orpm/*, by following the link for ''VA Regulations Published from FY 2004 Through Fiscal Year to Date.''

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

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. See also 5 CFR 1320.8(b)(3)(vi).

This final rule contains one provision constituting a collection of information at 48 CFR 809.507–1 and 48 CFR 852.209–70 which require offerors on solicitations for management support and consulting services to advise, as part of the firm's offer, whether or not award of the contract to the firm might involve a conflict of interest and, if so, to disclose all relevant facts regarding the conflict. The information is used by the contracting officer to determine whether or not to award a contract to the firm or, if a contract is to be awarded despite a potential conflict, whether or not additional contract terms and conditions are necessary to mitigate the conflict.

No new collection of information is associated with this provision as a part of this final rule. The information collection requirement for 809.507–1 and 852.209–70 is currently approved by OMB and has been assigned OMB control number 2900–0418. This rule amends this information collection requirement to revise 809.507–1 to designate 852.209–70 as a provision instead of a clause. For the requested administrative amendments to VAAR 852.209–70, as required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA will submit this information collection amendment to OMB for its review.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This rulemaking does not change VA's policy regarding small businesses, does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. On this basis, the final rule would not have an economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 as they do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments or on the private sector.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects

48 CFR Part 802

Government procurement.

48 CFR Part 809

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 841

Government procurement, Utilities.

48 CFR Part 842

Accounting, Government procurement.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Brooks D. Tucker, Acting Chief of Staff, Department of Veterans Affairs, approved this document on August 14, 2020, for publication.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 48 CFR, parts 802, 809, 841, 842 and 852 as follows:

PART 802—DEFINITIONS OF WORDS AND TERMS

■ 1. The authority citation for part 802 continues to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

802.101 [Amended]

■ 2. Section 802.101 is amended to remove the definitions for ''Suspending and Debarring Official (SDO)'' and ''Suspension and Debarment Committee (S&D Committee).''

PART 809—CONTRACTOR QUALIFICATIONS

■ 3. The authority citation for part 809 is revised to read as follows:

Authority: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

Subpart 809.1—Responsible Prospective Contractors

809.104 and 809.104–2 [Removed]

■ 4. Sections 809.104 and 809.104–2 are removed.

Subpart 809.2 [Removed and Reserved]

■ 5. Subpart 809.2, consisting of sections 809.201, 809.202, 809.204, 809.206, 809.206–1, and 809.270, is removed and reserved.

■ 6. Subpart 809.4 is revised to read as follows:

Subpart 809.4—Debarment, Suspension, and Ineligibility

Sec.

809.400 Scope of subpart.
809.402 Policy.
809.403 Definitions.
809.405 Effect of listing.
809.405–1 Continuation of current contracts.
809.405–2 Restrictions on subcontracting.
809.406 Debarment.
809.406–1 General.
809.406–2 Causes for debarment.
809.406–270 Additional causes for debarment.
809.406–3 Procedures.
809.406–4 Period of debarment.
809.407 Suspension.
809.407–1 General.
809.470 Fact-finding procedures.

809.400 Scope of subpart.

This subpart implements FAR subpart 9.4 and prescribes VA's procedures and related actions for the suspension and debarment of contractors.

809.402 Policy.

(b) Statutory debarments pursuant to the authority of 38 U.S.C. 8127(g), Enforcement Penalties for Misrepresentation, are mandatory when the determination is made that a business concern has willfully and intentionally misrepresented its status as a service-disabled, veteran-owned small business (SDVOSB) or veteran-owned small business (VOSB).

809.403 Definitions.

Suspension & Debarment (S&D) Committee means a committee authorized by the SDO to assist the SDO with suspension and debarment related matters.

Suspending and Debarring Official (SDO) means the individual responsible for final decisions regarding suspension and debarment, as appointed by the agency.

809.405 Effect of listing.

The authority under FAR 9.405(a), 9.405(d)(2), and 9.405(d)(3) to determine whether to solicit from, evaluate bids or proposals from, or award contracts to contractors with active exclusions in the System for Award Management (SAM) is delegated to the Suspending and Debarring Official (SDO). This authority is further delegated to the HCAs, who may delegate this authority, in writing, to a designee.

809.405–1 Continuation of current contracts.

(a) Notwithstanding the suspension, proposed debarment, or debarment of a contractor, VA may continue contracts or subcontracts in existence at the time the contractor was suspended, proposed for debarment, or debarred, unless the cognizant head of the contracting activity (HCA) directs otherwise. Examples of factors to be considered include, but are not limited to, potential costs associated with a termination, possible disruption to VA program objectives, and integrity of VA acquisition programs.

(b) Authority to make the determinations under FAR 9.405–1(b) is delegated to the SDO and is further delegated to the HCA, who may delegate this authority, in writing, to a designee. The HCA or their designee must make a written determination of the compelling reasons in accordance with FAR 9.405–1(b). Compelling reasons for the purposes of FAR 9.405–1(b) include, but are not limited to, urgency of the need for new or continued work, lengthy time period to acquire the new work from other sources and meeting estimated quantity for requirements contracts.

809.405–2 Restrictions on subcontracting.

Authority to make the written determination required under FAR 9.405–2 consenting to a contractor's use of a subcontractor who is suspended, proposed for debarment, or debarred is delegated to the SDO. This authority is further delegated to the HCA, who may delegate this authority, in writing, to a designee.

809.406 Debarment.

809.406–1 General.

(a) For the purposes of FAR 9.406–1, the SDO's authority includes debarments pursuant to the Federal Management Regulation at 41 CFR 102–117.295. In addition to the factors listed in FAR 9.406–1, the SDO may consider the following examples before arriving at a debarment decision:

(1) Whether the contractor had a mechanism, such as a hotline, by which employees could have reported suspected instances of improper conduct, and instructions in place that encouraged employees to make such reports; or

(2) Whether the contractor conducted periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting.

(c) As provided in FAR 9.406–1(c), authority to determine whether to continue business dealings between VA and a contractor suspended, proposed for debarment, or debarred is delegated to the SDO.

809.406–2 Causes for debarment.

809.406–270 Additional causes for debarment.

(a) *Discretionary causes.* (1) In addition to the causes listed in FAR 9.406–2 (a) through (c), the SDO may debar contractors, based upon a preponderance of the evidence (as defined at FAR 2.101), for the Government's protection, for—

(i) Any deliberate violation of the limitation on subcontracting clause requirements for acquisitions under subpart 819.70; or

(ii) Failure to observe the material provisions of a voluntary exclusion or an administrative agreement.

(2) The period of debarment shall be commensurate with the seriousness of the action.

(b) *Statutory cause.* (1) Pursuant to 38 U.S.C. 8127(g), Enforcement Penalties for Misrepresentation, the SDO shall debar, from contracting with VA, for a period of not less than five years, any business concern that has willfully and intentionally misrepresented the status of that concern as a small business concern owned and controlled by Veterans or as a small business concern owned and controlled by service-disabled Veterans.

(2) Debarment of a business concern pursuant to 38 U.S.C. 8127(g) shall include the debarment of all principals in the business concern. Debarment shall be for a period of not less than five years.

(3) ''Willful and intentional'' misrepresentations, for the purpose of debarment actions taken pursuant to 38 U.S.C. 8127(g), are defined as deliberate misrepresentations concerning the status of the concern as a small business concern owned and controlled by Veterans or as a small business concern owned and controlled by service-disabled Veterans as supported by the preponderance of evidence. Examples of a preponderance of evidence for deliberate misrepresentation of SDVOSB and/or VOSB status include but are not limited to: Criminal convictions, plea agreements, deferred prosecution agreements, Board of Contract Appeals decisions, and admissions of guilt.

809.406–3 Procedures.

(a) Any individual may submit a referral to debar an individual or contractor to the SDO or to the S&D Committee. The referral for debarment shall be supported with evidence of a cause for debarment listed in FAR 9.406–2, or 809.406–2. The SDO shall forward referrals for debarment to the S&D Committee. If the referring individual is a VA employee and the referral for debarment is based on possible criminal or fraudulent activities, the VA employee shall also refer the matter to the VA Office of Inspector General.

(b) When the S&D Committee finds preponderance of the evidence for a cause for debarment, as listed in FAR 9.406–2 or 809.406–2, it shall prepare a recommendation and draft notice of proposed debarment for the SDO's consideration.

(c) VA shall send the notice of proposed debarment to the last known address of the individual or contractor, the individual or contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other means that allows for confirmation of delivery. In the case of a contractor, VA may send the notice of proposed debarment to any partner, principal, officer, director, owner or co-owner, or joint venture. The S&D Committee concurrently shall list the appropriate parties as excluded in the SAM in accordance with FAR 9.404.

(d) If VA does not receive a reply from the contractor within 30 days after sending the notice of proposed debarment, the S&D Committee shall prepare a recommendation and refer the case to the SDO for a decision on whether or not to debar based on the information available.

(e) If VA receives a reply from the contractor within 30 days after sending the notice of proposed debarment, the S&D Committee shall consider the information in the reply before the S&D Committee makes its recommendation to the SDO.

(f) The S&D Committee, upon the request of the contractor proposed for debarment, shall, as soon as practicable, allow the contractor an opportunity to appear before the S&D Committee to present information or argument personally or through a representative. The contractor may supplement the oral presentation with written information and argument. VA shall conduct the proceeding in an informal manner and without requirement for a transcript.

(g) If the S&D Committee finds the contractor's or individual's submission in opposition to the proposed debarment raises a genuine dispute over facts material to the proposed debarment and the debarment action is not based on a conviction or civil judgment, the S&D Committee shall submit to the SDO the information establishing the dispute of material facts. If the SDO agrees there is a genuine dispute of material facts, the SDO shall refer the dispute to a designee for a resolution pursuant to 809.470, Fact-finding procedures. The S&D Committee shall provide the contractor or individual the disputed material fact(s). Decisions and determinations of VA's Center for Verification and Evaluation (CVE) or Office of Small and Disadvantaged Business Utilization (OSDBU), such as status protest decisions, and size determinations of the SBA shall not be subject to dispute or fact-finding in proposed debarment actions. The S&D Committee and SDO shall accept these decisions and determinations as resolved facts.

(h) If the proposed debarment action is based on a conviction or civil judgment, or if there are no disputes over material facts, or if any disputes over material facts have been resolved pursuant to 809.470, Fact-finding procedures, the SDO shall make a decision on the basis of all information available including any written findings of fact submitted by the designated fact finder, and oral or written agreements presented or submitted to the S&D Committee by the contractor.

(i) In actions processed under FAR 9.406 where no suspension is in place and where fact finding is not required, the VA shall make the final decision on the proposed debarment within 30 working days after receipt of any information and argument submitted by the contractor, unless the SDO extends this period for a good cause.

(j) In actions processed under 809.406–270(b), the SDO notifies the individuals and/or contractors of the determination of willful and intentional misrepresentation in the notice of proposed debarment. VA shall issue the final decision, removing or upholding the determination, within 90 days after SDO's determination of willful and intentional misrepresentation.

809.406–4 Period of debarment.

(a) The SDO will base the period of debarment on the circumstances surrounding the cause(s) for debarment.

(b) The SDO may remove a debarment imposed under FAR 9.406, amend its scope, or reduce the period of debarment based on a S&D Committee recommendation if—

(1) VA has debarred the contractor; and

(2) The debarring official concurs with documentary evidence submitted by or on behalf of the contractor setting forth the appropriate grounds for granting relief. Appropriate grounds include newly discovered material

evidence, reversal of a conviction, bona fide change of ownership or management, elimination of the cause for which debarment was imposed, or any other appropriate grounds.

(c) The period of debarment for willful and intentional misrepresentations of SDVOSB or VOSB status pursuant to 809.406–270(b) shall not be less than 5 years.

809.407 Suspension.

809.407–1 General.

(a) As provided in FAR 9.407–1(d), authority to determine whether to continue business dealings between VA and a suspended contractor is delegated to the HCAs. Compelling reasons include, but are not limited to, urgency of the need for new or continued work, lengthy time period to acquire the new work from other sources, and meeting estimated quantities for requirements contracts.

(b) For the purposes of FAR 9.407–1, the SDO is the suspending official under the Federal Management Regulation at 41 CFR 102–117.295.

809.407–3 Procedures.

(a) Any individual may submit a referral to suspend an individual or contractor to the SDO or to the S&D Committee. Referrals shall include supporting evidence of a cause for suspension listed in FAR 9.407–2. The SDO shall forward the referral to the S&D Committee. If the referring individual is a VA employee and the referral for suspension is based on possible criminal or fraudulent activities, the VA employee shall also refer the matter to the VA Office of Inspector General.

(b) When the S&D Committee finds adequate evidence of a cause for suspension, as listed in FAR 9.407–2, it shall prepare a recommendation and draft notice of suspension for the SDO's consideration.

(c) VA shall send the notice of suspension to the last known address of the individual or contractor, the individual or contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other means that allows for confirmation of delivery. In the case of a contractor, VA may send the notice of suspension to any partner, principal, officer, director, owner or co-owner, or joint venture. The S&D Committee concurrently shall list the appropriate parties as excluded in SAM in accordance with FAR 9.404.

(d) If VA receives a reply from the contractor within 30 days after receipt of the notice of suspension, the S&D Committee shall consider the information in the reply before the Committee makes further recommendations to the SDO. The S&D Committee, upon the request of a suspended contractor, shall, as soon as practicable, allow the contractor an opportunity to appear before the S&D Committee to present information or argument personally or through a representative. The contractor may supplement the oral presentation with written information and argument. The proceeding will be conducted in an informal manner and without requirement for a transcript.

(e) For the purposes of FAR 9.407–3(b)(2), Decision making process, in actions not based on an indictment, if the S&D Committee finds that the contractor's submission in opposition to the suspension raises a genuine dispute over facts material to the suspension, the S&D Committee shall submit to the SDO the information establishing the dispute of material facts. However, the S&D Committee may first coordinate any further proceeding regarding the material facts in dispute with the Department of Justice or with a State prosecuting authority in a case involving a State jurisdiction. VA shall take no further action to determine disputed material facts pursuant to this section or 809.470 if the Department of Justice or a State prosecuting authority advises VA in writing that additional proceedings to make such a determination would prejudice Federal or State legal proceedings.

(f) If the SDO agrees that there is a genuine dispute of material facts, the SDO shall refer the dispute to the designee for resolution pursuant to 809.470.

809.470 Fact-finding procedures.

The provisions of this section constitute the procedures to be used to resolve genuine disputes of material fact pursuant to 809.406–3 and 809.407–3 of this subpart. The SDO shall appoint a designee to conduct the fact-finding. OGC shall represent VA at any fact-finding hearing and may present witnesses for VA and question any witnesses presented by the contractor. The proceedings before the fact-finder will be limited to a finding of the facts in dispute, as determined by the SDO. The fact-finder shall establish the date for the fact-finding hearing, normally to be held within 30 days after the S&D Committee notifies the contractor or individual that the SDO has established a genuine dispute of material fact(s) exists.

(a) The Government's representative and the contractor will have an opportunity to present evidence relevant to the material fact(s) identified by the SDO. The contractor or individual may appear in person or through a representative at the fact-finding hearing. The contractor or individual may submit documentary evidence, present witnesses, and confront any person the agency presents.

(b) Witnesses may testify in person. Witnesses will be reminded of the official nature of the proceedings and that any false testimony given is subject to criminal prosecution. Witnesses are subject to cross-examination. Hearsay evidence may be presented and will be given appropriate weight by the fact-finder.

(c) The proceedings shall be transcribed and a copy of the transcript shall be made available at cost to the contractor upon request, unless the contractor and the fact-finder, by mutual agreement, waive the requirement for a transcript.

(d) The fact-finder shall determine the disputed fact(s) by a preponderance of the evidence for proposed debarments, and by adequate evidence for suspensions. Written findings of fact shall be prepared by the fact-finder. A copy of the findings of fact shall be provided to the SDO, the Government's representative, and the contractor or individual. The SDO will consider the written findings of fact in the decision regarding the suspension or proposed debarment.

Subpart 809.5—Organizational and Consultant Conflicts of Interest

809.503 [Removed]

■ 7. Section 809.503 is removed.

809.504 [Removed]

■ 8. Section 809.504 is removed.

■ 9. Section 809.507–1 is revised to read as follows:

809.507–1 Solicitation provisions.

(a) While conflicts of interest may not presently exist, award of certain types of contracts may create potential future organizational conflicts of interest (see FAR 9.508 for examples). If a solicitation may create a potential future organizational conflict of interest, the contracting officer shall insert a provision in the solicitation imposing an appropriate restraint on the contractor's eligibility for award of contracts in the future. Under FAR 9.507–1, the restraint must be appropriate to the nature of the conflict and may exclude the contractor from award of one or more contracts in the future.

(b) The provision at 852.209–70, Organizational Conflicts of Interest, must be included in any solicitation for the services addressed in FAR 9.502.

PART 841—ACQUISITION OF UTILITY SERVICES

■ 10. The authority citation for part 841 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

Subpart 841.1—General

841.100 [Removed]

■ 11. Section 841.100 is removed.

■ 12. Section 841.102 is added to read as follows:

841.102 Applicability.

(a) This part applies to purchases of utility services from nonregulated and regulated utility suppliers when a delegation of authority from GSA for those services is requested and obtained.

(b)(4) The acquisition of energy, such as electricity, and natural or manufactured gas, when purchased as a commodity is considered to be acquisitions of supplies rather than utility services as described in FAR part 41.

841.103 [Removed]

■ 13. Section 841.103 is removed.

Subpart 841.2 [Removed and reserved]

■ 14. Subpart 841.2, consisting of sections 841.100 and 841.103, is removed and reserved.

■ 15. Subpart 841.5 is added to read as follows:

Subpart 841.5—Solicitation Provision and Contract Clauses

841.501 Solicitation provision and contract clauses.

841.501–70 Disputes—Utility contracts.

The contracting officer shall insert the clause at 852.841–70, Disputes—Utility Contracts, in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.

PART 842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 16. The authority citation for part 842 continues to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

■ 17. Section 842.000 is revised to read as follows:

842.000 Scope of part.

This part prescribes policies and procedures for contract administration and audit services for all Department of Veterans Affairs (VA) contracting activities.

■ 18. Section 842.070 is revised to read as follows:

842.070 Definitions.

As used in this part—

Contract administration means Government actions taken after contract award to obtain compliance with such contract requirements as timely delivery of supplies or services, acceptance, payment, and closing of the contract. These actions include, but are not limited to, technical, financial, audit, legal, administrative, and managerial services in support of the contracting officer. It may include additional tasks requested of designated contract administration offices within VA in support of pre-award activities for solicitations issued by or awarded by other contracting activities through Interagency Acquisitions.

Administrative Contracting Officer Letter of Delegation means a delegation of functions as set forth in FAR 42.202, 42.302 and 842.271, Administrative Contracting Officer's role in contract administration and delegated functions, that is issued by a contracting officer to delegate certain contract administration or specialized support services.

Subpart 842.1 [Removed and reserved]

■ 19. Subpart 842.1, consisting of sections 842.101 and 842.102, is removed and reserved.

■ 20. Subpart 842.2 is added to read as follows:

Subpart 842.2—Contract Administration Services

Sec.

842.270 Contracting Officer's Representatives' role in contract administration.
842.271 Administrative Contracting Officer's role in contract administration and delegated functions.
842.272 Contract clause for Government construction contract administration.

842.270 Contracting Officer's Representatives' role in contract administration.

(a) A contracting officer may designate a qualified person to be the Contracting Officer's Representative (COR) for the purpose of performing certain technical functions in administering a contract.

(b) The COR acts solely as a technical representative of the contracting officer and is not authorized to perform any function that results in a change in the scope, price, terms or conditions of the contract.

(c) A COR designation must be made in writing by the contracting officer. The designation shall identify the responsibilities and limitations of the COR. A copy of the designation must be furnished to the contractor and the Administrative Contracting Officer (ACO), if separately assigned.

842.271 Administrative Contracting Officer's role in contract administration and delegated functions.

(a) Contracting officers are authorized to delegate certain contract administration or specialized support services in accordance with FAR 42.202 and 42.302 to cognizant VA administrative contracting officers.

(b) The Administrative Contracting Officer's authority is limited to the actions detailed in the delegation.

(c) These delegations of authority shall be set forth in a written Administrative Contracting Officer (ACO) Letter of Delegation issued by the contracting officer to the accepting contract administration office and designated administrative contracting officer. The ACO Letter of Delegation shall contain the information required in FAR 42.202(a) through (c) and identify the responsibilities and limitations of the ACO. A copy of the delegation will be furnished to the contractor and the ACO.

(d) The contracting officer shall insert the clause at 852.242–71, Administrative Contracting Officer, in solicitations and contracts expected to exceed the micro-purchase threshold.

842.272 Contract clause for Government construction contract administration.

The contracting officer shall insert the clause at 852.242–70, Government Construction Contract Administration, in solicitations and contracts for construction expected to exceed the micro-purchase threshold, when contract administration is delegated.

■ 21. Section 842.705 is revised to read as follows:

842.705 Final indirect cost rates.

Except when the quick-closeout procedures described in FAR 42.708 are used, contracting officers shall request contract audits on proposed final indirect cost rates and billing rates for use in cost reimbursement and fixed-price incentive contracts as prescribed in FAR subpart 42.7.

Subpart 842.8 [Removed and reserved]

■ 22. Subpart 842.8, consisting of sections 842.801, 842.801–70, and 842.803, is removed and reserved.

Subpart 842.12—Novation and Change-of-Name Agreements

■ 23. Section 842.1202 is added to read as follows:

842.1202 Responsibility for executing agreements.

To avoid duplication of effort on the part of VA contracting offices in preparing and executing agreements to recognize a change of name or successor in interest involving multiple contracts issued by VA activities, only one agreement will be prepared and executed between the Government and the parties (transferor and transferee) and will be processed as forth in FAR 42.1203. The Office of Acquisition and Logistics, Risk Management and Compliance Service will, in each case, designate a cognizant HCA responsible for assigning a contracting officer. The designated contracting officer shall be responsible for taking all necessary and appropriate actions with respect to either recognizing or not recognizing a successor in interest or recognizing a change of name agreement and processing and executing the agreements as set forth in VA procedures.

842.1203 [Removed]

■ 24. Section 842.1203 is removed.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 25. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 8127–8128, and 8151–8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3), 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

Subpart 852.2—Texts of Provisions and Clauses

■ 26. Section 852.209–70 is revised to read as follows:

852.209–70 Organizational Conflicts of Interest.

As prescribed in 809.507–1(b), insert the following provision:

Organizational Conflicts of Interest (OCT 2020)

(a) It is in the best interest of the Government to avoid situations which might create an organizational conflict of interest or where the Offeror's performance of work under the contract may provide the Contractor with an unfair competitive advantage. The term ''organizational conflict of interest'' means that because of other activities or relationships with other persons, a person is unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or the person has an unfair competitive advantage.

(b) The Offeror shall provide a statement with its offer which describes, in a concise manner, all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) or actual or potential organizational conflicts of interest relating to the services to be provided under this solicitation. The Offeror shall also provide statements with its offer containing the same information for any consultants and subcontractors identified in its proposal and which will provide services under the solicitation. The Offeror may also provide relevant facts that show how its organizational and/or management system or other actions would avoid or mitigate any actual or potential organizational conflicts of interest.

(c) Based on this information and any other information solicited or obtained by the Contracting Officer, the Contracting Officer may determine that an organizational conflict of interest exists which would warrant disqualifying the Contractor for award of the contract unless the organizational conflict of interest can be mitigated to the Contracting Officer's satisfaction by negotiating terms and conditions of the contract to that effect. If the conflict of interest cannot be mitigated and if the Contracting Officer finds that it is in the best interest of the United States to award the contract, the Contracting Officer shall request a waiver in accordance with FAR 9.503.

(d) Nondisclosure or misrepresentation of actual or potential organizational conflicts of interest at the time of the offer or arising as a result of a modification to the contract, may result in the termination of the contract at no expense to the Government.

(End of Provision)

■ 27. Section 852.241–70 is added to read as follows:

852.241–70 Disputes—Utility Contracts.

As prescribed in 841.501–70, insert the following clause:

Disputes—Utility Contracts (SEP 2020)

(a) *Definition.* As used in this clause, *Independent regulatory body* means the Federal Energy Regulatory Commission, a state-wide agency, or an agency with less than state-wide jurisdiction when operating pursuant to state authority. The body has the power to fix, establish, or control the rates and services of utility suppliers.

(b) *Independent Regulatory Body determinations.* The requirements of the Disputes clause at FAR 52.233–1 are supplemented to provide that matters involving the interpretation of tariffed retail rates, tariff rate schedules, and tariffed terms provided under this contract are subject to any determinations by the independent regulatory body having jurisdiction.

(End of Clause)

■ 28. Section 852.242–70 is revised to read as follows:

852.242–70 Government Construction Contract Administration.

As prescribed in 842.272, insert the following clause. This is a fill-in clause.

Government Construction Contract Administration (OCT 2020)

(a) Contract administration functions set forth in FAR 42.302 are hereby delegated to:

[*Insert name and office address of Contracting Officer*]

[*Note: If any of the functions set forth in FAR 42.302 are to be retained by the Contracting Officer, identify those as well with the notation: ''With the exception of the following contract administration functions: _____.'' Delete this notation if not required.*]

(b) The following functions will be retained by the Contracting Officer or Administrative Contracting Officer (ACO) and are not redelegable to Resident Engineers:

(1) Award of contract modifications either through supplemental agreements or change orders that exceed the ACO's appointed warrant limitations.

(2) Issuance of default letters.

(3) Issuance of Cure or Show-Cause Notices.

(4) Suspension of work letters and/or modifications.

(5) Issuance of Contracting Officer final determination letters.

(6) Issuance of termination notices.

(7) Authorization of final payment.

(c) The work will be under the direction of a Department of Veterans Affairs Contracting Officer, who may designate another VA employee to act as resident engineer at the construction site who possesses limited warranted authority.

(d) Except as provided below, the resident engineer's directions will not

conflict with or change contract requirements. Within the limits of any specific authority delegated by the Contracting Officer, the resident engineer may, by written direction, make changes in the work. The Contractor shall be advised of the extent of such authority prior to execution of any work under the contract.

(e) The Contracting Officer or an Administrative Contracting Officer identified in paragraph (a) may further delegate limited authority and specialized support services responsibilities below to the following warranted Resident Engineer personnel on site, not to exceed the dollar value and threshold of their warrant:

[*Insert name and office address of Resident Engineer with limited authority*]

(1) Conduct post-award orientation conferences.

(2) Issue administrative changes (see FAR 43.101) correcting errors or omissions, contractor address, facility or activity code, remittance address, computations which do not required additional contract funds, and other such changes.

(3) For actions not to exceed $ [*Insert dollar amount*] negotiate and execute supplemental agreements resulting from change orders issued under the Changes clause.

(4) Negotiate and execute supplemental agreements changing contract delivery schedules where the time extension does not exceed [*Insert number*] calendar days.

(End of Clause)

■ 29. Section 852.242–71 is added to read as follows:

852.242–71 Administrative Contracting Officer.

As prescribed in 842.271, insert the following clause:

Administrative Contracting Officer (OCT 2020)

The Contracting Officer reserves the right to designate an Administrative Contracting Officer (ACO) for the purpose of performing certain tasks/duties in the administration of the contract. Such designation will be in writing through an ACO Letter of Delegation and will identify the responsibilities and limitations of the ACO. A copy of the ACO Letter of Delegation will be furnished to the Contractor.

(End of Clause)

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapters II, III, and VI

[RTID 0648–XA387]

Plan for Periodic Review of Regulations

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

ACTION: Request for comments.

SUMMARY: NMFS announces the availability of a list of the rules it is reviewing, as required, under section 610 of the Regulatory Flexibility Act. We are required to notify the public of our review of existing regulations that we have determined had, or will have, a significant impact on a substantial number of small entities, such as small businesses, small organizations, and small governmental jurisdictions. The intended effect of this notice is to inform the public of the rules under review, to outline NMFS' review process, and to provide an opportunity to comment.

DATES: Written comments must be received by October 26, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0128, by the following method:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0128,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

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

FOR FURTHER INFORMATION CONTACT: Tara Scott, Industry Economist, (301) 427–8579.

SUPPLEMENTARY INFORMATION:

Background

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires that Federal agencies, including NMFS, take into account how their regulations affect ''small entities,'' including small businesses, small Governmental jurisdictions, and small organizations. Under the RFA, we must either prepare a Regulatory Flexibility Analysis or certify that the regulation, if put in place, will not have a significant economic impact on a substantial number of small entities. This requirement has been in place for any regulation proposed after January 1, 1981. Section 602 of the RFA requires that NMFS issue an Agenda of Regulations identifying rules under development that are likely to have a significant economic impact on a substantial number of small entities.

Section 610 of the RFA requires Federal agencies to review existing regulations. It requires that NMFS publish a plan in the **Federal Register** explaining how it will review its existing regulations, which have or will have a significant economic impact on a substantial number of small entities. Regulations that became effective after January 1, 1981, must be reviewed within 10 years of the publication date of the final rule. Section 610(c) requires that we annually publish a list of final rules we will review during the succeeding 12 months in the **Federal Register**. The list must describe, explain the need for, and provide the legal basis for the rules being reviewed, as well as invite public comment on the rules contained in the list.

Criteria for Review of Existing Regulations

The purpose of the required review is to determine whether existing rules should be left unchanged, or whether they should be revised or rescinded to minimize significant economic impacts on a substantial number of small entities, consistent with the objectives of other applicable statutes. In deciding whether change is necessary, the RFA establishes five factors that NMFS must consider:

(1) Whether the rule is still needed;

(2) What type of complaints or comments were received concerning the rule from the public;

(3) The complexity of the rule;

(4) How much the rule overlaps, duplicates or conflicts with other

Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) How long it has been since the rule has been evaluated or how much the technology, economic conditions, or other factors have changed in the area affected by the rule.

Plan for Periodic Review of Rules

We will ensure that all rules, which have or will have a significant economic impact on a substantial number of small entities, are reviewed within 10 years of the year in which they were originally issued. Below is the list of rules, and their summaries, issued between January 1, 2011, and December 31, 2013, that we will be reviewing during 2020. We anticipate completing the reviews for all of these rules by March 31, 2021:

1. Pacific Halibut Fisheries; Guided Sport Charter Vessel Fishery for Halibut; Recordkeeping and Reporting. RIN 0648–AY38 (76 FR 6567; February 7, 2011). The final rule amended the recordkeeping and reporting requirements for the Pacific halibut guided sport fishery in International Pacific Halibut Commission Regulatory Area 2C (Southeast Alaska) and Area 3A (Central Gulf of Alaska). These regulations revised the Federal requirements for submission of Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheets, modified the logbook recording requirements, and added a definition of fishing week. This action was necessary to improve consistency between Federal and State of Alaska requirements for the submission of the logbook data sheets and address recent changes by the State to the logbook reporting format. This action was intended to achieve the halibut fishery management goals of the North Pacific Fishery Management Council and to support the conservation and management provisions of the Northern Pacific Halibut Act of 1982.

2. Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska License Limitation Program. RIN 0648–AY42 (76 FR 15826; March 22, 2011). The final rule implemented Amendment 86 to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska. This action added a Pacific cod endorsement on licenses issued under the License Limitation Program (LLP) in specific management areas if those licenses had been used on vessels that met minimum recent landing requirements using non-trawl gear, commonly known as fixed gear. This action exempted vessels that use jig gear from the requirement to hold an LLP license, modified the maximum length designation on a specific set of fixed gear licenses, and allows entities representing specific communities to receive a limited number of fixed-gear licenses with Pacific cod endorsements. This action was intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Fishery Management Plan, and other applicable law.

3. Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2011 Atlantic Bluefish Specifications; Regulatory Amendment. RIN 0648–BA26 (76 FR 17789; March 31, 2011). NMFS issued final specifications for the 2011 Atlantic bluefish fishery, including total allowable landings (TAL), a commercial quota and recreational harvest limit, and a recreational possession limit. The intent of this action was to establish the allowable 2011 harvest levels and other management measures to achieve the target fishing mortality rate (F), consistent with the Atlantic Bluefish FMP. The final rule also amended the bluefish regulations that specify the process for setting the annual TAL and target F to more clearly reflect the intent of the FMP. This action was conducted by NMFS under the authority of the MSA.

4. Endangered and Threatened Species: Designation of Critical Habitat for Cook Inlet Beluga Whale; Final Rule. RIN 0648–AX50 (76 FR 20179; April 11, 2011). This rule designated critical habitat for the Cook Inlet beluga whale (*Delphinapterus leucas*) distinct population segment (DPS) under the Endangered Species Act (ESA). Two areas were designated, comprising 7,800 square kilometers (km^2) (3,013 square miles (mi^2) of marine habitat. In developing this rule, NMFS considered public and peer review comments, as well as economic impacts and impacts to national security. NMFS decided in the final rule to exclude the Port of Anchorage in consideration of national security interest. Additionally, portions of military lands were determined to be ineligible for designation as critical habitat.

5. Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 45; Final Rule and Interim Final Rule. RIN 0648–BA27 (76 FR 23042; April 25, 2011). This final rule partially approved Framework Adjustment (FW) 45 to the NE Multispecies FMP and implements the approved measures. FW 45 was developed by the New England Fishery Management Council (Council) to make adjustments necessary to ensure that conservation and management objectives of the FMP, including preventing overfishing, rebuilding overfished stocks, achieving optimum yield (OY), and minimizing the economic impact of management measures on affected vessels, were being met in accordance with the MSA. Specifically, this action revised the biological reference points and stock status for pollock, updated annual catch limits (ACL) for several stocks for fishing years (FYs) 2011–2012, adjusted the rebuilding program for Georges Bank (GB) yellowtail flounder, increased scallop vessel access to the Great South Channel Exemption Area, approved five new sectors, modified the existing dockside and at-sea monitoring requirements, revised several sector administrative provisions, established a Gulf of Maine (GOM) Cod Spawning Protection Area, and refined measures affecting the operations of NE multispecies vessels fishing with handgear. This action approved the Council's proposed FY 2011 U.S./Canada Management Area total allowable catch (TAC), acceptable biological catch (ABC), and ACL for GB yellowtail flounder, but replaced them with new catch limits for this stock through a parallel emergency action, included as part of this final rule, based on the International Fisheries Agreement Clarification Act (IFACA) that provided new flexibility in setting catch limits for this stock. In addition, this action disapproved a measure to delay fishing industry responsibility for paying for at-sea monitoring coverage costs in FY 2012. This action was necessary to ensure that the fishery is managed on the basis of the best available science, to comply with the ABC control rules adopted in Amendment 16 to the FMP, and to enhance the viability of the fishery. This action was conducted by NMFS under the authority of the MSA.

6. Fisheries Off West Coast States: Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measure. RIN 0648–BA01 (76 FR 27508; May 11, 2011). This final rule established the 2011–2012 harvest specifications for most of the species in the groundfish fishery and management measures for that fishery off the coasts of Washington, Oregon, and California consistent with the MSA and the Pacific Coast Groundfish Fishery Management Plan (PCGFMP). This rule also established, under emergency authority in section 305 of the MSA, harvest specifications for eight overfished species, and for flatfish. Emergency authority was being invoked to

implement measures that were included in Amendment 16–5 to the PCGFMP, which NMFS disapproved in December 2010. These included a new rebuilding plan for petrale sole, revised rebuilding plans for the remaining seven overfished species, and revised status determination criteria and precautionary harvest control rule for flatfish.

7. Fisheries of the Northeastern United States; Northeast Skate Complex Fishery; Framework Adjustment 1. RIN 0648–BA91 (76 FR 28328; May 17, 2011). This final rule implemented approved measures in Framework Adjustment 1 to the Northeast Skate Complex Fishery Management Plan. Framework Adjustment 1 was developed by the New England Fishery Management Council (Council) to adjust the possession limits for the skate wing fishery in order to slow the rate of skate wing landings, so that the available TAL was taken by the fishery over a longer duration in the FY than occurred in FY 2010, thus ensuring a steady market supply. The action also allowed vessels that process skate wings at sea to land skate carcasses for sale into the bait market, without counting the carcass landings against the TAL (skate wings are already converted to live weight for monitoring). Although recommended by the Council as part of Framework 1, this final rule announced that NMFS had disapproved a proposal to increase the incidental possession limit for skate wings that would have applied after the skate wing possession limit trigger was reached. This final rule did not adjust the skate fishery specifications for FY 2011. This action was conducted by NMFS under the authority of the MSA.

8. Fisheries of the Northeastern United States; Monkfish; Amendment 5. RIN 0648–AX70 (76 FR 30265; May 25, 2011). This final rule implemented measures that were approved in Amendment 5 to the Monkfish FMP. The New England and Mid-Atlantic Fishery Management Councils developed Amendment 5 to bring the FMP into compliance with the ACL and accountability measure (AM) requirements of the MSA. This rule established the mechanisms for specifying ACLs and AMs and set the ACT and associated measures for days-at-sea (DAS) and trip limits for the Southern Fishery Management Area. NMFS disapproved the proposed ACT, and associated measures, for the Northern Fishery Management Area on the grounds that they were not consistent with the most recent scientific advice. This final rule implemented three additional Amendment 5 management measures to promote efficiency and reduce waste, bring the biological and management reference points in the Monkfish FMP into compliance with revised National Standard 1 Guidelines, and made one correction to the monkfish weight conversion factors.

9. Fisheries of the Exclusive Economic Zone Off Alaska: Bering Sea and Aleutian Islands Crab Rationalization Program. RIN 0648–BA11 (76 FR 35781; June 20, 2011). NMFS issued regulations to implement Amendment 37 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs FMP. This action amended the Bering Sea/Aleutian Islands Crab Rationalization Program by establishing a process for eligible contract signatories to request that NMFS exempt holders of West-designated individual fishing quota (IFQ) and individual processor quota (IPQ) in the Western Aleutian Islands golden king crab fishery from the West regional delivery requirements. Federal regulations require West-designated golden king crab IFQ to be delivered to a processor in the West region of the Aleutian Islands with an exact amount of unused West-designated IPQ. However, sufficient processing capacity may not be available each season. This rule was necessary to prevent disruption to the Western Aleutian Islands golden king crab fishery, while providing for the sustained participation of municipalities in the region. This action was intended to promote the goals and objectives of the MSA, the FMP, and other applicable law.

10. Atlantic Highly Migratory Species (HMS): Atlantic Bluefin Tuna Quotas and Atlantic Tuna Fisheries Management Measures. RIN 0648–BA65 (76 FR 39019; July 5, 2011). NMFS modified Atlantic bluefin tuna (BFT) base quotas for all domestic fishing categories; established BFT quota specifications for the 2011 fishing year; reinstated pelagic longline target catch requirements for retaining BFT in the Northeast Distant Gear Restricted Area (NED); amended the Atlantic tunas possession-at-sea and landing regulations to allow removal of Atlantic tunas tail lobes; and clarified the transfer-at-sea regulations for Atlantic tunas. This action was necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the MSA.

11. Atlantic Highly Migratory Species: Modification of the Retention of Incidentally-Caught Highly Migratory Species in Atlantic Trawl Fisheries. RIN 0648–BA45 (76 FR 49368; August 10, 2011). This final rule modified the permitting requirements and retention limits for Atlantic HMS that were incidentally-caught in Atlantic trawl fisheries. This action reduced regulatory dead discards of incidentally-caught Atlantic swordfish in the Illex squid trawl fishery by establishing a new Incidental HMS Squid Trawl permit for all valid Illex squid moratorium permit holders. The Incidental HMS Squid Trawl permit allowed up to 15 swordfish per trip to be retained. The final rule also established a retention limit for smoothhound sharks in all Atlantic trawl fisheries. These actions were necessary to achieve domestic management objectives under the MSA, and implemented the 2006 Consolidated HMS Fishery Management Plan (Consolidated HMS FMP), which included objectives in the FMP to monitor and control all components of fishing mortality, both directed and incidental, so as to ensure the long-term sustainability of HMS stocks, and to provide the data necessary for assessing HMS fish stocks and managing HMS, including addressing inadequacies in current data collection and the ongoing collection of economic and bycatch data in Atlantic HMS fisheries.

12. Atlantic Highly Migratory Species: Atlantic Shark Management Measures. RIN 0648–BA69 (76 FR 53652; August 29, 2011). NMFS implemented the ICCAT recommendations 10–07 and 10–08, which prohibited the retention, transshipping, landing, storing, or selling of hammerhead sharks in the family Sphyrnidae (except for *Sphyrna tiburo*) and oceanic whitetip sharks (*Carcharhinus longimanus*) caught in association with ICCAT fisheries. This rule affected the commercial HMS pelagic longline (PLL) fishery and recreational fisheries for tunas, swordfish, and billfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action implemented ICCAT recommendations, consistent with the ATCA, and furthers domestic management objectives under the MSA.

13. Fisheries of Northeastern United States: Atlantic Herring Fishery; Regulatory Amendment. RIN 0648–BA79 (76 FR 54385; September 1, 2011). NMFS revised the reporting requirements for vessels issued Atlantic herring (herring) permits, because more timely catch information was necessary to monitor herring catch against the stock-wide herring ACL and herring management area sub-ACLs, to help prevent sub-ACLs overages and the chance of premature fishery closures.

This action required limited access herring vessels to report catch daily via vessel monitoring systems (VMS), open access herring vessels to report catch weekly via the interactive voice response system, and all herring-permitted vessels to submit vessel trip reports weekly.

14. Fisheries of the Northeastern United States: Atlantic Deep-Sea Red Crab; Amendment 3. RIN 0648–BA22 (76 FR 60379 September 29, 2011). This final rule implemented measures that were approved in Amendment 3 to the Atlantic Deep-Sea Red Crab FMP. The New England Fishery Management Council developed Amendment 3 to bring the FMP into compliance with the ACL and AM requirements of the MSA. This rule established the mechanisms for specifying an ACL and AMs and set the TAL for red crab for the 2011–2013 FY. NMFS disapproved two proposed measures in Amendment 3. This final rule implemented additional management measures to promote efficiency in the red crab fishery.

15. Fishing Capacity Reduction Program for the Southeast Alaska Purse Seine Salmon Fishery. RIN 0648–BA13 (76 FR 61985, October 6, 2011). NMFS established regulations to implement a fishing capacity reduction (buyback) program and an industry fee system to repay a $23,476,500 loan for the Southeast Alaska Purse Seine Salmon Fishery (Reduction Fishery). The fee system involves future landings of the Reduction Fishery. This action's intent was to permanently reduce the most fishing capacity at the least cost and establish the fee system. This action was conducted by NMFS under the authority of the MSA.

16. Endangered and Threatened Species: Designation of Critical Habitat for the Southern Distinct Population Segment of Eulachon. RIN 0648–XF87 (76 FR 65324; October 20, 2011). NMFS issued a final rule to designate critical habitat for the southern DPS of Pacific eulachon (*Thaleichthys pacificus*), pursuant to section 4 of the ESA. NMFS designated 16 specific areas as critical habitat within the states of California, Oregon, and Washington. The designated areas were a combination of freshwater creeks and rivers and their associated estuaries, comprising approximately 539 km (335 mi) of habitat. The Tribal lands of four Indian Tribes were excluded from designation after the evaluation of the impacts of designation and benefits of exclusion associated with Tribal land ownership and management by the Tribes. No areas were excluded from designation based on economic impacts. This final rule responded to and incorporated public comments received on the proposed rule and supporting documents, as well as peer reviewer comments received on our draft biological report and draft economic report.

17. Endangered and Threatened Wildlife and Plants: Designation of Critical Habitat for Black Abalone. RIN 0648–AY62 (76 FR 66806; October 27, 2011). NMFS designated critical habitat for the endangered black abalone under the ESA. This designation included approximately 360 km^2 of rocky intertidal and subtidal habitat within five segments of the California coast between the Del Mar Landing Ecological Reserve to the Palos Verdes Peninsula, as well as on the Farallon Islands, Año Nuevo Island, San Miguel Island, Santa Rosa Island, Santa Cruz Island, Anacapa Island, Santa Barbara Island, and Santa Catalina Island. This designation included rocky intertidal and subtidal habitats from the mean higher high water (MHHW) line to a depth of −6 meters (m) (relative to the mean lower low water (MLLW) line), as well as the coastal marine waters encompassed by these areas. NMFS did not designate the specific area from Corona Del Mar State Beach to Dana Point, California, because they concluded that the economic benefits of exclusion from the critical habitat designation outweigh the benefits of inclusion and that exclusion of this specific area would not result in the extinction of the species. NMFS also concluded that two of the specific areas proposed for designation (San Nicolas Island and San Clemente Island) were no longer eligible for designation, based on determinations that the U.S. Navy's revised integrated natural resource management plans (INRMPs) for these areas provide benefits to black abalone.

18. Fisheries of the Exclusive Economic Zone Off Alaska: Bering Sea and Aleutian Islands Management Area; Limited Access Privilege Program. RIN 0648–BA18 (76 FR 68354; November 4, 2011). NMFS issued regulations implementing Amendment 93 to the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area. These regulations amended the Bering Sea and Aleutian Islands Amendment 80 Program to modify the criteria for forming and participating in a harvesting cooperative. This action was necessary to encourage greater participation in harvesting cooperatives, which enable members to more efficiently target species, avoid areas with undesirable bycatch, and improve the quality of products produced. This action was intended to promote the goals and objectives of the MSA, the FMP, and other applicable law.

19. Fisheries of the Northeastern United States: Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 11. RIN 0648–AX05 (76 FR 68642; November 7, 2011). NMFS implemented approved measures in Amendment 11 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan, developed by the Mid-Atlantic Fishery Management Council. The approved measures included: A tiered limited access program for the Atlantic mackerel fishery; an open access incidental catch permit for mackerel; an update to essential fish habitat designations for all life stages of mackerel, longfin squid, Illex squid, and butterfish; and the establishment of a recreational allocation for mackerel. This action was conducted by NMFS under the authority of the MSA.

20. Fisheries of Exclusive Economic Zone Off Alaska: Revisions to Pacific Cod Fishing in Parallel Fishery in Bering Sea and Aleutian Islands Management Area. RIN 0648–AY65 (76 FR 73513; November 29, 2011). NMFS issued regulations to limit access of federally permitted pot and hook-and-line catcher/processors (C/Ps) to the Pacific cod fishery in Alaska State waters within three nautical miles of shore adjacent to the Bering Sea and Aleutian Islands management area (BSAI). The affected fishery is commonly known as the ''parallel'' fishery. The parallel fishery is managed by the State of Alaska concurrent with the Federal pot and hook-and-line fishery for Pacific cod in the BSAI. This rule limited access by federally permitted vessels to the parallel fishery for Pacific cod in three ways. First, it required an owner of a federally permitted pot or hook-and-line C/P vessel used to catch Pacific cod in the State of Alaska parallel fishery to be issued the same endorsements on his or her Federal fisheries permit (FFP) or license limitation program (LLP) license as currently were required for catching Pacific cod in the Federal waters of the BSAI. Second, it provided that the owner of a pot or hook-and-line C/P vessel who surrenders an FFP would not be reissued a new FFP for that vessel within the 3-year term of the permit. Third, it required an operator of any federally permitted pot or hook-and-line C/P vessel used to catch Pacific cod in the parallel fishery to comply with the same seasonal closures of Pacific cod that apply in the Federal fishery. These three measures were necessary to limit some C/Ps from catching a greater amount of Pacific cod in the parallel fishery than has been allocated to their sector from the BSAI

total allowable catch. Maintaining Pacific cod catch amounts within BSAI sector allocations also would reduce the potential for shortened Pacific cod seasons for C/Ps in the Federal fishery. These three measures would improve the effectiveness of NMFS' catch accounting and monitoring requirements on vessels participating in the parallel fishery. This action was intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, the MSA, and other applicable laws.

21. Atlantic Highly Migratory Species: Adjustments to the Atlantic Bluefin Tuna General and Harpoon Category Regulations. RIN 0648–AX85 (76 FR 74003; November 30, 2011). NMFS adjusted the Atlantic BFT fishery regulations to: Increase the General category maximum daily retention limit; allow the General category season to remain open until the January subquota was reached, or March 31, whichever happens first; and increase the Harpoon category daily incidental retention limit. This action was intended to enable more thorough utilization of the available U.S. BFT quota for the General and Harpoon (commercial handgear) categories; minimize bycatch and bycatch mortality to the extent practicable; expand fishing opportunities for participants in the commercial winter General category fishery; and increase NMFS' flexibility for setting the General category retention limit depending on available quota. This action was conducted by NMFS under the authority of the MSA.

22. Fisheries of the Exclusive Economic Zone Off Alaska: Pacific Cod Allocations in the Gulf of Alaska; Amendment 83. RIN 0648–AY53 (76 FR 74670; December 1, 2011). NMFS published regulations to implement Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA). Amendment 83 allocated Western and Central GOA Pacific cod TAC limits among various gear and operational sectors. Sector allocations limit the amount of Western and Central GOA Pacific cod that each sector was authorized to harvest. This action reduced competition among sectors and supported stability in the Pacific cod fishery. This rule limited access to the Federal Pacific cod TAC fisheries prosecuted in State of Alaska waters, commonly known as the parallel fishery, adjacent to the Western and Central GOA. This action was intended to promote community participation and provide incentives for new entrants in the jig sector. It also promoted the goals and objectives of the MSA, the Fishery Management Plan, and other applicable laws.

23. Atlantic Highly Migratory Species: Vessel Monitoring Systems. RIN 0648–BA64 (76 FR 75492; December 2, 2011). NMFS finalized requirements for fishermen to replace currently required Mobile Transmitting Unit (MTU) VMS units with Enhanced Mobile Transmitting Unit (E–MTU) VMS in Atlantic HMS fisheries. The key difference between MTU and E–MTU VMS units was that the E–MTU VMS units were capable of two-way communication. The purpose of this final action was to facilitate enhanced communication with HMS vessels at sea, provide HMS fishery participants with an additional means of sending and receiving information at sea, ensure that HMS VMS units are consistent with the current VMS technology and type approval requirements that apply to newly installed units, and to provide NMFS enforcement with additional information describing gear onboard and target species. This rule affected all HMS PLL, bottom longline (BLL), and shark gillnet fishermen who are currently required to have VMS onboard their vessels. This action was conducted by NMFS under the authority of the MSA.

24. Fisheries of the Exclusive Economic Zone Off Alaska: Groundfish of the Gulf of Alaska; Amendment Fisheries of the Exclusive Economic Zone Off Alaska: Groundfish of the Gulf of Alaska; Amendment 88. RIN 0648–BA97 (76 FR 81248; December 27, 2011). This final rule implemented Amendment 88 to the FMP for Groundfish of the Gulf of Alaska (GOA FMP). Amendment 88 was the Central Gulf of Alaska Rockfish Program (Rockfish Program). These regulations allocated exclusive harvest privileges to a specific group of license limitation program license holders who used trawl gear to target Pacific ocean perch, pelagic shelf rockfish, and northern rockfish during particular qualifying years. The Rockfish Program retained the conservation, management, safety, and economic gains realized under the Central Gulf of Alaska Rockfish Pilot Program (Pilot Program) and resolved identified issues in the management and viability of the rockfish fisheries. This action was necessary to replace particular Pilot Program regulations that were scheduled to expire at the end of 2011. This action was intended to promote the goals and objectives of the MSA, the GOA FMP, and other applicable law.

25. Endangered and Threatened Species: Critical Habitat Designation for Endangered Leatherback Sea Turtle. RIN 0648–AX06 (77 FR 4170; January 26, 2012). NMFS issued a final rule to revise the current critical habitat for the leatherback sea turtle (*Dermochelys coriacea*) by designating additional areas within the Pacific Ocean. This designation included approximately 16,910 mi^2 (43,798 km^2) stretching along the California coast from Point Arena to Point Arguello east of the 3,000 meter depth contour; and 25,004 mi^2 (64,760 km^2) stretching from Cape Flattery, Washington to Cape Blanco, Oregon east of the 2,000 meter depth contour. The designated areas comprised approximately 41,914 mi^2 (108,558 km^2) of marine habitat and include waters from the ocean surface down to a maximum depth of 262 feet (80 m). Other Pacific waters within the U.S. Exclusive Economic Zone (EEZ) were evaluated based on the geographical area occupied by the species, but NMFS determined that they were not eligible for designation, as they did not contain the feature identified as essential to the conservation of the species. The total estimated annualized economic impact associated with this designation was estimated to range between $188,000 and $9.1 million U.S. dollars. This action was conducted by NMFS under the authority of the ESA.

26. Fisheries of Exclusive Economic Zone Off Alaska: Chinook Salmon Bycatch Management in Bering Sea Pollock Fishery; Economic Data Collection. RIN 0648–BA80 (77 FR 5389; February 3, 2012). NMFS issued a final rule to implement the Chinook Salmon Economic Data Report Program, which would evaluate the effectiveness of Chinook salmon bycatch management measures for the Bering Sea pollock fishery that were implemented under Amendment 91 to the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area. Members of the American Fisheries Act catcher vessels, catcher/processor, and mothership sectors as well as representatives for the six western Alaska Community Development Quota Program organizations that were receiving allocations of Bering Sea pollock would submit the data collected for this program. This rule was intended to promote the goals and objectives of the FMP, the MSA, and other applicable law.

27. Fisheries of Exclusive Economic Zone Off Alaska: Community Development Quota Program. RIN 0648–AV33 (77 FR 6492; February 8, 2012). NMFS issued regulations that govern fisheries managed under the Western Alaska Community Development Quota (CDQ) Program. These revisions were needed to comply with certain changes

made to the MSA in 2006. Changes included revision to regulations associated with recordkeeping, vessel licensing, catch retention requirements, and fisheries observer requirements to ensure that they were no more restrictive than the regulations in effect for comparable non-CDQ fisheries managed under individual fishing quotas or cooperative allocations. In addition, NMFS removed CDQ Program regulations that were inconsistent with the MSA, including regulations associated with the CDQ allocation process, the transfer of groundfish CDQ and halibut prohibited species quota, and the oversight of CDQ groups' expenditures. This action was conducted by NMFS under the authority of the MSA.

28. Fisheries of the Northeastern United States: Northeast Multispecies Fishery; Framework Adjustment 47. RIN 0648–BB62 (77 FR 26104; May 2, 2012). NMFS approved Framework Adjustment 47 (Framework 47) to NE Multispecies FMP and implemented the approved measures. The New England Fishery Management Council developed and adopted Framework 47 based on the biennial review process established in the NE Multispecies FMP to develop ACLs and revise management measures necessary to rebuild overfished groundfish stocks and achieve the goals and objectives of the FMP. This action also implemented management measures and revised existing regulations that were not included in Framework 47, including common pool management measures for fishing year (FY) 2012, modification of the Ruhle trawl definition, and clarification of the regulations for charter/party and recreational groundfish vessels fishing in groundfish closed areas. This action was intended to prevent overfishing, rebuild overfished stocks, achieve OY, and ensure that management measures were based on the best available scientific information at the time Framework 47 was submitted. This action was conducted by NMFS under the authority of the MSA.

29. Fisheries of the Exclusive Economic Zone Off Alaska: Pacific Halibut and Sablefish Individual Fishing Quota Program. RIN 0648–AX91 (77 FR 29556; May 18, 2012). NMFS issued a final rule to modify the IFQ Program for the Fixed-Gear Commercial Fisheries for Pacific Halibut and Sablefish in Waters in and off Alaska (IFQ Program) by revoking quota share (QS) that had been inactive since they were originally issued in 1995. Inactive QS were those held by persons that have never harvested their IFQ and had never transferred QS or IFQ into or out of their IFQ accounts. This action was necessary to achieve the catch limit from the halibut fisheries and optimum yield from the sablefish fisheries in Alaska in accordance with National Standard 1 of the MSA and to achieve more efficient use of these species. The intended effect was to promote the management provisions in the Northern Pacific Halibut Act of 1982, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, and the Fishery Management Plan for Groundfish of the Gulf of Alaska.

30. Atlantic Coastal Fisheries Cooperative Management Act Provisions: American Lobster Fishery. RIN 0648–BA56 (77 FR 32420; June 1, 2012). This rule implemented new Federal American lobster regulations that limited entry into the lobster trap fishery in Lobster Conservation Management Area 1 (Area 1), located in the Federal inshore waters of the Gulf of Maine. Eligibility was based on specific eligibility criteria designed to identify active Federal Area 1 lobster trap permits. If a permit met the eligibility criteria, the permit holder was authorized to fish in the Federal waters of Area 1 with up to 800 lobster traps. The limited entry program responded to the recommendations for Federal action in the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for American Lobster.

31. Fisheries of Caribbean, Gulf of Mexico, and South Atlantic: Snapper-Grouper Fishery off Southern Atlantic States; Amendment 18A. RIN 0648–BB56 (77 FR 32408; June 1, 2012). NMFS issued this final rule to implement Amendment 18A to the FMP for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 18A), as prepared and submitted by the South Atlantic Fishery Management Council. This rule modified the current system of accountability measures for black sea bass, limited effort in the black sea bass segment of the snapper-grouper fishery, and improved fisheries data in the for-hire sector of the snapper-grouper fishery. Amendment 18A also updated the rebuilding plan and modified the ABC for black sea bass. The rule established a spawning season closure for black sea bass. It also modified the rebuilding strategy, ABC, ACL and ACT for black sea bass; modified the current commercial and/or recreational size limits; established a commercial trip limit for black sea bass; and limited participation in the black sea bass pot segment of the snapper grouper fishery through an endorsement program. The rule also established an appeals process for fishermen excluded from the black sea bass pot endorsement program. This final rule was intended to reduce overcapacity in the black sea bass segment of the snapper-grouper fishery and improve data reporting in the commercial and for-hire sectors of the snapper grouper fishery. This action was conducted by NMFS under the authority of the MSA.

32. Fisheries of the Northeastern United States: Northeast Multispecies Fishery; Exempted Fishery for Southern New England Skate Bait Trawl Fishery. RIN 0648–BB35 (77 FR 38738; June 29, 2012). This final rule modified the regulations implementing the NE Multispecies FMP to allow vessels issued a Federal skate permit and a Skate Bait Letter of Authorization to fish for skates in a portion of southern New England (SNE) from July 1 through October 31 of each year, outside of the NE multispecies DAS program. This action allowed vessels to harvest skates in a manner that is consistent with the bycatch reduction objectives of the NE Multispecies FMP. This action was conducted by NMFS under the authority of the MSA.

33. Fisheries of the Exclusive Economic Zone Off Alaska: Chinook Salmon Bycatch Management in the Gulf of Alaska Pollock Fishery; Amendment 93. RIN 0648–BB24 (77 FR 42629; July 20, 2012). NMFS published regulations to implement Amendment 93 to the FMP for Groundfish of the Gulf of Alaska. The regulations apply exclusively to the directed pollock trawl fisheries in the Central and Western Reporting Areas of the GOA (Central and Western GOA). Amendment 93 established separate prohibited species catch (PSC) limits in the Central and Western GOA for Chinook salmon (*Oncorhynchus tshawytscha*), which would cause NMFS to close the directed pollock fishery in the Central or Western regulatory areas of the GOA, if the applicable limit was reached. This action also required retention of salmon by all vessels in the Central and Western GOA pollock fisheries until the catch was delivered to a processing facility where an observer was provided the opportunity to count the number of salmon and to collect scientific data or biological samples from the salmon. This action made several revisions to the Prohibited Species Donation (PSD) program. Amendment 93 was intended to promote the goals and objectives of the MSA, the FMP, and other applicable laws.

34. Atlantic Highly Migratory Species: Electronic Dealer Reporting Requirements. RIN 0648–BA75 (77 FR 47303; August 8, 2012). This final rule required that Federal Atlantic

swordfish, shark, and tuna dealers report receipt of Atlantic sharks, swordfish, and bigeye, albacore, skipjack, and yellowfin (BAYS) tunas to NMFS through an electronic reporting system on a weekly basis. Atlantic HMS dealers would not be required to report bluefin tuna through this electronic reporting system, as a separate reporting system was in place for this species. This final rule changed the current definition of who was considered an Atlantic HMS dealer and required Atlantic HMS dealers to submit dealer reports to NMFS in a timely manner in order to be able to purchase commercially-harvested Atlantic sharks, swordfish, and BAYS tunas. Any delinquent reports would need to be submitted by the dealer and received by NMFS before a dealer could purchase commercially-harvested Atlantic sharks, swordfish, and BAYS tunas from a fishing vessel. These measures were necessary to ensure timely and accurate reporting, which was critical for quota monitoring and management of these species. This action was conducted by NMFS under the authority of the MSA.

35. Second Fishing Capacity Reduction Program: Longline Catcher Processor Subsector of Bering Sea and Aleutian Islands Non-pollock Groundfish Fishery. RIN 0648–BB06 (77 FR 58775; September 24, 2012). NMFS established regulations to implement a second fishing capacity reduction program (also commonly known as ''buyback'') and an industry fee system to repay a $2.7 million loan for a single latent permit within the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery (Reduction Fishery). The purpose of this action was to permanently reduce the greatest amount of fishing capacity at the least cost. This was intended to result in increased harvesting productivity for the permit holders remaining in the fishery. The loan for this program was added to the previous program loan of $35,700,000 authorized by the FY 2005 Appropriations Act. For purposes of this regulation, the terms license and permit were used interchangeably. This action was conducted by NMFS under the authority of the MSA and other applicable laws.

36. Fisheries of the Exclusive Economic Zone Off Alaska: Bering Sea and Aleutian Islands Management Area; Amendment 97. RIN 0648–BB18 (77 FR 59852, October 1, 2012). This final rule implemented Amendment 97 to the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area. Amendment 97 allowed the owner of a trawl catcher/processor vessel authorized to participate in the Amendment 80 catch share program to replace that vessel with a vessel that meets certain requirements. This action established the regulatory process for replacement of vessels in the Amendment 80 fleet and the requirements for Amendment 80 replacement vessels, such as a limit on the overall length of a replacement vessel, a prohibition on the use of an American Fisheries Act (AFA) vessel as a replacement vessel, measures to prevent a replaced vessel from participating in Federal groundfish fisheries off Alaska that are not Amendment 80 fisheries, and measures that extend specific catch limits (known as Amendment 80 sideboards) to a replacement vessel. This action was necessary to promote safety-at-sea by allowing Amendment 80 vessel owners to replace their vessels for any reason at any time and by requiring replacement vessels to meet certain U.S. Coast Guard vessel safety standards, and to improve the retention and utilization of groundfish catch by these vessels by facilitating an increase in the processing capabilities of the fleet. This action was intended to promote the goals and objectives of the MSA, the FMP, and other applicable laws.

37. Atlantic Highly Migratory Species: Silky Shark Management Measures. RIN 0648–BB96 (77 FR 60632; October 4, 2012). NMFS implemented the ICCAT Recommendation 11–08, which prohibits retaining, transshipping, or landing of silky sharks (*Carcharhinus falciformis*) caught in association with ICCAT fisheries. In order to facilitate domestic compliance and enforcement, NMFS also prohibited the storing, selling, and purchasing of the species. This rule primarily affected the commercial Atlantic HMS pelagic longline fishery for tuna and tuna-like species in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This rule did not affect commercial fishermen fishing for sharks with bottom longline, gillnet, or handgear, and it does not further affect recreational fishermen because harvesting silky sharks was already prohibited in the recreational fishery. This action implemented the ICCAT recommendation, consistent with the ATCA, and furthers domestic management objectives under the MSA.

38. Groundfish Fisheries of the Exclusive Economic Zone off Alaska and Pacific Halibut Fisheries: Observer Program. RIN 0648–BB42 (77 FR 70062; November 21, 2012). This final rule implemented Amendment 86 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 76 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (Amendments 86/76). Amendments 86/76 add a funding and deployment system for observer coverage to the existing North Pacific Groundfish Observer Program (Observer Program) and amend existing observer coverage requirements for vessels and processing plants. The new funding and deployment system allowed NMFS to determine when and where to deploy observers according to management and conservation needs, with funds provided through a system of fees based on the ex-vessel value of groundfish and halibut in fisheries covered by the new system. This action was necessary to resolve data quality and cost equity concerns with the Observer Program's existing funding and deployment structure. This action was intended to promote the goals and objectives of the MSA, the Northern Pacific Halibut Act of 1982, the fishery management plans, and other applicable law.

39. Taking of Marine Mammals Incidental to Commercial Fishing Operations: False Killer Whale Take Reduction Plan. RIN 0648–BA30 (77 FR 71260; November 29, 2012). The final rule issued the False Killer Whale Take Reduction Plan (FKWTRP), and regulatory measures and non-regulatory measures and recommendations to reduce mortalities and serious injuries of false killer whales in Hawaii-based longline fisheries. Regulatory measures include gear requirements, longline prohibited areas, training and certification in marine mammal handling and release, captains' supervision of marine mammal handling and release, and posting of NMFS-approved placards on longline vessels. In this rule, NMFS also recommended research and data collection programs. This final rule also revised the boundaries of the longline prohibited area around the main Hawaiian Islands to be consistent with the prohibited area established under the FKWTRP regulations. The FKWTRP was based on consensus recommendations submitted to NMFS by the False Killer Whale Take Reduction Team (Team), with certain modifications described herein that were determined to be necessary to meet the requirements of the MMPA. This final rule was necessary because current mortality and serious injury levels of the Hawaii Pelagic and Hawaii Insular stocks of false killer whales incidental to the Hawaii-based pelagic longline fisheries are above the stocks' potential biological removal (PBR) levels, and are

therefore inconsistent with the short- and long-term goals of the Marine Mammal Protection Act (MMPA). The FKWTRP was intended to meet the requirements of the MMPA.

40. International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species: Transshipping, Bunkering, Reporting, and Purse Seine Discard Requirements. RIN 0648–BA85 (77 FR 71501; December 3, 2012). NMFS issued regulations under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to implement requirements for U.S. fishing vessels used for commercial fishing that offload or receive transshipments of HMS, U.S. fishing vessels used for commercial fishing that provide bunkering or other support services to fishing vessels, and U.S. fishing vessels used for commercial fishing that receive bunkering or engage in other support services, in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). Some of the requirements also applied to transshipments of fish caught in the area of application of the Convention (Convention Area) and transshipped elsewhere. NMFS also issued requirements regarding notification of entry into and exit from the ''Eastern High Seas Special Management Area'' (Eastern SMA) and requirements relating to discards from purse seine fishing vessels. This action was necessary for the United States to implement decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC) and to satisfy its obligations under the Convention, to which it is a Contracting Party.

41. Fisheries Off West Coast States; Pacific Coast Groundfish Fishery: 2013–2014 Biennial Specifications and Management Measures. RIN 0648–BC35 (78 FR 580; January 3, 2013). This final rule established the 2013–2014 harvest specifications and management measures for groundfish taken in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California consistent with the MSA and the PCGFMP. This final rule also revised the collection of management measures in the groundfish fishery regulations that are intended to keep the total catch of each groundfish species or species complex within the harvest specifications.

42. Fisheries of the Exclusive Economic Zone Off Alaska: Bering Sea and Aleutian Islands Management Area; Groundfish Retention Standard. RIN 0648–BA93 (78 FR 12627; February 25, 2013). NMFS published a regulatory amendment to modify the groundfish retention standard (GRS) program in the Bering Sea and Aleutian Islands Management Area (BSAI). This final rule removed certain regulatory requirements that mandate minimum levels of groundfish retention by the owners and operators of trawl catcher/processor (C/P) vessels not listed in the AFA, commonly referred to as either non-AFA trawl C/Ps or Amendment 80 vessels, and Amendment 80 cooperatives participating in the BSAI groundfish fisheries. The GRS program was implemented to increase the retention and utilization of groundfish; however, NMFS discovered that the regulatory methodology used to calculate compliance with the GRS requires individual Amendment 80 vessels and Amendment 80 cooperatives to retain groundfish at rates well above the minimum retention rates recommended by the Council or implemented by NMFS. As a result, the GRS imposed significantly higher than predicted compliance costs on vessel owners and operators due to the increased level of retention needed to meet the minimum retention rates. Additionally, NMFS discovered that enforcement of the GRS had proven far more complex, challenging, and potentially costly than anticipated by NMFS. This action was necessary to relieve Amendment 80 vessels and Amendment 80 cooperatives from undue compliance costs stemming from the minimum retention rates while continuing to promote the GRS program goals of increased groundfish retention and utilization. This action maintained current monitoring requirements for the Amendment 80 fleet and established a new requirement for Amendment 80 cooperatives to annually report groundfish retention performance as part of the report submitted to NMFS. This action was intended to promote the goals and objectives of the MSA, the fishery management plan, and other applicable law.

43. Fisheries of the Northeastern United States: Northeast Multispecies Fishery Management Plan; Amendment 19. RIN 0648–BC48 (78 FR 20260; April 4, 2013). This final rule implemented Amendment 19 to the Northeast Multispecies Fishery Management Plan. The New England Fishery Management Council developed Amendment 19 to modify management measures that governed the small-mesh multispecies fishery, including the accountability measures, the year-round possession limits, and total allowable landings process. Amendment 19 was approved by NMFS on January 15, 2013. This action was conducted by NMFS under the authority of the MSA.

44. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic: Snapper-Grouper Fishery off Southern Atlantic States; Amendment 18B. RIN 0648–BB58 (78 FR 23858; April 23, 2013). NMFS issued this final rule to implement management measures described in Amendment 18B to the FMP for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 18B), as prepared by the South Atlantic Fishery Management Council. This final rule: Established a longline endorsement program for the commercial golden tilefish component of the snapper-grouper fishery; established initial eligibility requirements for a golden tilefish longline endorsement; established an appeals process; allocated the commercial golden tilefish ACL among gear groups; established a procedure for the transfer of golden tilefish endorsements; and modified the golden tilefish trip limits; and established a trip limit for commercial fishermen who did not receive a golden tilefish longline endorsement. The intent of this rule was to reduce overcapacity in the commercial golden tilefish component of the snapper-grouper fishery. This action was conducted by NMFS under the authority of the MSA.

45. Fisheries of the Northeastern United States: Northeast Multispecies Fishery. RIN 0648–BC27 78 FR 26118; May 3, 2013). This rule announced that NMFS partially approved Framework Adjustment 48 to the NE Multispecies FMP and implemented the approved measures in the regulations. Framework 48 was the first of two parallel and related actions developed by the New England Fishery Management Council to respond to updated stock status information and to adjust other management measures in the NE multispecies (groundfish) fishery beginning in FY 2013. This action implemented new status determination criteria for GOM cod, GB cod, Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder, and white hake based on new benchmark assessments completed for these stocks in 2012 and 2013. NMFS approved and implemented updated status determination criteria for white hake through this interim final rule and accepted further comment on this measure since it was not available for comment in the Framework 48 proposed rule. Through this action, NMFS also approved and implemented the

following Framework 48 measures: Elimination of dockside monitoring requirements for the groundfish fishery; lower minimum fish sizes for several groundfish stocks; clarified goals and performance standard for groundfish monitoring programs; revisions to the allocation of GB yellowtail flounder to the scallop fishery; and establishment of sub-ACLs of GB yellowtail flounder and SNE/MA windowpane flounder for the scallop and other non-groundfish fisheries. NMFS also approved revisions to recreational and commercial accountability measures (AMs), including amendments to existing AMs for windowpane flounder, ocean pout, and Atlantic halibut, and new ''reactive'' AMs for Atlantic wolffish and SNE/MA winter flounder, to address a remand by the U.S. District Court of Appeals. NMFS disapproved some measures in Framework 48: A provision for cost-sharing of monitoring costs between the industry and NMFS; a provision to delay industry-funded monitoring to FY 2014; finer scale discard rate strata for GB yellowtail flounder; and a provision to remove requirements for groundfish trawlers to stow their gear when transiting closed areas. Through this interim final rule, NMFS also withdrew a proposed correction to the regulations specific to monitoring of the Eastern U.S./Canada quotas, and accepted additional public comment on this issue. These measures were necessary to meet the requirements of the FMP and the MSA, most notably preventing overfishing, ensuring that management measures are based on the best available science, and mitigating, to the extent practicable, potential negative economic impacts from reductions in catch limits anticipated for fishing year FY 2013. This action was conducted by NMFS under the authority of the MSA.

46. Fisheries of the Northeastern United States: Northeast Multispecies Fishery. RIN 0648–BC97 (78 FR 26172; May 3, 2013). NMFS partially approved Framework Adjustment 50 (Framework 50) to the NE Multispecies FMP, and implemented the approved measures. NMFS also implemented three parallel emergency actions to set FY 2013 catch limits for GB yellowtail flounder and white hake, and to modify the maximum GOM cod carryover available to sectors from FY 2012 to FY 2013. Framework 50 set specifications for FYs 2013–2015, including 2013 TACs for U.S./Canada stocks, and revised the rebuilding program and management measures for Southern New England/Mid-Atlantic (SNE/MA) winter flounder. This final rule also implemented FY 2013 management measures for the recreational and common pool fisheries and clarified how to account for sector carryover for FY 2013 and for FY 2014 and beyond. These actions were necessary to prevent overfishing, rebuild overfished stocks, achieve OY, and ensure that management measures were based on the best available scientific information. This action was conducted by NMFS under the authority of the MSA.

47. Fisheries of the Northeastern United States: Northeast Multispecies Fishery; Exempted Fishery for the Spiny Dogfish Fishery in the Waters East and West of Cape Cod, MA. RIN 0648–BC50 (78 FR 26518; May 7, 2013). This interim final rule modified the regulations implementing the NE Multispecies FMP to allow vessels fishing with a NE Federal spiny dogfish permit to fish in an area east of Cape Cod, MA (Eastern Exemption Area) with gillnet and longline gear, from June through December and with handgear from June through August, and to fish in Cape Cod Bay (Western Exemption Area) with longline gear and handgear from June through August. This action allowed vessels to harvest spiny dogfish in a manner that is consistent with the bycatch reduction objectives of the NE Multispecies FMP. This action was conducted by NMFS under the authority of the MSA.

48. Fisheries of the Exclusive Economic Zone Off Alaska: Bering Sea and Aleutian Islands Crab Rationalization Program. RIN 0648–BA82 (78 FR 28523; May 15, 2013). NMFS issued regulations to implement Amendment 41 to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs. These regulations amended the Bering Sea/Aleutian Islands Crab Rationalization Program (CR Program) by establishing a process whereby holders of regionally designated IFQ and IPQ in six CR Program fisheries may receive an exemption from regional delivery requirements in the North or South Regions. The six CR Program fisheries were Bristol Bay red king crab, Bering Sea snow crab, Saint Matthew Island blue king crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, and Pribilof Islands red and blue king crab. This action was necessary to mitigate disruptions in a CR Program fishery that prevented participants from complying with regional delivery requirements. This action was intended to promote the goals and objectives of the MSA, the FMP, and other applicable law.

49. Fisheries of the Exclusive Economic Zone Off Alaska: Revised Maximum Retainable Amounts of Groundfish; Bering Sea and Aleutian Islands. RIN 0648–BA43 (78 FR 29248; May 20, 2013). NMFS issued a regulation to increase the maximum retainable amounts (MRAs) of groundfish using arrowtooth flounder (*Atheresthes stomias*) and Kamchatka flounder (*Atheresthes evermanni*) as basis species in the Bering Sea and Aleutian Islands management area (BSAI). This action allowed the use of BSAI arrowtooth flounder and Kamchatka flounder as basis species for the retention of species closed to directed fishing and was necessary to improve retention of otherwise marketable groundfish in these BSAI fisheries. This action also included four regulatory amendments related to harvest management of Kamchatka flounder. Two amendments were necessary to account for Kamchatka flounder in the same manner as arrowtooth flounder in the BSAI and to aid in the recordkeeping, reporting, and catch accounting of flatfish in the BSAI. The third amendment was necessary to provide NMFS the flexibility to allocate Kamchatka flounder (and other species in the future) to the Western Alaska Community Development Quota (CDQ) Program in the annual harvest specifications. Through this action, NMFS intended to promote the goals and objectives of the MSA, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, and other applicable law.

50. Highly Migratory Species: Atlantic Shark Management Measures; Amendment 5a. RIN 0648–BB29 (78 FR 40318; July 3, 2013). The final rule implemented the Final Amendment 5a to the 2006 Consolidated Atlantic HMSFMP. In developing Amendment 5a to the 2006 Consolidated HMS FMP, NMFS examined a full range of management alternatives to maintain rebuilding of sandbar sharks; end overfishing and rebuild scalloped hammerhead and Atlantic blacknose sharks; and establish a TAC and commercial quota and recreational measures for Gulf of Mexico blacknose and blacktip sharks, consistent with the MSA, and other applicable laws. This final rule implemented the final conservation and management measures in Amendment 5a to the 2006 Consolidated HMS FMP for sandbar, scalloped hammerhead, blacknose, and Gulf of Mexico blacktip sharks. This final rule also announced the revised 2013 annual regional quotas for aggregated large coastal sharks (LCS), hammerhead, Gulf of Mexico blacktip, blacknose, and non-blacknose small coastal sharks (SCS). These changes

could have affected all commercial and recreational fishermen who fish for sharks in the Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea.

51. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic: Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands; Parrotfish Management Measures in St. Croix. RIN 0648–BC20 (78 FR 45894; July 30, 2013). NMFS issued this final rule to implement management measures described in Regulatory Amendment 4 to the FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands, as prepared by the Caribbean Fishery Management Council. This rule established minimum size limits for parrotfish in the EEZ off St. Croix in the U.S. Virgin Islands. The purpose of this final rule was to provide protection from harvest to parrotfish and to assist the stock in achieving OY. This action was conducted by NMFS under the authority of the MSA.

52. Highly Migratory Species: 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan; Amendment 8. RIN 0648–BC31 (78 FR 52012; August 21, 2013). This final rule implemented Amendment 8 to the 2006 Consolidated Atlantic HMS FMP. Amendment 8 to the 2006 Consolidated HMS FMP provided additional opportunities for U.S. fishermen to harvest swordfish using selective gears that are low in bycatch, given their rebuilt status and increased availability. This final rule created new and modified commercial fishing vessel permits that allow permit holders to retain and sell a limited number of swordfish caught on rod and reel, handline, harpoon, green-stick, or bandit gear. Specific management measures under this final action included the establishment of a new open access commercial swordfish permit, modification of HMS Charter/Headboat permit regulations to allow for the commercial retention of swordfish on non-for-hire trips, regional swordfish retention limits for the new and modified permits, gear authorizations, and reporting requirements. This action was conducted by NMFS under the authority of the MSA.

53. Fisheries of the Northeastern United States: Northeast Multispecies Fishery; Framework Adjustment 48, Framework Adjustment 50; 2013 Sector Operations Plans, Contracts, and Allocation Annual Catch Entitlements. RIN 0648–BC27 (78 FR 53363; August 29, 2013). This final rule finalized interim measures put in place for the May 1, 2013, start of the NE multispecies fishing year. This action was intended to do the following: Finalize interim rule measures put in place by FW 48, FW 50, and in the 2013 Sector Operations Plan rulemakings; respond to public comments received on the interim measures; and notify the public of changes being made to Eastern U.S./Canada Area quota monitoring and associated reporting requirements. This action was conducted by NMFS under the authority of the MSA.

54. Atlantic Highly Migratory Species: Vessel Monitoring Systems. RIN 0648–BD24 (78 FR 68757; November 15, 2013). NMFS modified the reporting requirements for vessels required to use VMS units in Atlantic HMS fisheries. This final rule required vessel owners or operators, who have been issued HMS permits and were required to use VMS, to provide hourly position reports 24 hours a day, 7 days a week (24/7) via VMS. The final rule also allowed the vessel owners or operators of such vessels to declare out of the HMS fishery when not fishing for or retaining HMS for a period of time encompassing two or more trips. This final action continued to provide NOAA Office of Law Enforcement needed information on the target fishery and gear possessed in order to facilitate enforcement of closed areas and other HMS regulations, while reducing the reporting burden on vessel owners and operators. This action brought HMS fisheries regulations in line with VMS regulations in other fisheries. This rule affected all owners and/or operators of permitted vessels that fish for HMS and are required to use VMS. This action was conducted by NMFS under the authority of the MSA.

55. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic: Shrimp Fishery of the Gulf of Mexico; Establish Funding Responsibilities for the Electronic Logbook Program. RIN 0648–BD41 (78 FR 78776; December 27, 2013). NMFS established funding responsibilities for an upgrade to the shrimp electronic logbook (ELB) program as described in a framework action to the FMP for the Shrimp Fishery of the Gulf of Mexico, as prepared by the Gulf of Mexico Fishery Management Council. Newer and more efficient ELB units have been purchased by NMFS for the Gulf shrimp fleet and are available for installation on Gulf shrimp vessels. Therefore, NMFS established a cost-sharing program to fund the ELB program. NMFS paid for the software development, data storage, effort estimation analysis, and archival activities for the new ELB units, and selected vessel permit holders in the Gulf shrimp fishery paid for installation and maintenance of the new ELB units and for the data transmission from the ELB units to a NOAA server. The purpose of these changes was to ensure that management of the shrimp fishery is based upon the best scientific information available and that bycatch is minimized to the extent practicable. This action was conducted by NMFS under the authority of the MSA.

56. Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic: Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 27. RIN 0648–BD05 (78 FR 78770; December 27, 2013). NMFS issued this final rule to implement Amendment 27 (Amendment 27) to the FMP for the Snapper-Grouper Fishery of the South Atlantic Region, as prepared and submitted by the South Atlantic Fishery Management Council. Amendment 27 and this final rule extended the South Atlantic Council's management responsibility for Nassau grouper into the Gulf of Mexico (Gulf) EEZ; increased the number of allowable crew members to four on dual-permitted snapper-grouper vessels (*i.e.,* vessels holding a South Atlantic Charter Vessel/Headboat Permit for Snapper-Grouper and a commercial South Atlantic Unlimited or a 225-Pound Trip Limit Snapper-Grouper Permit) that were fishing commercially; removed the prohibition on retaining any fish under the aggregate bag limit for grouper and tilefish or the vermilion snapper bag limit by captains and crew of federally permitted for-hire vessels; modified the snapper-grouper framework procedures to allow ABCs, ACLs, and annual catch targets (ACTs) to be adjusted via an abbreviated framework process; and removed blue runner from the FMP. The purposes of this final rule were to streamline management of Nassau grouper, improve vessel safety for dual-permitted vessels, implement consistent regulations regarding captains and crew retention limits for snapper-grouper species, expedite adjustments to snapper-grouper catch limits when new scientific information becomes available, and minimize socio-economic impacts to fishermen who harvest and sell blue runner. This action was conducted by NMFS under the authority of the MSA.

Availability of Completed Reviews

NMFS will make available a copy of this notice and the reviews when complete to the public at: *https://www.fisheries.noaa.gov/national/laws-and-policies/guidance-conducting-economic-and-social-analyses-regulatory-actions.*

Dated: September 17, 2020.

Jennifer M. Wallace,

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

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Proposed Rules

Federal Register

Vol. 85, No. 186

Thursday, September 24, 2020

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 ENERGY

10 CFR Parts 430 and 431

Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of supplemental proposed interpretive rule; request for comment.

SUMMARY: In response to a petition for rulemaking submitted on October 18, 2018 (Gas Industry Petition), the Department of Energy (DOE) published that petition in the **Federal Register** on November 1, 2018, for public review and input, and DOE subsequently published a proposed interpretive rule in the **Federal Register** on July 11, 2019, which tentatively determined that in the context of residential furnaces, commercial water heaters and similarly-situated products/equipment, use of non-condensing technology (and associated venting) may constitute a performance-related ''feature'' under the Energy Policy and Conservation Act (EPCA) that cannot be eliminated through adoption of an energy conservation standard. After carefully considering the public comments on its proposed interpretive rule, DOE has tentatively determined to consider a more involved class structure which turns on maintenance of compatibility with existing venting categories, and the Department seeks further information on the potential feasibility, burdens, and other implications of implementing such a venting-compatibility approach. DOE requests comments limited in scope to this issue, after which DOE will respond to not only this matter, but also to all of the other topics raised in comments on the July 2019 notice of proposed interpretive rule.

DATES: Written comments and information are requested on or before October 26, 2020.

ADDRESSES: Interested persons are encouraged to submit comments, identified by ''Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters,'' by any of the following methods:

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

Email: ResFurnaceCommWaterHeater2018STD0018@ee.doe.gov. Include Docket No. EERE–2018–BT–STD–0018 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, Suite 600, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information, see section IV of this document (Public Participation).

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at: *http://www.regulations.gov/docket?D=EERE-2018-BT-STD-0018.*

FOR FURTHER INFORMATION CONTACT:

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I. Background

On October 18, 2018, the Department received a petition for rulemaking submitted by the American Public Gas Association (APGA), Spire, Inc., the Natural Gas Supply Association (NGSA), the American Gas Association (AGA), and the National Propane Gas Association (NPGA), collectively referred to as the ''Gas Industry Petitioners,'' asking DOE to: (1) Issue an interpretive rule stating that DOE's proposed energy conservation standards for residential furnaces and commercial water heaters would result in the unavailability of ''performance characteristics'' within the meaning of the Energy Policy and Conservation Act of 1975 [1] (EPCA; 42 U.S.C. 6291 *et seq.*), as amended (*i.e.,* by setting standards which can only be met by products/equipment using condensing combustion technology and thereby precluding the distribution in commerce of products/equipment using non-condensing combustion technology) and (2) withdraw the proposed energy conservation standards for residential furnaces [2] and commercial water heaters [3] based upon such findings. DOE published the petition in the **Federal Register** on November 1, 2018 (83 FR 54883) and requested public comment,

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

[2] Standards for non-weatherized residential furnaces were published in a notice of proposed rulemaking at 80 FR 13120 (March 12, 2015) (Docket No. EERE–2014–BT–STD–0031–0032) and in a supplemental notice of proposed rulemaking at 81 FR 65720 (Sept. 23, 2016) (Docket No. EERE–2014–BT–STD–0031–0230).

[3] Standards for commercial water heating equipment were published in a notice of proposed rulemaking at 81 FR 34440 (May 31, 2016) (Docket No. EERE–2014–BT–STD–0042).

with a comment period scheduled to close on January 30, 2019. DOE received two requests from interested parties seeking an extension of the comment period in order to develop additional data relevant to the petition. DOE granted those requests through publication in the **Federal Register** of a notice extending the comment period on the notice of petition for rulemaking until March 1, 2019. 84 FR 449 (Jan. 29, 2019).

The 90-day public comment period, including the 30-day extension to submit comments, invited public input in order to better understand stakeholder perspectives and increase transparency around a complex issue involving DOE's legal authority. DOE received comments from a variety of stakeholders, including representatives from gas industry associations, the manufactured housing industry, efficiency advocates, consumer advocates, State organizations and Attorneys General, and individuals (mostly form letter comments). In general, the gas industry associations and the manufactured housing industry supported the petition, and the advocates and State officials opposed it.

After carefully considering the comments on the petition, DOE published a notice of proposed interpretive rule in the **Federal Register** on July 11, 2019 to provide the public additional information about DOE's tentative interpretation of EPCA's ''features'' provision [4] in the context of condensing vs. non-condensing furnaces and water heaters, as informed by public comments. 84 FR 33011. Once again, DOE received comments from a variety of stakeholders, including representatives from gas industry associations, the housing industry, appliance manufacturers, utilities, environmental and efficiency advocates, consumer advocates, State organizations and Attorneys General, and individuals. DOE plans to respond to these comments, and the issues raised therein, fully in a subsequent document, after receiving comment on the topic presented in this supplemental notice of proposed interpretive rule.

II. Summary Description

A. Relevant Statutory Provisions

In this notice, DOE explains its historical interpretation regarding the evaluation of what constitutes a product ''feature'' which cannot be eliminated under EPCA, specifically in the context of residential furnaces and commercial water heaters. For covered consumer products, the key statutory provision at issue can be found at 42 U.S.C. 6295(o)(4), which provides that the Secretary may not prescribe an amended or new standard under this section if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding.

Where the Secretary finds such ''performance characteristics (including reliability), features, sizes, capacities, and volumes'' (collectively referred to hereafter as ''features'') to exist, the statute provides a remedy at 42 U.S.C. 6295(q)(1), which states that a rule prescribing an energy conservation standard for a type (or class) of covered products shall specify a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group—(A) consume a different kind of energy from that consumed by other covered products within such group (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class). In making a determination under 42 U.S.C. 6295(q)(1) concerning whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate.

These provisions also apply to covered non-ASHRAE [5] commercial and industrial equipment through the crosswalk provision at 42 U.S.C. 6316(a). (Under the statute, ''ASHRAE equipment'' refers to small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, very large commercial package air conditioning and heating equipment, packaged terminal air conditioners (PTACs), packaged terminal heat pumps (PTHPs), warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, or unfired hot water storage tanks, which are addressed by ASHRAE in ASHRAE Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings*.)

ASHRAE equipment has its own separate statutory scheme under EPCA, with the default situation being that DOE must adopt the level set forth in ASHRAE Standard 90.1, unless the Department has clear and convincing evidence to adopt a more-stringent standard (*see* 42 U.S.C. 6313(a)(6)). Under 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa), there is a similar ''features'' provision which states, ''The Secretary may not prescribe an amended standard under this subparagraph if the Secretary finds (and publishes the finding) that interested persons have established by a preponderance of the evidence that a standard is likely to result in the unavailability in the United States in any product type (or class) of performance characteristics (including reliability, features, sizes, capacities, and volumes) that are substantially the same as those generally available in the United States at the time of the finding of the Secretary.'' However, it is noted that this provision contains the specific limitation that it applies to an amended standard prescribed *under this subparagraph* (*i.e.,* when DOE is acting under its authority to set a more-stringent standard). There is no companion ''features'' provision under 42 U.S.C. 6313(a)(6)(A), which is the provision that would apply when DOE is adopting the levels set by ASHRAE. Congress was clearly aware of the features issue, and it chose to act in the context of DOE standard setting, but not ASHRAE standard setting. There is likewise no companion provision to 42 U.S.C. 6295(q)(1) for ASHRAE equipment.

B. DOE's Historical Interpretation

With this statutory background in mind, in the March 12, 2015, notice of proposed rulemaking (NOPR) for energy conservation standards for residential furnaces, DOE set forth in detail its rationale for why it did not considering the venting of non-condensing furnaces to constitute a product ''feature'' under 42 U.S.C. 6295(o)(4). 80 FR 13120, 13137–13138.

As discussed previously, when evaluating and establishing energy conservation standards, the statute requires DOE to divide covered products into product classes by the

[4] *See* 42 U.S.C. 6295(o)(4); 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa); and as applicable in certain cases through 42 U.S.C. 6316(a)).

[5] ''ASHRAE'' refers to the American Society of Heating, Refrigerating and Air-Conditioning Engineers.

type of energy used, by capacity, or by other performance-related features that justify a different standard. In making a determination whether a performance-related feature justifies a different standard, DOE must consider factors such as the utility to the consumer of the feature and other factors DOE determines are appropriate. (42 U.S.C. 6295(q)) Historically, DOE has viewed utility as an aspect of the product that is accessible to the layperson and is based on user operation, rather than performing a theoretical function. This interpretation has been implemented consistently in DOE's previous rulemakings by determining utility through the value the item brings to the consumer, rather than through analyzing more complicated design features, or costs that anyone, including the consumer, manufacturer, installer, or utility companies may bear. DOE reasoned that this approach is consistent with EPCA's requirement for a separate and extensive analysis of economic justification for the adoption of any new or amended energy conservation standard (*see* 42 U.S.C. 6295(o)(2)(A)–(B) and (3)).

Under EPCA, DOE has typically addressed consumer utility by establishing separate product classes or otherwise taken action when a consumer may value a product feature based on the consumer's everyday needs. For instance, DOE has determined that it would be impermissible under 42 U.S.C. 6295(o)(4) to include elimination of oven door windows as a technology option to improve the energy efficiency of cooking products.[6] DOE reached this conclusion based upon how consumers typically use the product: Peering through the oven window to judge if an item is finished cooking, as opposed to checking the timer and/or indicator light or simply opening the oven door (which could waste more energy) to see if the item is finished cooking. DOE has also determined that consumers may value other qualities such as ability to self-clean,[7] size,[8] and configuration.[9] This determination, however, can change depending on technological developments and shifts in consumer behavior/preferences, and it is conceivable that certain products may disappear from the market entirely due to shifting consumer demand. DOE stated that it has determined such value on a case-by-case basis through its own research, as well as public comments received.

DOE offered a cautionary note that disparate products may have very different consumer utilities, thereby making direct comparisons difficult and potentially misleading. For instance, in a 2011 rulemaking, DOE created separate product classes for vented and ventless residential clothes dryers based on DOE's recognition of the ''unique utility'' that ventless clothes dryers offer to consumers. 76 FR 22454, 22485 (April 21, 2011). This utility could be characterized as the ability to have a clothes dryer in a living area where vents are impossible to install (*e.g.,* an apartment in a high-rise building). As explained in that April 2011 direct final rule technical support document, ventless dryers can be installed in locations where venting dryers would be precluded due to venting restrictions.

But in another rulemaking, DOE found that water heaters that utilize heat pump technology did not need to be put in a separate product class from conventional types of hot water heaters that utilize electric resistance technology, even though water heaters utilizing heat pumps require the additional installation of a condensate drain that a hot water heater utilizing electric resistance technology does not require. 74 FR 65852, 65871 (Dec. 11, 2009). DOE found that regardless of these installation factors, the heat pump water heater and the conventional water heater still had the same utility to the consumer: Providing hot water. *Id.* In both cases, DOE made its finding based on consumer type and utility type, rather than product design criteria that impact product efficiency.

DOE expressed concern that tying the concept of ''feature'' to a specific technology would effectively lock-in the currently existing technology as the ceiling for product efficiency and eliminate DOE's ability to address technological advances that could yield significant consumer benefits in the form of lower energy costs while providing the same functionality for the consumer. DOE stated that it was very concerned that determining features solely on product technology could undermine the Department's Appliance Standards Program. DOE reasoned that if it is required to maintain separate product classes to preserve less-efficient technologies, future advancements in the energy efficiency of covered products would become largely voluntary, an outcome which seems inimical to Congress's purposes and goals in enacting EPCA.

Turning to the product at issue in that rulemaking, DOE noted that residential furnaces are currently divided into several product classes. For example, furnaces are separated into product classes based on their fuel source (gas, oil, or electricity), which is required by statute. In the most recent rulemaking for that covered product, DOE analyzed only two product classes for residential furnaces: (1) Non-weatherized gas-fired furnaces (NWGFs) and (2) mobile home gas-fired furnaces (MHGFs). DOE did not additionally separate NWGFs and MHGFs into condensing and noncondensing product classes.

In that rulemaking, DOE tentatively concluded that the methods by which a furnace is vented did not provide any separate performance-related impacts, and, therefore, that DOE had no statutory basis for defining a separate class based on venting and drainage characteristics. DOE reasoned that NWGF and MHGF venting methods did not provide unique utility to consumers beyond the basic function of providing heat, which all furnaces perform. Using this logic, the possibility that installing a non-condensing furnace may be less costly than a condensing furnace due to the difference in venting methods did not justify separating the two types of NWGFs into different product classes. Unlike the consumers of ventless dryers, which DOE had determined to be a performance-related feature based on the impossibility of venting in certain circumstances (*e.g.,* high-rise apartments), DOE reasoned that consumers of condensing NWGFs are homeowners that may either use their existing venting or have a feasible alternative to obtain heat. In other words, homeowners would still be able to obtain heat regardless of the venting. In contrast, DOE reasoned that a resident of a high-rise apartment or condominium building that is not architecturally designed to accommodate vented clothes dryers would have no option in terms of installing and enjoying the utility of a dryer in their home unless he or she used a ventless dryer.

As explained previously, DOE's conclusion in the March 12, 2015, NOPR was that the utility of a furnace involves providing heat to a consumer. DOE reasoned that such utility is provided by any type of furnace, but to the extent that a consumer has a preference for a particular fuel type (*e.g.,* gas), improvements in venting technology may eventually allow a consumer to obtain the efficiency of a condensing furnace using the existing

[6] 63 FR 48038, 48041 (Sept. 8, 1998).

[7] 73 FR 62034, 62048 (Oct. 17, 2008) (separating standard ovens and self-cleaning ovens into different product classes).

[8] 77 FR 32307, 32319 (May 31, 2012) (creating a separate product class for compact front-loading residential clothes washers).

[9] 75 FR 59469, 59487 (Sept. 27, 2010) (creating a separate product class for refrigerators with bottom-mounted freezers).

venting in a residence by sharing venting space with water heaters. DOE postulated that this update in technology would significantly reduce the cost burden associated with installing condensing furnaces and reduce potential instances of ''orphaned'' water heaters, where the furnace and water heater can no longer share the same venting (due to one unit being condensing and the other noncondensing). In other words, when mature, this technology could allow consumers to switch from a non-condensing furnace to a condensing furnace in a greater variety of applications, such as urban row houses. For more information, interested parties were asked to consult appendix 8L of the NOPR TSD.

C. The Gas Industry Petition

As noted previously, on October 18, 2018, DOE received a petition from the Gas Industry Petitioners asking DOE to: (1) Issue an interpretive rule stating that DOE's proposed energy conservation standards for residential furnaces and commercial water heaters would result in the unavailability of ''performance characteristics'' within the meaning of the Energy Policy and Conservation Act of 1975, as amended (*i.e.,* by setting standards which can only be met by products/equipment using condensing combustion technology) and (2) withdraw the proposed energy conservation standards for residential furnaces and commercial water heaters based upon such findings. In their petition, the Gas Industry Petitioners argue that DOE misinterpreted its mandate under section 325(o)(4) of EPCA by failing to consider as a ''feature'' of the subject residential furnaces and commercial water heating equipment the compatibility of a product/equipment with conventional atmospheric venting systems and the ability to operate without generating liquid condensate requiring disposal via a plumbing connection. Consequently, the Gas Industry Petitioners assert that DOE's proposals would make unavailable non-condensing products/equipment with such features, which currently exist in the marketplace, in contravention of the statute. The petition makes a number of technical, legal, and economic arguments in favor of its suggested interpretation, and it points to DOE's past precedent related to space constraints and differences in available electrical power supply (and associated installation costs) as supporting its call to find that non-condensing technology amounts to a performance-related ''feature.'' Based upon these arguments, the Gas Industry Petitioners concluded that DOE should issue an interpretive rule treating non-condensing technology as a ''feature'' under EPCA, withdraw its rulemaking proposals for both residential furnaces and commercial water heaters, and proceed on the basis of this revised interpretation.

D. DOE's Proposed Interpretive Rule

As discussed in section I of this document, DOE published a notice of proposed interpretive rule in the **Federal Register** on July 11, 2019. 84 FR 33011. In consideration of public comments and other information received on the Gas Industry Petition, DOE proposed to revise its interpretation of EPCA's ''features'' provision in the context of condensing and non-condensing technology used in furnaces, water heating equipment, and similarly-situated appliances (where permitted by EPCA). Based on those comments and for the reasons set forth fully in that document, DOE proposed to interpret prospectively the statute to provide that adoption of energy conservation standards that would limit the market to natural gas and/or propane gas furnaces, water heaters, or similarly-situated products/equipment (where permitted by EPCA) that use condensing combustion technology would result in the unavailability of a performance related feature within the meaning of 42 U.S.C. 6295(o)(4) and 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa) (and as applicable in certain cases through 42 U.S.C. 6316(a)).

As explained in the proposed interpretive rule, the statute accords the Secretary of Energy considerable discretion in terms of determining whether a performance characteristic of a covered product/equipment amounts to a performance-related feature which cannot be eliminated through adoption of an energy conservation standard. DOE stated that it has taken the opportunity presented by the Gas Industry Petition to reconsider its historical interpretation of EPCA's ''features'' provision in the context of condensing and non-condensing technologies used by certain gas appliances. Contrary to the petitioners' assessment, DOE found this to be a close case, with persuasive arguments on both sides of the issue. However, a number of factors convinced DOE to propose a revision to its interpretation.

First, DOE acknowledged that it has, in the past, taken space constraints and similar limitations into account when setting product classes (*e.g.,* PTACs, ventless clothes dryers). For example, DOE was sensitive to the costs associated with requiring expensive building modifications when it decided to set separate equipment classes for standard size PTACs and non-standard size PTACs. 73 FR 58772 (Oct. 7, 2008). DOE stated that it expects that similar expenses would occur here, if DOE were to hold to its historical interpretation, at least for some subset of installations. Although limited data were provided to address the actual costs that consumers and commercial customers would face to modify their existing category I venting, there is little doubt that some number of such installations would be quite costly. These more complicated/costly installations are documented as part of DOE's analysis of the venting costs for residential furnaces, which considered potential venting modifications that could be required when replacing an existing category I furnace with a condensing (category IV) furnace (*see* appendix 8D of the 2016 SNOPR TSD for further details).

Second, DOE stated that it has in the past focused on the consumer's interaction with the product/equipment in deciding whether a performance feature is at issue. In the context of residential furnaces and commercial water heaters, DOE has focused on the primary function of the appliance (*e.g.,* providing heat to a home or potable hot water) in establishing the nexus to the consumer. In the past, DOE opined that consumers were only interested in obtaining heat or hot water from the appliance, so they would not care about the mechanism for generating that end product. However, commenters have made clear that in at least some cases, the physical changes associated with a condensing appliance may change a home's aesthetics (*e.g.,* by adding new venting into the living space or decreasing closet or other storage space), thereby impacting consumer utility even under DOE's prior approach.

Third, DOE noted that it has been its policy to remain neutral regarding competing energy sources in the marketplace. As certain commenters have pointed out and as DOE's own analyses have shown, some enhanced level of fuel switching is likely to accompany standard setting using DOE's prior interpretation. Many consumers who are currently gas customers may show a proclivity for that fuel type and would be negatively impacted by a standard that requires the purchase of a condensing unit to the extent they feel compelled to change to a different fuel type. DOE explained that it seeks neither to determine winners and losers in the marketplace nor to limit consumer choice.

Finally, DOE stated that it is very concerned about ensuring energy

affordability, particularly for persons with low incomes. Although energy efficiency improvements may pay for themselves over time, there is typically a significant increase in first-cost associated with furnaces and water heaters using condensing technology. For consumers with difficult installation situations (*e.g.,* inner-city row houses), there would be the added cost of potentially extensive venting modifications. In certain cases, commenters have argued that accommodating condensing products may not even be possible. Although DOE continues to believe that costs are properly addressed in the economic analysis portion of its rulemakings, it stated that it remains cognizant of such issues. DOE stated that it has tentatively concluded that the other reasons discussed immediately above are sufficient in and of themselves to justify the Department's proposed change in interpretation, but it acknowledged these cost impacts in order to be fully transparent in terms of the agency's thinking.

The agency reasoned that creating separate product classes for condensing and non-condensing furnaces, water heaters, and similarly-situated products/equipment (where permitted by EPCA) would prevent many of these potential problems. Although DOE's proposed revised approach may have some impact on overall energy saving potential as a result of establishing separate product/equipment classes, the Department noted that that is not the touchstone of EPCA's ''features'' provision; through that provision, Congress expressed its will that certain product utilities will take priority over additional energy-saving measures. (For example, DOE did not eliminate the oven window which consumers found useful, despite the potential for further energy savings.) With that said, DOE expressed it belief that any potentially negative programmatic impacts of its revised interpretation are likely to be limited. DOE reasoned that the proposed interpretation would be likely to impact only a limited set of appliances, and DOE noted that market trends have favored the growing reach of condensing furnaces, even as non-condensing alternatives have remained available. DOE stated that it has every reason to believe that such trends will continue.

DOE sought to clarify the limitations of its proposed revised interpretation, based upon the existing statutory provisions. As discussed previously, DOE can effect this change for all relevant consumer products, all non-ASHRAE commercial and industrial equipment, and ASHRAE equipment in those instances where DOE has clear and convincing evidence to adopt levels higher than the levels in ASHRAE Standard 90.1.

As noted, additional, subsequent DOE action would be required before the interpretation in the proposed interpretive rule could be implemented. The proposed interpretive rule, even once finalized, would not alter the Department's current regulations. This interpretation does not and will not be used to abrogate DOE's responsibilities under existing laws or regulations, nor does it change DOE's existing statutory authorities or those of regulators at the Federal, State, or local level. DOE anticipates continued engagement and productive involvement of members of the public and the regulated community in subsequent activities that may follow this interpretation.

As discussed in the proposed interpretive rule, DOE decided to grant the Gas Industry Petition to the extent that it proposed to prospectively interpret the statute to provide that adoption of energy conservation standards that would limit the market of natural gas and/or propane gas furnaces, water heaters, or similarly-situated products/equipment (where permitted by EPCA) to appliances that use condensing combustion technology would result in the unavailability of a performance related feature within the meaning of 42 U.S.C. 6295(o)(4) and 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa) (and as applicable in certain cases through 42 U.S.C. 6316(a)). The proposal clarified that such interpretation would apply to all applicable residential products, non-ASHRAE commercial equipment, and ASHRAE equipment where DOE adopts a level more stringent than the ASHRAE level.

DOE stated that it is denying the Gas Industry Petition as it pertains to those rulemakings where ASHRAE sets standard levels that trigger DOE to consider and adopt those level (unless DOE finds clear and convincing evidence to adopt more-stringent levels), due to lack of authority. DOE also denied the Gas Industry Petition's request for DOE to withdraw the proposed rules for residential furnaces and commercial water heaters as unnecessary. DOE stated that if the interpretive rule were to be finalized, it would anticipate developing supplemental notices of proposed rulemaking (SNOPRs) that would implement the new legal interpretation for those two rulemakings that were the subject of the petition for rulemaking.

III. Discussion of Issues Regarding Structuring of Potential Product/Equipment Classes

DOE received a number of comments with diverse views on the Department's proposed interpretive rule related to the Gas Industry Petition, with some supporting the proposal and others in opposition. Once again, all of those comments will be addressed by DOE in a subsequent document. Consequently, there is no need to repeat those arguments, and interested parties are instead asked to limit the scope of their comments to the specific issue raised in this supplemental notice of proposed interpretive rule.

As noted previously, in its proposed interpretive rule, DOE explored the issue of whether non-condensing technology (and associated venting) constitutes a performance-related ''feature'' under 42 U.S.C. 6295(o)(4),[10] as would support a separate product/equipment class under 42 U.S.C. 6295(q)(1).[11] 84 FR 33011, 33015 (July 11, 2019). DOE initially assumed that if it were to adopt an interpretation consistent with the Gas Industry Petition, it would suffice to set product/equipment classes largely based upon the key distinction of whether an appliance utilizes condensing or non-condensing combustion technology. However, a number of comments on the proposed interpretive rule suggested that such approach may not adequately resolve the issue at hand, as presented in the petition.

More specifically, while U.S. Boiler (USB) generally agreed with DOE's revised interpretation, the commenter argued that DOE has erred in focusing on ''non-condensing'' technology as the performance-related feature, suggesting that the agency should instead focus on Category I venting. According to USB, Category II, III, and IV (as well as non-categorized direct vent furnaces and boilers) are currently available using non-condensing technology, but many of the same problems identified in the Gas Industry Petition still may arise. USB stated that non-condensing Category II, III, and IV appliances generally share the same venting consumer utility issues as condensing appliances and equipment, and that they can theoretically operate at higher efficiencies than Category I. However, the commenter argued that elimination of models using Category I venting (under a standard level that could only

[10] 42 U.S.C. 6316(a) for non-ASHRAE equipment; 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa) for ASHRAE equipment where DOE is setting more-stringent standards.

[11] 42 U.S.C. 6316(a) for non-ASHRAE equipment.

be met by products/equipment using Category II, III, or IV venting) would create the same problems which DOE has sought to address through its proposed revised interpretation. USB commented that vent categorization has been recognized for over 20 years by manufacturers, utilities, and code enforcement officials as the best way to determine how to safely vent appliances. (USB, No. 78 at pp. 1–2) Burnham Holdings, International (BHI) made essentially identical arguments to those raised by USB, and Crown Boiler offered a similar comment that DOE should focus product classes based upon type of venting used, rather than the use of condensing or non-condensing technology. (BHI, No. 83 at pp. 1–2; Crown Boiler, No. 79 at pp. 1–2)

In response to the comments from USB, BHI, and Crown Boiler suggesting that DOE focus on the type of venting as the performance related feature rather than non-condensing operation, DOE notes that, while separate from the product/equipment, the venting system is inextricably linked to the design of the product. Because the venting system is a separate component from the product, DOE initially sought to focus on non-condensing operation as the performance-related characteristic of the product itself. However, after further considering these commenters' concerns, DOE understands that interpreting non-condensing operation to be a feature could still result in a reduction of utility for certain consumers, because some non-condensing appliances require connection to venting systems other than Category I and would likely result in many of the installation issues that DOE seeks to address through this interpretive rulemaking.

As a result, DOE further considered what constitutes a ''feature'' or ''performance-related characteristic'' under EPCA, and in particular, whether such feature might be based on venting system compatibility of the product. Because the most significant concerns regarding venting system compatibility involve use of gas appliances that are not compatible with Category I venting in place of gas appliances that are compatible with Category I venting, DOE considered whether compatibility with Category I venting should be a protected feature under EPCA. Moreover, DOE also considered whether *any* impact to venting system compatibility resulting from increasing product or equipment efficiency standards would cause the aforementioned issues. For example, it is conceivable that if a more-stringent standard results in an appliance compatible with Category III venting systems being replaced with an appliance that is only compatible with Category IV venting systems, many of the same issues might arise as have been identified for the replacement of appliances compatible with Category I venting systems. Thus, compatibility with venting systems of any type could conceivably be a feature that consumers desire and which DOE must consider when evaluating more-stringent standards. Under such an interpretation, compatibility with each existing venting technology would be a feature under EPCA that could require separate classes based on compatibility with venting systems for each venting category, and uncategorized venting systems could also require separate classes.

The first approach (*i.e.,* considering only Category I venting compatibility as a performance-related feature) has the benefit of potentially simplifying the regulatory scheme in comparison to the latter approach, which could require classification of products in each venting category separately. The first approach would result in more streamlined regulations and product/equipment classes for gas appliances, as compared to the latter approach, while resolving the most significant issues involved with venting system compatibility. The latter approach potentially would address more comprehensively possible issues related to the compatibility of an appliance with venting systems, but it would make the regulatory scheme more complex and could create extra compliance burdens, as the number of product/equipment classes for vented appliances could increase greatly (*e.g.,* each current class of gas appliance could require further segmentation by each of the four categories of venting and also could need to account for gas appliances that are compatible with uncategorized venting systems). Both approaches would have the benefit of not limiting DOE to consideration of the combustion technology that provides the function of the appliance (*e.g.,* condensing, non-condensing), about which some commenters have expressed concerns. Instead, DOE's focus would be to ensure compatibility with existing venting, thereby allowing DOE to be responsive to potential future technological advances in venting system compatibility.

Based on these considerations, DOE is considering a proposed alternative interpretation, in addition to the interpretation proposed in the July 2019 notice of proposed interpretive rule. As discussed previously, the July 2019 notice of proposed interpretive rule proposed that adoption of energy conservation standards that would limit the market to natural gas and/or propane gas furnaces, water heaters, or similarly-situated products/equipment (where permitted by EPCA) that use condensing combustion technology would result in the unavailability of a performance-related feature within the meaning of 42 U.S.C. 6295(o)(4) and 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa) (and as applicable in certain cases through 42 U.S.C. 6316(a)). In this document, DOE is also proposing an interpretation that an appliance's compatibility with a venting system is a performance-related characteristic of that appliance under EPCA. Specifically, DOE is also considering an interpretation that, based on current appliance/venting system compatibility limitations, the adoption of energy conservation standards that would limit the market to natural gas and/or propane gas furnaces, water heaters, or similarly-situated products/equipment (where permitted by EPCA) that are incompatible with any existing venting systems available on the market would result in the unavailability of a performance related feature within the meaning of 42 U.S.C. 6295(o)(4) and 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa) (and as applicable in certain cases through 42 U.S.C. 6316(a)). DOE considered limiting its proposal to include only that compatibility with Category I venting systems is a feature, as suggested by the commenters, and seeks comment on doing so. In addition, DOE is considering a broader approach taking into consideration all venting categories since concerns similar to those that gave rise to the petition could conceivably occur for appliances that are compatible with venting systems other than Category I. The Department welcomes input on both potential approaches, and it will consider adopting either or the original proposed approach in its final interpretation, in light of the information received both previously and in response to today's request.

DOE will consider all comments received on the issue of the potential utility associated with ensuring venting system compatibility, as well as comments on the potential for added regulatory complexity from the alternative approaches, before making a final decision.

IV. Public Participation

Submission of Comments

DOE invites all interested parties to submit in writing by the date listed in the **DATES** section of this document, comments and information regarding

this supplemental proposed interpretive rule.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page will require you to provide your name and contact information prior to submitting comments. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or postal mail. Comments and documents via email, hand delivery, or postal mail will also be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information in your cover letter each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not include any special characters or any form of encryption, and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked ''Confidential'' including all the information believed to be confidential, and one copy of the document marked ''Non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of its process for considering regulatory actions. DOE actively encourages the participation and interaction of the public during the comment period. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in determining how to proceed with a regulatory action. Anyone who wishes to be added to DOE mailing list to receive future notices and information about this matter should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this supplemental notice of proposed interpretive rule.

Signing Authority

This document of the Department of Energy was signed on September 16, 2020, by Daniel R Simmons, Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 16, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–20773 Filed 9–23–20; 8:45 am]

BILLING CODE 6450–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2020–0028]

RIN 3170–AA98

Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Seasoned QM Loan Definition; Extension of Comment Period

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On August 28, 2020, the Bureau of Consumer Financial Protection (Bureau) published in the **Federal Register** a Notice of Proposed Rulemaking (Seasoned QM Proposal) proposing to create a new category of qualified mortgages in Regulation Z for first-lien, fixed-rate covered transactions that have met certain performance requirements over a 36-month seasoning period, are held in portfolio until the end of the seasoning period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements. The 30-day comment period for the Seasoned QM Proposal is counted from the date of publication, which was August 28. Thus, the 30-day comment period was set to close on September 28, 2020, which this year is the date on which the Jewish holiday Yom Kippur falls. In response to a request that we change the due date in light of the holiday, the Bureau is extending the comment period for the Seasoned QM Proposal until October 1, 2020.

DATES: The comment period for the Seasoned QM Proposal published August 28, 2020, at 85 FR 53568, is extended. Responses to the Seasoned QM Proposal must now be received on or before October 1, 2020.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB–2020–0028, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2020-NPRM-SeasonedQM@cfpb.gov.* Include Docket No. CFPB–2020–0028 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier.
- *Instructions:* The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries during the COVID–19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202–435–9169.

All submissions in response to the Seasoned QM Proposal, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Please do not include sensitive personal information in your submissions, such as account numbers or Social Security numbers, or names of other individuals, or other information that you would not ordinarily make public, such as trade secrets or confidential commercial information. Submissions will not be edited to remove any identifying or contact information, or other information that you would not ordinarily make public. If you wish to submit trade secret or confidential commercial information, please contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section below. Information submitted to the Bureau will be treated in accordance with the Bureau's Rule on the Disclosure of Records and Information, 12 CFR part 1070 *et seq.*

FOR FURTHER INFORMATION CONTACT: For general inquiries and submission process questions, please call Ruth Van Veldhuizen, Counsel, or Joan Kayagil or Amanda Quester, Senior Counsels, Office of Regulations at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: With certain exceptions, Regulation Z requires creditors to make a reasonable, good faith determination of a consumer's ability to repay any residential mortgage loan, and loans that meet Regulation Z's requirements for QMs obtain certain protections from liability. Regulation Z contains several categories of QMs, including the General QM category and a temporary category (Temporary GSE QM loans) of loans that are eligible for purchase or guarantee by government-sponsored enterprises (GSEs) while they are operating under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA). On August 18, 2020, the Bureau issued the Seasoned QM Proposal to create a new category of QMs (Seasoned QMs) for first-lien, fixed-rate covered transactions that have met certain performance requirements over a 36-month seasoning period, are held in portfolio until the end of the seasoning period, comply with general restrictions on product features and points and fees, and meet certain underwriting requirements. The Bureau's primary objective with the Seasoned QM Proposal is to ensure access to responsible, affordable mortgage credit by adding a Seasoned QM definition to the existing QM definitions. The Seasoned QM Proposal was published in the **Federal Register** on August 28, 2020.[1]

The Bureau provided for a 30-day comment period for the Seasoned QM Proposal. The 30-day comment period is counted from the date of publication, which was August 28. Thus, the 30-day public comment period was set to close on September 28, 2020. Subsequent to the issuance of the Seasoned QM Proposal, representatives from a consumer group asked the Bureau to extend the deadline for submission of comments because the originally established deadline of September 28, 2020 is the date this year of the Jewish holiday Yom Kippur. In response to this request, the Bureau is extending the comment period for the Seasoned QM Proposal to October 1, 2020.

Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register.**

Dated: September 21, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2020–21152 Filed 9–23–20; 8:45 am]

BILLING CODE 4810–AM–P

[1] 85 FR 53568 (Aug. 28, 2020).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0849; Project Identifier MCAI–2020–01036–A]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all

Pilatus Aircraft Ltd. Model PC–7 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the need to revise the Airworthiness Limitations section (ALS) of the existing aircraft maintenance manual (AMM) to introduce new mandatory repetitive inspections for the flap pivot arm assemblies and for certain wing angle brackets, and to implement a change to the Oxygen cylinder and pressure reducer task item. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 9, 2020.

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

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

For service information identified in this NPRM, contact Pilatus Aircraft Ltd., Customer Technical Support (MCC), P.O. Box 992, CH–6371 Stans, Switzerland; telephone: +41 (0)41 619 67 74; fax: +41 (0)41 619 67 73; email: *Techsupport@pilatus-aircraft.com;* internet: *https://www.pilatus-aircraft.com/en.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0849; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views about this proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0849; Project Identifier MCAI–2020–01036–A'' at the beginning of your comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received by the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this NPRM because of those comments.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person identified in the **FOR FURTHER INFORMATION CONTACT** section. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The Federal Office of Civil Aviation (FOCA), which is the aviation authority for Switzerland, has issued FOCA AD HB–2020–007, dated July 23, 2020 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition with new mandatory instructions for continued airworthiness for all Pilatus Aircraft Ltd. Model PC–7 airplanes. The MCAI states:

> The airworthiness limitations and certification maintenance instructions for Pilatus PC–7 aeroplanes, which are approved by FOCA, are currently defined and published in the Pilatus PC–7 AMM Chapter 5. These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition [discrepancies of life-limited and overhauled components, which could result in reduced structural integrity and system reliability of the airplane].
>
> Previously, FOCA issued AD HB–2019–004 (later corrected) to require implementation of the maintenance tasks and airworthiness limitations as specified in Pilatus PC–7 AMM Document Number 01715, or Document Number 02416, both at issue 44, as applicable. [These tasks included the added wing angle bracket at rib 23 repetitive inspections.]
>
> Since that AD was issued, Pilatus amended the ALS, as defined in this AD, to introduce new mandatory repetitive inspection for the flap pivot arm assemblies and a change to the Oxygen cylinder and pressure reducer task (Chapter 35—Oxygen) to remove the reference to the part numbers.
>
> For the reason described above, this [Swiss] AD retains the requirements of FOCA AD HB–2019–004 including its correction, which is superseded, and requires accomplishment of the actions specified in the ALS.

You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0849.

Related Service Information Under 1 CFR Part 51

Pilatus Aircraft Ltd. has issued Section 05–10–10, ''Lifed and Overhauled Components,'' of Chapter 05, Time Limitations, of the Pilatus PC–7 Maintenance Manual, dated June 30, 2020. This document provides updated

limitations, inspections, and procedures for the airworthiness limitations in chapter 5 of the existing AMM. This service information describes new mandatory repetitive inspections for the flap pivot arm assemblies and for the wing angle brackets on middle rib 23, and a change to the Oxygen cylinder and pressure reducer task item to remove the reference to the part numbers.

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

Differences Between This AD and the MCAI

The FOCA AD is requiring incorporating all of the updated Chapter 05–00–00 for the Swiss State of Design type certificate because they deem the complete chapter 5 as the mandatory ALS of the PC–7 AMM. The FAA is only requiring Section 05–10–10, ''Lifed and Overhauled Components,'' of Chapter 05, Time Limitations, of the Pilatus PC–7 Maintenance Manual, dated June 30, 2020, because it is the only mandatory section of the ALS for the U.S. type certificate.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the airworthiness limitation section of the existing maintenance manual or instructions for continued airworthiness to incorporate new airworthiness limitations. An owner/operator (pilot) may incorporate the revisions to the AMM, and the owner/operator must enter compliance with the applicable paragraphs of the AD into the aircraft records in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). A pilot may perform these actions because they can be performed equally well by a pilot or a mechanic. This is an exception to our standard maintenance regulations.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (h) of this proposed AD.

Costs of Compliance

The FAA estimates that this proposed AD affects 18 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hours × $85 per hour = $85	$0	$85	$1,530

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pilatus Aircraft Ltd.: Docket No. FAA–2020–0849; Project Identifier MCAI–2020–01036–A.

(a) Comments Due Date

The FAA must receive comments by November 9, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pilatus Aircraft Ltd. Model PC–7 airplanes, all manufacturer serial numbers, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by the need to revise the Airworthiness Limitation section of the existing aircraft maintenance manual. The FAA is issuing this AD to revise the Airworthiness Limitations section of the existing aircraft maintenance manual (AMM) to introduce new mandatory repetitive inspections for the flap pivot arm assemblies and for the wing angle brackets on middle rib 23, and to implement a change to the Oxygen cylinder and pressure reducer task item. The unsafe condition, if not addressed, could result in reduced structural integrity and system reliability of the airplane.

(f) Compliance

Unless already done, before further flight: Incorporate the revised Airworthiness Limitation section as specified in Section 05–10–10, ''Lifed and Overhauled Components,'' of Chapter 05, Time Limitations, of the Pilatus PC–7 Maintenance Manual, dated June 30, 2020, into your FAA-accepted maintenance program (maintenance manual).

(g) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (f) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (h) of this AD.

(h) Other FAA AD Provisions

Alternative Methods of Compliance (AMOCs): The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to Doug Rudolph, Aerospace Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Federal Office of Civil Aviation (FOCA) AD HB–2020–007, dated July 23, 2020, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0849.

(2) For more information about this AD, contact Doug Rudolph, Aerospace Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

(3) For service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Technical Support (MCC), P.O. Box 992, CH–6371 Stans, Switzerland; telephone: +41 (0)41 619 67 74; fax: +41 (0)41 619 67 73; email: *Techsupport@pilatus-aircraft.com;* internet: *https://www.pilatus-aircraft.com/en.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued on September 18, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–21031 Filed 9–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0752; Product Identifier 2009–SW–44–AD]

RIN 2120–AA64

Airworthiness Directives; Pacific Scientific Company Seat Restraint System Rotary Buckle Assemblies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: The FAA is reopening the comment period for an earlier proposed rulemaking (NPRM) for certain Pacific Scientific Aviation Services seat restraint rotary buckle assemblies (buckles). The NPRM proposed to require inspecting each buckle and buckle handle vane, and depending on the inspection results, removing the buckle from service and installing an airworthy buckle. The NPRM also proposed to prohibit the installation of the affected buckles. The NPRM was prompted by several reports of cracked buckle handles. This action reopens the comment period because a significant amount of time has elapsed since the NPRM was published. Additionally, this action clarifies the applicability and updates nomenclature, contact information, and the design approval holder's (DAH) name.

DATES: The FAA must receive comments on this SNPRM by November 9, 2020.

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

- *Federal eRulemaking Docket:* Go to *https://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0752; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

For Pacific Scientific Company service information identified in this proposed rule, contact Meggitt Services, 1785 Voyager Ave., Simi Valley, CA 93063, telephone 877–666–0712 or at *CustomerResponse@meggitt.com.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Kristi Bradley, Aviation Safety Engineer, International Validation Branch, General Aviation and Rotorcraft Unit, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *kristin.bradley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning

this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments received.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this SNPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this SNPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this SNPRM. Submissions containing CBI should be sent to Kristi Bradley, Aviation Safety Engineer, International Validation Branch, General Aviation and Rotorcraft Unit, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *kristin.bradley@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

On September 5, 2013, at 78 FR 54594, the FAA published in the **Federal Register** an NPRM which proposed to amend 14 CFR part 39 by adding an AD that would apply to buckles, part number (P/N) 1111430 or 1111475, all dash numbers, installed on but not limited to Cessna Aircraft Company, de Havilland, Inc. (Type Certificate (TC) currently held by Viking Air Limited), and Learjet Inc. model airplanes and Eurocopter France model helicopters. The NPRM proposed to require, within 30 days, inspecting each buckle for a crack and replacing any cracked buckle with an airworthy buckle. Also, within 6 months, the NPRM proposed to require inspecting the thickness of the buckle handle vane and replacing any buckle with a handle vane thickness of 0.125 inch or greater. Lastly, the NPRM proposed to prohibit installing an affected buckle on any airplane or helicopter. The proposed requirements were intended to detect a cracked rotary buckle handle, which could prevent a strap from releasing as intended when the buckle is rotated.

The NPRM was prompted by EASA AD No. 2007–0256, dated September 19, 2007, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for certain Pacific Scientific Company Seat Restraint System Plastic Rotary Buckle Handles. According to EASA, Pacific Scientific Company reports several instances of cracked handles on certain buckles with a date of manufacture from November 2004 through May 2007. Testing on buckles with a cracked handle indicates that in some circumstances, a load placed on the restraint system prevents a strap from releasing as intended when the buckle is rotated. EASA states that these circumstances are possible when a passenger weighs more than 50 kg (approximately 110 lbs.) and an aircraft is upside down.

Actions Since the NPRM Was Issued

Since the FAA issued the NPRM, a significant amount of time has elapsed requiring the FAA to reopen the comment period to allow the public a chance to comment on the proposed actions. These actions are intended to prevent a buckle from not releasing the restraint system strap in an emergency.

The FAA is also correcting the name of Pacific Scientific Aviation Services to Pacific Scientific Company in this SNPRM.

Comments

After the NPRM was published, the FAA received comments from one commenter. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request

The commenter stated that buckle P/Ns 1111430–11 and 1111460–13 are fitted for certain Bombardier Inc., Model CL–600–2B19 aircraft and requested that the FAA include these aircraft in the Applicability because it would be helpful when performing records research and audits. The FAA partially agrees. Buckle P/N 1111430–11 is captured by the Applicability; however, buckle P/N 1111460–13 is not known to be affected by this unsafe condition and therefore is not included in the Applicability. Further, while the list of airplanes and helicopters in the Applicability that could have an affected buckle installed is not all-inclusive, the FAA has added Bombardier Inc., as a possible airplane on which an affected buckle could be installed.

The commenter also stated that Appendix 1 of Pacific Scientific Service Bulletin SB 25–1111432, dated May 22, 2007 (SB 25–1111432) lists P/Ns of affected buckles and restraint systems, and that affected part-numbered buckles may be in inventory with restraint system subassemblies (straps and belts) and on spare seat assemblies. The commenter requested the FAA require checking these inventories to determine if they need to be inspected. The FAA partially agrees. The FAA agrees that affected part-numbered buckles must be inspected and that they may be found as a component of a different part-numbered restraint system assembly. Accordingly, the FAA has added a note to the Applicability paragraph to clarify that an affected part-numbered buckle may be included as a component of a different part-numbered restraint system assembly and added a reference to Appendix 1 of SB 25–1111432, which lists the P/Ns of potentially affected restraint systems. To address spare parts, the proposed AD contains an installation prohibition so that affected parts in inventory will not become installed on any aircraft.

The commenter noted that the NPRM proposed to require replacing affected buckles and requested that the FAA allow replacing a restraint system or subassembly with a restraint system or subassembly containing an airworthy buckle as an acceptable method of compliance. The FAA agrees with the comment, but does not agree that a change to this AD action is necessary. Replacing a restraint system or subassembly that contains an airworthy buckle inherently meets the requirement to replace an affected buckle with an airworthy buckle.

The commenter stated that it will be difficult to maintain a record of compliance since this is an appliance AD for a non-serialized component and spare buckles are affected. Although neither the service information nor the NPRM suggest marking or serializing buckles, the commenter requested the FAA require doing so as a method to ensure solid compliance recordkeeping. The FAA disagrees. The Applicability includes the part-numbered buckles affected by the unsafe condition and the FAA appreciates the importance of compliance recordkeeping. However, serializing buckles for the purpose of compliance with this AD would create unnecessary costs and internal controls by maintainers and operators are expected to be used to ensure AD compliance.

The commenter stated that SB 25–1111432, which is referenced in the Related Service Information section of the NPRM, provides a link to an out of date revision of the component maintenance manual (CMM) and that the revised CMM includes an Illustrated Parts Catalog list. The commenter did not request a change to the proposed AD. The FAA acknowledges that the link in paragraph 4 of SB 25–1111432 is out of date, but that portion of SB 25–1111432 is not required to accomplish this AD.

Lastly, the commenter stated that considering SB 25–1111432 was issued several years ago, there appears to be a lack of urgency. The commenter requested that the FAA increase the compliance time for performing the inspection for cracks from 30 days to 6 months and the compliance time for performing the buckle handle vane measurement from 6 months to 1 year. The FAA agrees and has made these changes accordingly in this SNPRM.

FAA's Determination

This product has been approved by EASA and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA is proposing this SNPRM after evaluating all known relevant information and determining that an unsafe condition exists and is likely to exist or develop on other products. Because of the amount of time that has elapsed since the NPRM was issued, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment. This SNPRM incorporates the changes described previously as well as the following:

- Minor editorial changes,
- update of the estimated costs to comply with this proposed AD,
- clarification of the Applicability paragraph by stating buckle P/Ns 1111430 ''and'' 1111475 instead of buckle P/Ns 1111430 ''or'' 1111475,
- update of Cessna Aircraft Company's name to Textron Aviation, Inc., and Eurocopter France's name to Airbus Helicopters, and
- update of the contact information name from Pacific Scientific Aviation Services to Meggitt Services, as well as the contact information.

Additionally, since the FAA issued the NPRM, the FAA's Aircraft Certification Service has changed its organization structure. The new structure replaces product directorates with functional divisions. The FAA has revised some of the office titles and nomenclature throughout this SNPRM to reflect the new organizational changes. Additional information about the new structure can be found in the Notice published on July 25, 2017 (82 FR 34564).

Related Service Information Under 1 CFR Part 51

The FAA reviewed SB 25–1111432. This service information specifies inspecting each buckle P/Ns 1111430–XX and 1111475–XX with a date of manufacture between November 2004 and May 2007, to identify whether the handle is one susceptible to cracking by checking the P/N on the reverse side of the buckle assembly or by measuring the thickness of the handle vane. If the buckle is identified as a ''suspect'' buckle, the service information provides procedures for removing the buckle and replacing it with an acceptable buckle. Information in the service information also advises that buckles with a cracked handle should be removed from service immediately.

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

Proposed Requirements of This SNPRM

This proposed AD would require, within 6 months, inspecting each buckle for a crack, and within 12 months, inspecting the thickness of the buckle handle vane. If there is a crack or the handle vane thickness is 0.125 inch or greater, this proposed AD would require removing the buckle from service and replacing it with an airworthy buckle. This proposed AD would also prohibit installing an affected buckle on any airplane or helicopter.

Differences Between This Proposed AD and the EASA AD

The EASA AD applies to certain Eurocopter (now Airbus Helicopters) model helicopters only. Since the affected buckles may be installed in other aircraft resulting in the same unsafe condition, this proposed AD would also apply to those aircraft. This proposed AD would not require returning the unairworthy buckle assembly to the manufacturer, and this proposed AD would not apply to ''spare'' parts that are not installed on an aircraft. Also, this proposed AD would apply to buckle P/Ns 1111430 and 1111475, all dash numbers, and would not be dependent on the restraint P/Ns. The EASA AD requires inspecting the buckles within 30 days, whereas this proposed AD would require inspecting the buckle handle for a crack within 6 months and the buckle handle vane thickness within 12 months instead. This proposed AD would not require an inspection for cracks ''before any flight'' for the 6 months until the affected buckles are replaced. The EASA AD identifies suspect parts by date of manufacture, and this proposed AD would not. Finally, the EASA AD allows for marking a seat as ''un-operative'' and this proposed AD would not.

Costs of Compliance

The FAA estimates that this proposed AD would affect 1,435 restraint systems installed on aircraft of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this proposed AD. Labor costs are estimated at $85 per work-hour.

Inspecting a buckle would cost a minimal amount and take a nominal amount of time. Replacing a buckle would take about 0.5 work-hour and parts would cost about $636 for an estimated cost of $679 per buckle and $974,365 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pacific Scientific Company: Docket No. FAA–2013–0752; Product Identifier 2009–SW–44–AD.

(a) Applicability

This AD applies to Pacific Scientific Company rotary buckle assembly (buckle), part numbers (P/Ns) 1111430 and 1111475, all dash numbers. These buckles may be installed on but not limited to Bombardier Inc., Learjet Inc., Textron Aviation, Inc. (Type Certificate (TC) previously held by Cessna Aircraft Company), and Viking Air Limited (TC previously held by de Havilland, Inc.) model airplanes and Airbus Helicopters (TC previously held by Eurocopter France) model helicopters, certificated in any category.

Note 1 to paragraph (a): The rotary buckle may be included as a component of a different part-numbered restraint system assembly. Pacific Scientific Service Bulletin SB 25–1111432, dated May 22, 2007 (SB 25–1111432), Appendix 1, includes a list of these restraint system P/Ns.

(b) Unsafe Condition

This AD defines the unsafe condition as a cracked rotary buckle handle, which could prevent a strap from releasing as intended when the buckle is rotated.

(c) Comments Due Date

The FAA must receive comments on this SNPRM November 9, 2020.

(d) Compliance

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

(e) Required Actions

(1) Within 6 months, inspect the buckle handle for a crack. If the buckle handle is cracked, before further flight, remove the buckle as depicted in Figure 5 and by following the Procedures, paragraph 9, of SB 25–1111432, and replace it with an airworthy buckle, except you are not required to return the removed buckle to Pacific Scientific.

(2) Within 12 months, measure the thickness of the buckle handle vane as depicted in Figure 3 of SB 25–1111432. If the handle vane thickness is 0.125 inch or greater, before further flight, remove the buckle from service and replace it with an airworthy buckle.

(3) As of the effective date of this AD, do not install a buckle or a restraint system with a buckle, P/N 1111430 or 1111475, all dash numbers, with a handle vane thickness of 0.125 inch or greater on any airplane or helicopter.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Kristi Bradley, Aviation Safety Engineer, International Validation Branch, General Aviation and Rotorcraft Unit, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *kristin.bradley@faa.gov.*

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

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD No. 2007–0256, dated September 19, 2007. You may view the EASA AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2013–0752.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2500, Cabin Equipment/Furnishings.

Issued on September 14, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–20624 Filed 9–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0850; Project Identifier AD–2020–00288–E]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain GEnx–1B64, 1B64/P1, –1B64/P2, –1B67, –1B67/P1, –1B67/P2, –1B70, –1B70/75/P1, –1B70/75/P2, –1B70/P1, –1B70/P2, –1B70C/P1, –1B70C/P2, –1B74/75/P1, –1B74/75/P2, –1B76/P2, –1B76A/P2, –2B67, –2B67/P, and –2B67B model turbofan engines. This proposed AD was prompted by a finding during an inspection by the manufacturer that two stages 6–10 compressor rotor spools in the high-pressure compressor (HPC) assembly were damaged at similar locations. Additionally, the manufacturer reported that certain stages 6–10 compressor rotor spool webs did not undergo a required fluorescent penetrant inspection (FPI) during production. This proposed AD would require inspection of the stages 6–10 compressor rotor spool and, depending on the result of the inspection, replacement of the stages 6–10 compressor rotor spool with a part eligible for installation. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 9, 2020.

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

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

For service information identified in this NPRM, contact General Electric Company, 1 Neumann Way, Cincinnati,

OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ae.ge.com;* website: *www.ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0850; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Mehdi Lamnyi, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7743; fax: (781) 238–7199; email: *Mehdi.Lamnyi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0850; Project Identifier AD–2020–00288–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Mehdi Lamnyi, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA received a report from the manufacturer that an inspection had found two stages 6–10 compressor rotor spools in the HPC assembly damaged at similar locations on the webs. The subsequent investigation determined that tool marks were created during the manufacturing process. In addition, the manufacturer also reported that certain stages 6–10 compressor rotor spool webs did not undergo a required FPI during production. This condition, if not addressed, could result in failure of the compressor rotor spool, uncontained release of debris, damage to the engine, and damage to the airplane.

FAA's Determination

The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed GE GEnx–1B Service Bulletin (SB) 72–0472 R01, dated July 24, 2020 (''GEnx–1B SB 72–0472'') and GE GEnx–2B SB 72–0415 R01, dated July 24, 2020 (''GEnx–2B SB 72–0415'').

GEnx–1B SB 72–0472 describes procedures for performing a borescope inspection (BSI) or an eddy current inspection (ECI) of stage 6, stage 7, and stage 8 webs, web transitions, and bore faces of the stages 6–10 compressor rotor spool for GEnx–1B model turbofan engines. GEnx–1B SB 72–0472 also provides the affected part and serial numbers of the stages 6–10 compressor rotor spools installed on GEnx–1B model turbofan engines.

GEnx–2B SB 72–0415 describes procedures for performing a BSI or an ECI of stage 6, stage 7, and stage 8 webs, web transitions, and bore faces of the stages 6–10 compressor rotor spool for GEnx–2B model turbofan engines. GEnx–2B SB 72–0415 also provides the affected part and serial numbers of the stages 6–10 compressor rotor spools installed on GEnx–2B model turbofan engines.

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

Other Related Service Information

The FAA also reviewed Subtask 72–31–45–160–002 of TASK 72–31–45–200–807 in GE GEnx–1B Engine Manual 05–21–00, Life Limits 001 Mandatory Inspections, Rev. 31 dated, January 31, 2020; and Subtask 72–31–45–160–002 of TASK 72–31–45–200–801 in GE GEnx–2B Engine Manual 05–21–00, Life Limits 001 Mandatory Inspections, Rev. 24 dated, January 31, 2020. The Subtasks provide guidance on performing the ECI on the stages 6–10 compressor rotor spool on GE GEnx–1B and GEnx–2B model turbofan engines.

The FAA also reviewed the following GE SBs: GEnx–1B SB 72–0448 R00, dated July 29, 2019 (''GEnx–1B SB 72–0448''); GEnx–1B SB 72–0460 R00, dated October 30, 2019 (''GEnx–1B SB 72–0460''); GEnx–2B SB 72–0385 R02, dated July 29, 2019 (''GEnx–2B SB 72–0385''); and GEnx–2B SB 72–0398 R00, dated October 30, 2019 (''GEnx–2B SB 72–0398'').

GEnx–1B SB 72–0448 describes procedures for performing a BSI or an ECI of the stage 8 aft web of the HPC stages 6–10 rotor spool for GEnx–1B model turbofan engines. GEnx–1B SB 72–0460 describes procedures for performing a BSI or an ECI of the stage 6 and stage 7 aft web of the HPC stages 6–10 rotor spool for GEnx–1B model turbofan engines.

GEnx–2B SB 72–0385 describes procedures for performing a BSI or an ECI of the stage 8 aft web of the HPC stages 6–10 spool for GEnx–2B model turbofan engines. GEnx–2B SB 72–0398 describes procedures for performing a BSI or an ECI of the stage 6 and stage 7 aft web of the HPC stages 6–10 rotor spool for GEnx–2B model turbofan engines.

Proposed AD Requirements in This NPRM

This proposed AD would require inspection of the stages 6–10 compressor rotor spool. Certain affected GEnx–1B or GEnx–2B model turbofan engines, identified in paragraphs (g)(1)(i) and (g)(1)(ii) of this proposed

AD, have already completed acceptable inspections of the aft web of stage 6, stage 7, and stage 8 of the stages 6–10 compressor rotor spool. This proposed AD would require those affected engines to complete the inspection of the stages 6–10 compressor rotor spool by the next engine shop visit. All other affected GEnx–1B or GEnx–2B model turbofan engines would be required to complete inspection of the stages 6–10 compressor rotor spool before exceeding the compliance times in Table 1 to paragraph (g)(1) of this AD. Depending on the results of the inspection, this AD would require replacement of the stages 6–10 compressor rotor spool with a part eligible for installation.

Costs of Compliance

The FAA estimates that this AD, as proposed, would affect 268 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
BSI of GEnx–1B stage 6, stage 7, and stage 8 aft webs, web transitions and bore faces of the stages 6–10 compressor rotor spool.	6 work-hours × $85 per hour = $510	$0	$510	$89,760
BSI of GEnx–2B stage 6, stage 7, and stage 8 aft webs, web transitions and bore faces of the stages 6–10 compressor rotor spool.	6 work-hours × $85 per hour = $510	0	510	46,920

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. The FAA has no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace the stages 6–10 compressor rotor spool	64 work-hours × $85 per hour = $5,440	$1,018,600	$1,024,040

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA–2020–0850; Project Identifier AD–2020–00288–E.

■ (a) Comments Due Date

The FAA must receive comments by November 9, 2020.

■ (b) Affected ADs

None.

■ (c) Applicability

This AD applies to:

(1) General Electric Company (GE) GEnx–1B64, GEnx–1B64/P1, GEnx–1B64/P2, GEnx–1B67, GEnx–1B67/P1, GEnx–1B67/P2, GEnx–1B70, GEnx–1B70/75/P1, GEnx–1B70/75/P2, GEnx–1B70/P1, GEnx–1B70/P2, GEnx–1B70C/P1, GEnx–1B70C/P2, GEnx–1B74/75/P1, GEnx–1B74/75/P2, GEnx–1B76/P2, GEnx–1B76A/P2 model turbofan engines with stages 6–10 compressor rotor spools in the high-pressure compressor (HPC) assembly with the following part numbers (P/N) installed:

(i) P/N 2357M30G01, P/N 2357M30G02, P/N 2439M35G01, P/N 2439M35G02, or P/N 2445M40G02, all serial numbers (S/Ns);

(ii) P/N 2610M90G01 with the S/Ns listed in paragraph 4., APPENDIX—A, Table 1 of the GE GEnx–1B Service Bulletin (SB) 72–0472 R01, dated July 24, 2020 (''SB 72–0472''); and

(iii) P/N 2628M56G01 with the S/Ns listed in paragraph 4., APPENDIX—A, Table 2 or Table 3 of SB 72–0472.

(2) GEnx–2B67, GEnx–2B67/P, GEnx–2B67B model turbofan engines with the following stages 6–10 compressor rotor spools P/Ns installed:

(i) P/N 2357M30G02, P/N 2439M35G02, or P/N 2445M40G02, all S/Ns;

(ii) P/N 2340M36G01with S/Ns listed in paragraph 4., APPENDIX—A, Table 1 of GE GEnx–2B SB 72–0415 R01, dated July 24, 2020 (''SB 72–0415''); and

(iii) P/N 2628M56G01 with S/Ns listed in paragraph 4., APPENDIX—A, Table 2 or Table 3 of SB 72–0415.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by a finding during an inspection that two stages 6–10 compressor rotor spools were damaged at similar locations. In addition, the manufacturer reported that certain stages 6–10 compressor rotor spool webs did not undergo a required fluorescent penetrant inspection (FPI) during production. The FAA is issuing this AD to prevent failure of the compressor rotor spool. The unsafe condition, if not addressed, could result in uncontained release of debris, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For all affected GEnx–1B and GEnx–2B model turbofan engines, before exceeding the compliance time in Table 1 to paragraph (g)(1) of this AD, perform a borescope inspection (BSI) or eddy current inspection (ECI) of the stage 6, stage 7, and stage 8 webs, web transitions, and bore faces of the stages 6–10 compressor rotor spool in accordance with the Accomplishment Instructions, paragraph 3, of SB 72–0472 (for GEnx–1B models) or the Accomplishment Instructions, paragraph 3, of SB 72–0415 (for GEnx–2B models).

Table 1 to Paragraph (g)(1)

Cycles Since New (CSN) Accumulated on the stages 6-10 compressor rotor spool	Compliance Time
Less than 6,500 CSN	Next engine shop visit or before the stages 6-10 compressor rotor spool accumulates 6,500 CSN, whichever occurs first after the effective date of this AD
6,500 CSN or greater	Before further flight

(i) For GEnx–1B model turbofan engines, except those identified in paragraph 4, APPENDIX—A, Table 3 of SB 72–0472, if the engines have previously undergone inspections of the aft web of stage 6, stage 7, and stage 8 of the stages 6–10 compressor rotor spool using both GE GEnx–1B SB 72–0448 R00, dated July 29, 2019, and GE GEnx–1B SB 72–0460 R00, dated October 30, 2019, regardless of the CSN accumulated on the stages 6–10 compressor rotor spool, perform the inspection required by paragraph (g)(1) of this AD no later than the next engine shop visit after the effective date of this AD.

(ii) For GEnx–2B model turbofan engines, except those identified in paragraph 4., APPENDIX—A, Table 3 of SB 72–0415, if the engines have previously undergone inspections of the aft web of stage 6, stage 7, and stage 8 of the stages 6–10 compressor rotor spool using both GE GEnx–2B SB 72–385 R02, dated July 29, 2019, and GE GEnx–2B SB 72–0398 R00, dated October 30, 2019, regardless of the CSN accumulated on the stages 6–10 compressor rotor spool, perform the inspection required by paragraph (g)(1) of this AD no later than the next engine shop visit after the effective date of this AD.

(2) For all affected GEnx–1B and GEnx–2B model turbofan engines, during the inspections required by paragraph (g)(1) of this AD, if a rejectable indication is found, before further flight, remove the stages 6–10 compressor rotor spool from service and replace it with a part eligible for installation.

(h) Definition

For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation of the engine without subsequent engine maintenance does not constitute an engine shop visit.

(i) Credit for Previous Action

(1) For affected GEnx–1B model turbofan engines, you may take credit for the BSI or ECI required by paragraph (g)(1) of this AD, if the stages 6–10 compressor rotor spool webs, web transitions, and bore faces previously received an ECI using Subtask 72–31–45–160–002 of TASK 72–31–45–200–807 in GE GEnx–1B Engine Manual 05–21–00, Life Limits 001 Mandatory Inspections, Rev. 31 dated, January 31, 2020, or earlier, and no rejectable indications were found.

(2) For affected GEnx–2B model turbofan engines, you may take credit for the BSI or ECI required by paragraph (g)(1) of this AD, if the stages 6–10 compressor rotor spool webs, web transitions, and bore faces previously received an ECI using Subtask 72–31–45–160–002 of TASK 72–31–45–200–801 in GE GEnx–2B Engine Manual 05–21–00, Life Limits 001 Mandatory Inspections, Rev. 24 dated, January 31, 2020, or earlier, and no rejectable indications were found.

(3) For affected GEnx–1B and GEnx–2B model turbofan engines, you may take credit for the BSI or ECI required by paragraph (g)(1) of this AD, if you performed these inspections using GE GEnx–1B Service Bulletin (SB) 72–0472 R00, dated April 24, 2020, or GE GEnx–2B SB 72–0415 R00, dated April 24, 2020, respectively, and no rejectable indications were found.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

(1) For more information about this AD, contact Mehdi Lamnyi, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7743; fax: (781) 238–7199; email: *Mehdi.Lamnyi@faa.gov.*

(2) For service information identified in this AD, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ae.ge.com;* website: *www.ge.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued on September 17, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–20947 Filed 9–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0835; Airspace Docket No. 20–AEA–16]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Toughkenamon, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface for New Garden Airport, Toughkenamon, PA, to accommodate new instrument procedures designed for the airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Comments must be received on or before November 9, 2020.

ADDRESSES: Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2020–0835; Airspace Docket No. 20–AEA–16, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace for New Garden Airport, Toughkenamon, PA, to support IFR operations in the area.

Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2020–0835 and Airspace Docket No. 20–AEA–16) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0835; Airspace Docket No. 20–AEA–16''. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace extending upward from 700 feet above the surface as new instrument approach procedures have been designed for New Garden Airport, Toughkenamon, PA.

Class E airspace designations are published in Paragraph 6005, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is

published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA PA E5 Toughkenamon, PA [New]

New Garden Airport, PA
(Lat. 39°49′50″ N, long. 75°46′11″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of New Garden Airport.

Issued in College Park, Georgia, on September 18, 2020.

Matthew N. Cathcart,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2020–21001 Filed 9–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0567; Airspace Docket No. 20–AAL–15]

RIN 2120–AA66

Proposed Amendment to Federal Airways Amber 15 (A–15), V–444, J–502, and J–511; Alaska and Establishment of Q-Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This action proposes to amend Federal airways J–502, and J–511 in Alaska. It also proposes to establish 2 Q routes, Q–902, and Q–811. The modifications are necessary due to the decommissioning of the Burwash Non-Directional Beacon (NDB) in Yukon Territory, Canada, which provided navigation guidance for portions of the affected routes. The Burwash NDB was decommissioned effective March 26, 2020 due to ongoing maintenance problems and logistic issues.

DATES: Comments must be received on or before November 9, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0567; Airspace Docket No. 20–AAL–15 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2020–0567; Airspace Docket No. 20–AAL–15) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments

on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0567; Airspace Docket No. 20–AAL–15.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA published a notice of proposed rulemaking for Docket No. FAA–2020–0567 in the **Federal Register** (85 FR 38799; June 29, 2020) proposing to amend and remove several Federal airways in Alaska to reflect route changes being made due to the decommissioning of the Burwash NDB. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Subsequent to publication of the NPRM, the FAA determined that further amendments to J–502 and J–511 were required. These amendments would remove the segments contained within Canada and would ensure a ground based method of navigation is available within the National Airspace System. Additionally, the FAA is in the process of transitioning to Next Generation Air Transportation (NEXTGEN). This process provides satellite based navigational routes to replace or augment the ground base navigation system. The FAA proposes to establish two Q routes, Q–811 and Q–902, which would overlay J–502 and J–511 to mitigate the route segments that cannot be supported by ground based navigational facilities.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to amend Federal airways J–502, and J–511, and add Alaska Air Navigational routes Q–811 and Q–902. The proposed airway actions are described below.

J–502: J–502 currently extends between Seattle, WA and Kotzebue, AK. The FAA proposes to remove the segment between Sister Island, AK, VORTAC and Northway, AK, VORTAC. The unaffected portions of the existing route would remain as charted.

J–511: J–511 currently extends between Dillingham, AK and Burwash Landing, YT, Canada, NDB. The FAA proposes to remove the segment between Gulkana VORTAC and Burwash Landing, YT, Canada. The unaffected portions of the existing route would remain as charted.

Q–811: The FAA proposes to establish Q–811 to overly the existing J–511 to mitigate the route segments that cannot be supported by ground navigational facilities. Q–811 would start at Dillingham, AK and terminate at the newly established waypoint of IGSOM, which was established to replace the Burwash NDB.

Q–902: The FAA proposes to create Q–902 to overlay the existing J–502 in its entirety, to mitigate route segments that cannot be supported by ground navigation facilities. Q–902 would start at Seattle, WA and terminate at Kotzebue, AK, excluding that airspace in Canada.

Jet routes are published in paragraph 2004 and United States Area Navigation Routes are published in paragraph 2006, of FAA Order 7400.11E dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR part 71.1. The Federal airways listed in this document will be subsequently published in the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting

Points, dated July 21, 2020 and effective September 15, 2020, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–502 [Amended]

From Seattle, WA; via Victoria, BC, Canada; Port Hardy, BC, Canada; Annette Island, AK; Level Island, AK; Sisters Island; and then; Northway, AK; Fairbanks, AK; to Kotzebue, AK, excluding the airspace within Canada.

* * * * *

J–511 [Amended]

From Dillingham, AK; via INT Dillingham 059° and Anchorage, AK 247° radials, to Anchorage, AK; Gulkana, AK.

* * * * *

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–811 DILLINGHAM, AK TO IGSOM [NEW]

DILLINGHAM, AK (DLG)	VOR/DME	(Lat. 58°59′39.24″ N, long. 158°33′07.99″ W)
KOWOK, AK	FIX	(Lat. 59°12′31.22″ N, long. 157°50′52.40″ W)
SAHOK, AK	FIX	(Lat. 59°34′38.92″ N, long. 156°35′01.99″ W)
FAGIN, AK	WP	(Lat. 59°51′56.15″ N, long. 155°32′43.30″ W)
NONDA, AK	WP	(Lat. 60°19′15.50″ N, long. 153°47′57.60″ W)
AMOTT, AK	WP	(Lat. 60°52′26.59″ N, long. 151°22′23.60″ W)
GASTO, AK	WP	(Lat. 60°56′38.36″ N, long. 151°02′43.16″ W)
ANCHORAGE, AK (TED)	VOR/DME	(Lat. 61°10′04.32″ N, long. 149°57′36.51″ W)
GULKANA, AK (GKN)	VOR/DME	(Lat. 62°09′13.51″ N, long. 145°26′50.51″ W)
TOVAD, CAN	FIX	(Lat. 61°37′45.02″ N, long. 140°58′54.31″ W)
IGSOM, CAN	WP	(Lat. 61°22′14.38″ N, long. 139°02′23.81″ W)

* * * * * * *

Q–902 SEATTLE, WA TO KOTZEBUE, AK [NEW]

SEATTLE, WA (SEA)	VORTAC	(Lat. 47°26′07.34″ N, long. 122°18′34.62″ W)
ORCUS, WA	WP	(Lat. 48°20′39.54″ N, long. 123°07′44.01″ W)
VICTORIA, CAN (YYJ)	VOR/DME	(Lat. 48°43′37.34″ N, long. 123°29′03.69″ W)
ARRUE, CAN	INT	(Lat. 49°04′23.00″ N, long. 124°07′47.00″ W)
ROYST, CAN	INT	(Lat. 49°35′29.00″ N, long. 125°07′35.00″ W)
PORT HARDY, CAN (YZT)	VOR/DME	(Lat. 50°41′02.90″ N, long. 127°21′55.10″ W)
PRYCE, CAN	INT	(Lat. 52°14′17.00″ N, long. 128°45′00.00″ W)
DUGGS, CAN	INT	(Lat. 53°02′05.00″ N, long. 129°30′12.00″ W)
HANRY, CAN	INT	(Lat. 54°36′23.00″ N, long. 131°05′36.00″ W)
ANNETTE ISLAND, AK (ANN)	VOR/DME	(Lat. 55°03′37.47″ N, long. 131°34′42.24″ W)
GESTI, AK	INT	(Lat. 55°25′57.47″ N, long. 131°57′50.40″ W)
DOOZI, AK	WP	(Lat. 55°37′57.14″ N, long. 132°10′28.73″ W)
LEVEL ISLAND, AK (LVD)	VOR/DME	(Lat. 56°28′03.75″ N, long. 133°04′59.21″ W)
HOODS, AK	WP	(Lat. 57°44′34.56″ N, long. 134°40′53.66″ W)
SISTERS ISLAND, AK (SSR)	VORTAC	(Lat. 58°10′39.58″ N, long. 135°15′31.91″ W)
IGSOM, CAN	WP	(Lat. 61°22′14.38″ N, long. 139°02′23.81″ W)
AYZOL, AK	WP	(Lat. 62°28′16.15″ N, long. 141°00′00.00″ W)
NORTHWAY, AK (ORT)	VORTAC	(Lat. 62°56′49.92″ N, long. 141°54′45.39″ W)
RDFLG, AK	WP	(Lat. 63°35′27.26″ N, long. 143°51′00.14″ W)
HRDNG, AK	WP	(Lat. 64°18′04.42″ N, long. 146°12′01.50″ W)
FAIRBANKS, AK (FAI)	VORTAC	(Lat. 64°48′00.25″ N, long. 148°00′43.11″ W)
KOTZEBUE, AK (OTZ)	VOR/DME	(Lat. 66°53′08.46″ N, long. 162°32′23.77″ W)

* * * * *

Issued in Washington, DC, on September 18, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–20954 Filed 9–23–20; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

RIN 3038–AE67

Bankruptcy Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: In April of 2020, the Commodity Futures Trading Commission (the ''Commission'') proposed amendments to its regulations governing bankruptcy proceedings of commodity brokers. In light of comments on the proposed amendments, the Commission is proposing a revision of the proposed amendments with respect to a particular issue, specifically, efforts to foster a resolution proceeding under Title II of the Dodd-Frank Act.

DATES: Comments must be received on or before October 26, 2020.

ADDRESSES: You may submit comments, identified by ''Part 190 Bankruptcy Regulations'' and RIN number 3038–AE67, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according

to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Chief Counsel and Senior Advisor, 202–418–5092, *rwasserman@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

I. Introduction

In April 2020, the Commission approved a proposal to update comprehensively its commodity broker bankruptcy rules, 17 CFR part 190 (the ''Proposal'').[2] Subpart C of those proposed rules is intended to establish a bespoke set of rules for the bankruptcy of a derivatives clearing organization (''DCO''). Within Subpart C, § 190.14 addresses operation of the estate of the debtor clearing organization subsequent to the order for relief. Proposed § 190.14(b)(1) states that except as otherwise explicitly provided in paragraph (b), the DCO shall cease making calls for variation or initial margin.

That alternative provision is found in proposed § 190.14(b)(2) and (3), and was intended to provide a brief opportunity, after the order for relief, to enable paths alternative to liquidation—that is, resolution under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act[3] (''Title II Resolution''), or transfer of clearing operations to another DCO—in cases where a short delay (*i.e.,* less than or equal to six days) might facilitate such an alternative path.[4] The aim of proposed § 190.14(b)(2) and (3) was to avoid a DCO's bankruptcy filing having an irrevocable consequence of termination of clearing operations, an event that would likely be disruptive of markets and possibly the broader United States financial system, in a case where an alternative path was close to fruition. Proposed § 190.14(b)(2) and (3) applied to all DCOs, and was intended to foster either Resolution or transfer of clearing operations.

A number of commenters[5] indicated strong concern that the approach in proposed § 190.14(b) might interfere with DCO rules concerning close-out netting, noting that these rules, and the enforceability of such rules, are necessary for the DCO's rules to constitute a ''Qualifying Master Netting Agreement'' (''QMNA'') for purposes of bank capital requirements. These bank capital requirements are established by the regulators of the banks and bank holding companies that many clearing members are affiliated with or part of: The Federal Deposit Insurance Corporation (''FDIC''), the Board of Governors of the Federal Reserve System (''Federal Reserve''), and the Office of the Comptroller of the Currency (''OCC'') (together, the ''Prudential Regulators''); qualification of such DCO rules as a QMNA is, in turn, necessary in order for the banks and bank holding companies that clearing members are affiliated with or part of to net the exposures of their contracts cleared with the DCO in calculating bank capital requirements.[6]

Qualified Master Netting Agreements. The definition of QMNA[7] requires that any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than receivership, conservatorship, or resolution under the Federal Deposit Insurance Act,[8] Title II Resolution or under any similar insolvency law applicable to government-sponsored enterprises, or laws of foreign jurisdictions that are substantially similar to the foregoing. A Chapter 7 bankruptcy (including such a bankruptcy subject to part 190) does not fit within the foregoing list, and thus to the extent that proposed § 190.14(b)(2) and (3) acts as a stay, it would undermine the QMNA status of DCO rules. If clearing members that are part of banks are not able to net their contracts cleared with a DCO, there would be significantly increased bank capital requirements associated with such contracts. Such an increase in bank capital requirements would disrupt both proprietary and customer clearing.

Some commenters noted that proposed § 190.14(b)(2)(ii)(A) already required, for continued operation on a temporary basis, that such operation would need to be practicable, and that rules of the DCO that would compel the termination of outstanding contracts upon the order for relief would be inconsistent with the practicability of continued operation.[9] Others considered that the references to continued operation created an unacceptable level of legal uncertainty regarding the enforceability of closeout netting provisions. In addition, some commenters expressed doubt that continued operation of a DCO by a trustee in bankruptcy, including collection and payment of margin, would be practicable.[10]

Withdrawal of proposed § 190.14(b)(2) and (3). No DCO registered with the Commission has ever been subject to bankruptcy, or even come close to insolvency. In the unprecedented and highly unlikely case that such a bankruptcy were to happen, it would be beneficial to foster the transfer of clearing operations, including contracts, from the DCO in Chapter 7 liquidation to another DCO, to the extent that such an opportunity presents itself. However, to the extent that fostering the transfer of clearing operations in a hypothetical unprecedented bankruptcy undermines the present-day netting treatment under bank capital rules of all bank-affiliated clearing members of a DCO, the benefit is not worth the cost.[11] Moreover, while it would be beneficial, and it may be possible to develop an acceptable means, to foster Resolution under Title II in the case of certain DCOs in Chapter 7 liquidation, the means proposed in § 190.14(b)(2) and (3) do not result in a practicable and effective way to achieve this result at an acceptable cost. Accordingly, the Commission is

[1] 17 CFR 145.9. Commission regulations referred to in this release are found at 17 CFR chapter I (2019), and are accessible on the Commission's website at *https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm.*

[2] 85 FR 36000 (June 12, 2020).

[3] 12 U.S.C. 5381 *et. seq.*

[4] Proposed § 190.14(b)(2) would enable the trustee to request permission of the Commission to continue operations of the DCO while proposed paragraph (b)(3) would set forth the procedure for the Commission to respond to the request.

[5] *See, e.g.,* FIA at 3–6.

[6] For the FDIC, *see* 12 CFR 324.35(c)(2)(i) (measuring clearing member's trade exposure to a qualifying CCP based on either individual derivative contracts or netting sets of derivative contracts); 12 CFR 324.2 (defining netting set to mean, as relevant here, a group of transactions with a single counterparty that are subject to a qualifying master netting agreement). Analogous rules apply to banks regulated by the Federal Reserve (12 CFR 217.133(c)(2)(i) and 217.2) and the OCC (12 CFR 3.35(c)(2)(i) and 3.2).

[7] *See* 12 CFR 324.2 (FDIC), 217.2 (Federal Reserve), and 3.2 (OCC).

[8] 12 U.S.C. 1811.

[9] *See, e.g.,* CME section IV.D.

[10] *See, e.g.,* FIA at 6.

[11] As noted below, *see infra* n.233, a transfer approved pursuant to 11 U.S.C. 363 (unlike a transfer pursuant to a Title II Resolution) would not have the effect of avoiding a contractual termination provision.

withdrawing proposed § 190.14(b)(2) and (3).[12]

As discussed further below, the Commission is instead proposing that the part 190 regulations include a provision that is intended to foster, for a brief period after a bankruptcy filing, the Title II Resolution of a DCO, in particular a systemically important DCO (''SIDCO''),[13] but through means different to those in the original proposal for § 190.14(b)(2) and (3).

Resolution under Title II of Dodd-Frank. Title II Resolution is designed to address cases where a financial company is in default or danger of default, and where the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States.[14] Default or danger of default includes a circumstance where a case has been, or likely will promptly be, commenced with respect to the financial company under the Bankruptcy Code.[15] The Financial Stability Oversight Council (''FSOC'') has determined that the failure of either of the two systemically important derivatives clearing organizations, CME and ICE Clear Credit, would likely threaten the stability of the broader U.S. financial system.[16]

The process for placing a financial company into Title II Resolution is deliberate and intricate. In the case of a SIDCO, this would include a written recommendation by each of the FDIC and the Federal Reserve covering eight statutory factors.[17] Following that recommendation, the Secretary of the Treasury would then need to make a determination, in consultation with the President, that each of seven statutory factors is met.[18] Following such a determination, the board of directors of the financial company may acquiesce or consent to the appointment of the FDIC as receiver, or there may be a period of judicial review which may extend to 24 hours.[19]

By contrast, a voluntary petition in bankruptcy commences the case, which in turn constitutes an order for relief.[20]

Accordingly, there exists a possibility that (in the highly unlikely event that a SIDCO would consider bankruptcy), the SIDCO could file for bankruptcy before a process to place that SIDCO into a Title II Resolution would have completed.[21] While the appointment of the FDIC as receiver under Title II would automatically result in the dismissal of the prior bankruptcy,[22] if the bankruptcy filing were to immediately and irrevocably result in the termination of the SIDCO's derivatives contracts with its members, that would undermine the potential success of any subsequent Title II Resolution.

By contrast, if the FDIC is appointed as receiver in a Title II Resolution before a SIDCO's derivatives contracts with its members are terminated as a result of a bankruptcy filing, such termination would be stayed by operation of Title II until 5:00 p.m. (eastern time) on the business day following the date of the appointment and, if the FDIC were to transfer such contracts to, *e.g.,* a bridge entity before that time, termination based on the insolvency or financial condition of the SIDCO would be permanently avoided,[23] again by operation of Title II.[24]

II. Supplemental Proposal

In view of the points raised by commenters on the Proposal and upon further review of the matter, the Commission is proposing a limited revision to the Proposal that would (1) stay the termination of SIDCO contracts for a brief time after bankruptcy in order to foster the success of a Title II Resolution, if the FDIC is appointed receiver in such a Resolution within that time, but (2) do so in a manner that does not undermine the QMNA status of SIDCO rules (the ''Supplemental Proposal.'') All other aspects of the Proposal remain the same.

Specifically, the Supplemental Proposal would impose a temporary stay on the termination of derivatives contracts of a SIDCO that is the subject of a bankruptcy case.[25] However, that provision would become effective only if the Commission finds that the Prudential Regulators have taken steps to make such a stay consistent with the QMNA status of SIDCO rules. As discussed further below, the Commission is seeking comment on whether the Supplemental Proposal can reasonably be expected to achieve both of those goals, is feasible, is the best design for such a solution, and appropriately reflects consideration of benefits and costs.

As noted above, the present regulations of the Prudential Regulators of the banks and bank holding companies that SIDCO clearing members may be affiliate with or part of make any stay under Part 190 inconsistent with QMNA status for DCO rules. Thus, to meet the second goal, the Prudential Regulators must take action sufficient to change that result.

Following analogous stay provision. The Commission notes that the regulations of the Prudential Regulators encourage a limited stay period in certain contexts. For example, 12 CFR 382.4(b)(1) (FDIC) provides that a covered qualified financial contract (''QFC'') may not permit the exercise of any default right with respect to the covered QFC that is related, directly or indirectly, to an affiliate of the direct party becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding. However, § 382.4(f) provides that, notwithstanding paragraph (b), under certain circumstances, a covered QFC may permit the exercise of a default right after the stay period. The term ''stay period'' is defined in § 382.4(g) as, with respect to a receivership,

[12] The Commission will make appropriate edits to the language in proposed § 190.14(b)(1) as part of the process of finalizing the Part 190 rule proposal.

[13] 17 CFR 39.2 defines systemically important derivatives clearing organization to mean a financial market utility that is a derivatives clearing organization registered under section 5b of the Act, which is currently designated by the Financial Stability Oversight Council to be systemically important and for which the Commission acts as the Supervisory Agency pursuant to 12 U.S.C. 5462(8).

[14] 12 U.S.C. 5383(b)(1, 2).

[15] 12 U.S.C. 5383(c)(4)(A).

[16] *See* 2012 FSOC Annual Report, Appendix A, at 163 (''a significant disruption or failure of CME could have a major adverse impact on the U.S. financial markets, the impact of which would be exacerbated by the limited number of clearing alternatives currently available for the products cleared by CME. Accordingly, a failure or disruption of CME would likely have a significant detrimental effect on the liquidity of the futures and options markets, clearing members, which include large financial institutions, and other market participants, which would, in turn, likely threaten the stability of the broader U.S. financial system''); *id.* at 178 (same for ICE Clear Credit with respect to swaps markets and the broader U.S. financial system).

[17] *See* 12 U.S.C. 5383(a)(1)(A). These include a description of the effect that the default of the financial company would have on financial stability in the United States and an evaluation of why a case under the Bankruptcy Code is not appropriate for the financial company. *See* 12 U.S.C. 5383(a)(2).

[18] *See* 12 U.S.C. 5383(b). These include that the failure of the financial company under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States.

[19] *See* 12 U.S.C. 5382(a)(1)(A).

[20] *See* 12 U.S.C. 301.

[21] The timeline for an involuntary bankruptcy is longer, in that it involves a petition, an answer (that the debtor has 21 days to file), and (if the petition is timely controverted) a trial. *See* 12 U.S.C. 303 (b, h), Federal Rule of Bankruptcy Procedure 1011(b).

[22] *See* 12 U.S.C. 5388(a).

[23] *See* 12 U.S.C. 5390(c)(10)(B)(i). By contrast, a transfer within a bankruptcy proceeding (including a ''sale free and clear'' pursuant to 11 U.S.C. 363), would not have the effect of preventing termination of the contracts.

[24] As noted above, limitations of termination rights pursuant to Title II are explicitly made consistent with QMNA status of an agreement.

[25] Under the Supplemental Proposal, the temporary stay would not apply in the case of the bankruptcy of a DCO that is not a SIDCO.

insolvency, liquidation, resolution, or similar proceeding, the period of time beginning on the commencement of the proceeding and ending at the later of 5 p.m. (EST) on the business day following the date of the commencement of the proceeding and 48 hours after the commencement of the proceeding.[26]

While the ''stay period'' in 12 CFR 382.4(g) does not apply to a contract with a SIDCO (or any other central counterparty (''CCP'')) in bankruptcy, it would appear more likely that the Prudential Regulators would be comfortable with—and, thus, willing to make changes to the QMNA definition that would conform to—a stay period that is of identical length to a stay period that the Prudential Regulators already use in another context.

Thus, instead of continued operation for up to six days as originally proposed, the Supplemental Proposal would provide for the use of a stay period, applicable to the bankruptcy of a SIDCO, that would extend for the period of time beginning on the commencement of the proceeding and ending at the later of 5 p.m. (EST) on the business day following the date of the commencement of the proceeding and 48 hours after the commencement of the proceeding.

Unlike the original Proposal, there would be no continued collection or payments of initial or variation margin during the stay period. Rather, the termination of contracts outstanding at the time of the order for relief would be stayed for the stay period. To be sure, risk levels would increase during the stay period, as the design of CCPs is based on daily collection and payment of variation margin.[27] However, in a context where the DCO is (based on the prior bankruptcy filing) already *in extremis,* and collection and payment of variation margin is impracticable, such a stay may be the best available alternative (as compared to an immediate and irrevocable result of termination of contracts). The Commission notes that this risk is mitigated, albeit incompletely, by the limited maximum length of the stay period.[28]

Need for a Springing Provision. For the reasons discussed above, in order to avoid undermining the QMNA status of SIDCO rules, no stay provision regarding DCO contract termination rules may be made effective as an element of the DCO bankruptcy provisions of Part 190 unless and until each of the three Prudential Regulators takes action to make such a stay provision consistent with such QMNA status. The Commission seeks to complete the work of amending Part 190 in one coherent rulemaking. Moreover, the inclusion of such a stay provision, contingent on such action, might encourage the Prudential Regulators promptly to take such action.

Accordingly, the Supplemental Proposal would provide for the implementation of a stay provision, as discussed above, applicable to the bankruptcy of a SIDCO, that would only become effective after each of the three Prudential Regulators has publically taken action sufficient to make such a stay provision consistent with the QMNA status of SIDCO rules. The length of the stay period would be the shorter of (a) the stay period discussed above (found in, *e.g.,* 12 CFR 382.4(g)) or (b) the shortest such period specified in the action by any of the Prudential Regulators.

If the Prudential Regulators take such action prior to the finalization of the rulemaking embodied in the Proposal (as modified by this Supplemental Proposal), the Commission could implement the stay period provision as part of that finalization. Otherwise, the stay period provision would not become effective unless and until the Commission subsequently issues an Order, confirming that the stay provision is consistent with the QMNA status of SIDCO rules.[29] In either event, before acting to implement a stay provision, the Commission would issue a request for public comment, limited to the issue of whether the Prudential Regulators' actions are each sufficient to make such a stay provision consistent with the QMNA status of SIDCO rules.[30]

In summary, the Commission is withdrawing proposed § 190.14(b)(2) and (3) from the Proposal and instead proposing that the final amendments to part 190 would contain a regulation with the following elements:

- Subsequent to the order for relief with respect to a SIDCO, a stay period would apply to the termination of derivatives contracts outstanding at the time of the order for relief and the exercise of any other default right. There would be no continued collection or payments of initial or variation margin during the stay period.
- The length of the stay period would be the shorter of (a) the period of time beginning on the commencement of the proceeding and ending at the later of 5 p.m. (EST) on the business day following the date of the commencement of the proceeding and 48 hours after the commencement of the proceeding; or (b) the shortest such period specified in the action by any of the Prudential Regulators.
- This aspect of the regulation would not be effective until the Commission determines (whether as part of finalizing the rulemaking in the Proposal (as modified by the Supplemental Proposal) or by a subsequent Order), following public notice and comment, that each of the three Prudential Regulators has taken action sufficient to make the stay provision consistent with the QMNA status of SIDCO rules. Public comment would be limited to whether the Prudential Regulators' actions are sufficient on that point.

III. Cost-Benefit Considerations

Introduction. Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[31] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors (collectively referred to herein as ''Section 15(a) Factors'').

In the Proposal, the Commission proposed amendments to its regulations governing bankruptcy proceedings of commodity brokers in part 190. The Proposal provided the public with an opportunity to comment on the

[26] Similar provisions are found in the regulations of the Federal Reserve (*see* 12 CFR 252.84) and of the OCC (*see* 12 CFR 47.5).

[27] *See* 17 CFR 39.14(b) (requiring daily variation settlement). Moreover, while no transactions would be entered into during the stay period, and thus there would be no changes in initial margin levels due to change in positions, the SIDCO would be unable to change initial margin levels even if an increase in such levels would otherwise be warranted.

[28] The Commission notes that 48 hours/5 p.m. on the next business day is the *maximum* length of the stay period. To the extent that the process of placing the SIDCO into Title II would be completed sooner, that would further mitigate the impact of not collecting and paying variation margin.

[29] Authority to issue such an Order would not be delegated to staff, and thus would be excluded from the delegation of authority set forth in proposed § 190.02(b).

[30] As a practical matter, the Commission expects that before issuing the request for public comment, there would be contacts by Commission staff with relevant staff at each of the three Prudential Regulators confirming understanding of such action.

[31] Section 15(a) of the CEA, 7 U.S.C. 19(a).

Commission's cost-and-benefit considerations of the proposed amendments, including identification and assessment of any costs and benefits not discussed therein. In particular, the Commission requested that commenters provide data or any other information that they believe supports their positions with respect to the Commission's considerations of costs and benefits.

Baseline. In this release, the Commission sets out the Supplemental Proposal described above, and withdraws proposed § 190.14(b) and (c). All other aspects of the Proposal remain the same. The Proposal set forth the costs and benefits of the Commission's proposed amendments of Part 190. All aspects of the Proposal's considerations of costs and benefits remain the same other than those related specifically to the Supplemental Proposal. Thus, while the Commission's practices under existing part 190 serve as the baseline for the consideration of costs and benefits of the Supplemental Proposal, we also discuss as appropriate for clarity the differences from the Proposal. The Commission seeks comment on all aspects of the baseline laid out above.

The Commission recognizes that the Supplemental Proposal could create benefits, but also could impose costs. The Commission has endeavored to assess the expected costs and benefits of the proposed rulemaking in quantitative terms, but has not found it possible to do so, and instead has identified and considered the costs and benefits of the applicable proposed rules in qualitative terms. The lack of data and information to estimate those costs is attributable in part to the nature of the Supplemental Proposal, including that it relates to a situation—the failure of a DCO—that is unprecedented and is considered to be highly unlikely.

Consideration of benefits and costs. The benefit of the Supplemental Proposal would be to provide a brief opportunity for a Title II Resolution of a SIDCO that has filed for bankruptcy to be initiated without the termination of the outstanding derivatives contracts. In the event that such a Resolution is initiated during the stay period, this would mitigate, and possibly avoid, the disruption to clearing members and clients, and to the U.S. financial system more broadly, that would result from such termination of the outstanding contracts. By delaying the effectiveness of this provision until a Commission Order confirming that the Prudential Regulators had taken action to make such a stay provision consistent with QMNA status for the DCO's rules, the Supplemental Proposal would avoid undermining QMNA status, and thus would avoid increasing capital requirements for bank-affiliated clearing members.

The Commission does not anticipate material administrative costs associated with the Supplemental Proposal. Nonetheless, there is at least one significant cost: For the duration of the stay period, clearing members and clients will be uncertain whether their contracts will continue (as part of a Resolution) or be terminated (and thus would need to be replaced). That uncertainty would mean that clearing members and clients would be disadvantaged in determining how best to protect their positions.

The Commission notes that it has considered alternatives to the Supplemental Proposal. First, the Commission could simply withdraw proposed § 190.14(b)(2) and (3), and not propose anything additional. As discussed above, that would permit the immediate and irrevocable result of the termination of a SIDCO's derivatives contracts with its members, and that result would undermine the success of any subsequent Title II Resolution. Second, and proceeding in the opposite direction, the Commission could propose to make the proposed solution immediately effective. However, that approach would undermine QMNA status for DCO rules. Third, the proposed solution could be extended to all DCOs with respect to potential resolution under Title II. However, while it is possible that a DCO that has not been designated as systemically important pursuant to Title VIII of Dodd-Frank could nonetheless, in the event of its bankruptcy, be found eligible for Title II Resolution in that the bankruptcy proceeding would have serious adverse effects on financial stability in the United States, that is much less likely than in the case of a SIDCO and, in light of the impact on clearing members and clients, the Commission has determined not to propose to apply a stay period to DCOs that are not SIDCOs.

Finally, while the original proposed § 190.14(b)(2) and (3) would have been applied to cases where a prompt transfer of clearing operations (including contracts) outside of Title II Resolution might be facilitated, the Supplemental Proposal does not include transfers outside of Title II Resolution because, as noted above, such a transfer would not avoid the effect of a termination provision. Nor does the Commission anticipate that the Prudential Regulators would be inclined to permit avoidance of such termination outside the context of a Title II Resolution.

IV. Request for Comment

The Commission requests comment on all aspects of the Supplemental Proposal and the issues raised in this document, including in particular:

(1) Do commenters agree with the concerns identified (or consider that there are additional or different concerns) with respect to the status of DCO rules as qualifying master netting agreements for purposes of bank capital rules?

(2) Does the Supplemental Proposal achieve the goals of fostering the success of a Title II Resolution while avoiding undermining the QMNA status of SIDCO rules? Are these the right goals?

(3) Do commenters see a better way to achieve these goals? Do commenters see specific provisions that should be included in, or exclude from, the Supplemental Proposal?

(4) Do commenters agree that the Supplemental Proposal should be limited to SIDCOs (*i.e.,* that it should not be applied to DCOs that are not SIDCOs)?

(5) The Commission generally requests comment on all aspects of its cost-benefit considerations, including the identification and assessment of any costs and benefits not discussed herein; the potential costs and benefits of the alternatives discussed herein; data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the costs and benefits of the proposed solution; and substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's discussion. The Commission welcomes comment on such costs from all members of the public. Commenters may also suggest other alternatives to the proposed approaches.

Issued in Washington, DC, on September 18, 2020 by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Appendices to Bankruptcy Regulations—Commission Voting Summary and Commissioner's Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Commissioner Dan M. Berkovitz

The part 190 rulemaking supplemental notice of proposed rulemaking (''Supplemental NPRM'') addresses a potential unintended outcome of the original NPRM identified in a number of comments on the proposal. These comments stated that certain provisions in the original proposed rule related to the bankruptcy of a derivatives clearing organization (''DCO'') could have significant, unintended and detrimental impacts on various market participants with contracts cleared at the DCO. The Supplemental NPRM presents new, alternative provisions governing DCO bankruptcy that are intended to avoid these impacts. In issuing the Supplemental NPRM, the Commission seeks public comment on these alternative provisions.

I support the issuance of this Supplemental NPRM because it will provide all interested persons with an opportunity to comment on the alternative provisions formulated by the Commission. This alternative approach was not set forth in the proposal. Providing the public with notice and opportunity to comment on rules being considered by the Commission is not only a basic legal requirement for agency rulemaking, but it is sound public policy as well. Public input from all interested persons is critical to sound regulation.

Under the Administrative Procedure Act, the provisions in a final rule must be reasonably foreseeable and a logical outgrowth of the provisions in the proposal.[1] The NPRM must contain more than a passing reference or question about an issue; the proposal must be sufficiently descriptive for members of the public to evaluate and comment on the approach being considered. The Supplemental NPRM meets that standard.

I look forward to reviewing all perspectives on these alternative provisions.

[FR Doc. 2020–21005 Filed 9–23–20; 8:45 am]

BILLING CODE 6351–01–P

[1] *See, e.g., Idaho Farm Bureau Fed'n* v. *Babbitt,* 58 F.3d 1392, 1402–03 (9th Cir. 1995).

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0537]

RIN 1625–AA00

Safety Zone; Ohio River, New Richmond, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a temporary safety zone for all navigable waters of the Ohio River from mile marker (MM) 452.0 to MM 454.0. This action is necessary to provide for the safety of life on these navigable waters near New Richmond, OH, during a demolition project. Entry into, transiting through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before October 26, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0537 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST1 Matthew Roberts, Waterways Department Marine Safety Detachment Cincinnati, U.S. Coast Guard; telephone 513–921–9033, email *msdcincinnati@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On July 22, 2020, MCM Management Corp notified the Coast Guard that it will be conducting a demolition from 7 a.m. to 9 a.m. on October 16, 2020, as part of the process to remove the structures of the Beckjord Power Plant. The demolition will occur to stuctures on and close to the waterway. Hazards from demolition include low visibility from the smoke and or noise hazards from the implosion. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the demolition would be a safety concern for anyone within the two mile river closure.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters from Mile Marker 452.0 to 454.0 before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 7 a.m. to 9 a.m. on October 16, 2020. The safety zone would cover all navigable waters from Mile Marker 452.0 to 454.0 on the Ohio River bank to bank. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 7 a.m. to 9 a.m. demolition. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Entry into the regulated area will be prohibited from 7 a.m. to 9 a.m. on October 16, 2020, from Ohio River MM 452.0 to MM 454.0, unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. Moreover, the Coast Guard will issue written Local Notice to Mariners and Broadcast Notice to Mariners via VHF–FM marine channel 16 about the temporary safety zone that is in place.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations

that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 2 hours that would prohibit entry into the regulated area. Normally such actions are categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Recordkeeping Requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0537 to read as follows:

§ 165.T08–0537 Safety Zone; Ohio River, New Richmond, OH.

(a) *Location.* The following area is a temporary safety zone: All navigable waters of the Ohio River between MM 452.0 to MM 454.0 in New Richmond, OH.

(b) *Effective Period.* This temporary safety zone will be in effect on October 16, 2020.

(c) *Period of enforcement.* This temporary safety zone will be enforced from 7 a.m. through 9 a.m. on October 16, 2020.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM radio channel 16 or phone at 1–800–253–7465.

(2) Persons and vessels permitted to enter this safety zone must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners and the Local Notice to Mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

Dated: September 2, 2020.

A.M. Beach,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2020–19852 Filed 9–23–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2020–OCTAE–0029]

Proposed Priorities, Requirements, Definition, and Selection Criteria—Perkins Innovation and Modernization Grant Program

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Proposed priorities, requirements, definition, and selection criteria.

SUMMARY: The Assistant Secretary for Career, Technical, and Adult Education proposes priorities, requirements, a definition, and selection criteria under the Perkins Innovation and Modernization Grant Program, Catalog of Federal Domestic Assistance (CFDA) number 84.051F. The Assistant Secretary may use the priorities, requirements, definition, and selection criteria for competitions in fiscal year (FY) 2020 and later years. We take this action in order to support the identification of strong and well-designed projects that will incorporate evidence-based and innovative strategies and activities to improve and modernize career and technical education (CTE) and better prepare youth and adults for in-demand jobs.

DATES: We must receive your comments on or before October 26, 2020.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to Use *Regulations.gov*'' in the Help section.

Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about these proposed regulations, address them to Corinne Sauri, U.S. Department of Education, 400 Maryland Avenue SW, Room 11–110, PCP, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Corinne Sauri, U.S. Department of Education, 400 Maryland Avenue SW, Room 11–110, PCP, Washington, DC 20202. Telephone: (202) 245–6412. Email: *PerkinsIandMGrants@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities, requirements, definition, and selection criteria. To ensure that your comments have maximum effect in developing the final priorities, requirements, definition, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, definition, or selection criterion your comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from the proposed priorities, requirements, definition, and selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priorities, requirements, definition, and selection criteria by accessing *Regulations.gov.* You may also inspect the comments in person in Room 11–110, PCP, 400 Maryland Avenue SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Specific Requests for Comment: The Department is particularly interested in comments on Proposed Priority 4—Serving Students from Low-Income Families. We are interested in feedback about how well this priority would assist in the determination of whether a proposed project would predominantly serve students from low-income families as well as whether the proposed priority would be challenging or burdensome for applicants to meet and, if so, how the proposed priority could be revised. In addition, we invite comment about the appropriateness of the proposed data sources applicants may use to demonstrate that the proposed project will serve students from low-income families.

We are also interested in comments about whether there are important aspects of innovative CTE projects or the likelihood of project success that the proposed selection criteria for the I and M competition do not assess. We are interested in feedback about whether there is ambiguity in the language of the proposed selection criteria that will make it difficult for applicants to respond to the criteria and for peer reviewers to evaluate applications with respect to the selection criteria.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to

review the comments or other documents in the public rulemaking record for the proposed priorities, requirements, definition, and selection criteria. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Perkins Innovation and Modernization (Perkins I and M) Grant Program is to identify, support, and rigorously evaluate evidence-based and innovative strategies and activities to improve and modernize CTE, and to ensure workforce skills taught in CTE programs funded under the Carl D. Perkins Career and Technical Education Act of 2006, as amended by the Strengthening Career and Technical Education for the 21st Century Act (Perkins V or the Act), align with labor market needs.

Program Authority: Section 114(e) of Perkins V (20 U.S.C. 2327).

Background: The Perkins Innovation and Modernization (I and M) Grant Program was authorized by amendments to the Carl D. Perkins Career and Technical Education Act that were enacted in 2018 by the Strengthening Career and Technical Education for the 21st Century Act (Pub. L. 115–224). The program's first competition for new awards occurred during 2019 and resulted in nine grant awards. We propose these priorities, requirements, definition, and selection criteria in anticipation of future grant competitions. The proposed priorities, requirements, and definition are based largely on those used in the notice inviting applications (NIA) for the 2019 competition that was published in the **Federal Register** on April 15, 2019 (84 FR 15193). The proposed selection criteria differ, however, from the criteria we used in the 2019 NIA because they are tailored to the specific requirements of the Perkins I and M Grant Program. The 2019 NIA used the general selection criteria from the Education Department General Administrative Regulations (34 CFR 75.210). However, we propose, for example, to establish a selection criterion that would assess the extent to which the project proposed in an application addresses a regional or local need identified through the comprehensive local needs assessment carried out under section 134(c) of Perkins V. We also propose a selection criterion that focuses on projects that serve students from rural areas. We believe that these and the other proposed selection criteria would help peer reviewers evaluate the quality of Perkins I and M grant applications and identify the strongest proposals to improve and modernize CTE.

Proposed Priorities

This document contains five proposed priorities. We may apply one or more of these priorities for a Perkins I and M grant competition in FY 2020 or in subsequent years.

Proposed Priority 1—Evidence-Based Field-Initiated Innovations

Background: The purpose of the Perkins I and M Grant Program is to test new ideas that can help better prepare students for success in the workforce. Section 114(e)(1) of Perkins V requires the strategies and activities funded under this program to be not only innovative, but also evidence-based, which is defined in Perkins V by adopting the definition of ''evidence-based'' from the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA). This definition includes four tiers of evidence that are defined in 34 CFR 77.1 and distinguished from each other by the strength and extent of rigorous research on the effectiveness of an intervention—(1) strong evidence, (2) moderate evidence, (3) promising evidence, or (4) evidence that demonstrates a rationale.

This proposed priority identifies each of these evidence tiers and requires applicants to describe how their proposed project meets one of these tiers. The proposed priority could be used by the Department in a variety of ways in different competitions. It could be used as a competitive preference priority that awards points to applications based on the evidence tiers that they meet. Alternatively, it could be implemented as an absolute priority that requires applicants, in order to be considered for funding, to demonstrate that they meet one or more of the evidence tiers, or even a specific evidence tier. In a given competition, the Secretary would have flexibility to choose one or more evidence tiers for applicants to meet. The 2019 NIA, for example, included an absolute priority for projects that demonstrated a rationale and included a corresponding logic model.

Proposed Priority: Under this priority the Department provides funding to applicants that propose a project for evidence-based field-initiated innovations.

In its application, an applicant must propose to create, develop, implement, replicate, or take to scale evidence-based (as defined in section 8101(21)(A) of the ESEA (20 U.S.C. 6301 *et seq.*) and adopted by section 3(23) of Perkins V), field-initiated innovations to modernize and to improve effectiveness and alignment of CTE (as defined in section 3 of Perkins V) with labor market needs, and to improve student outcomes in CTE. The application must describe how the proposed project meets one or more of the following evidence tiers:

(a) Strong evidence.

(b) Moderate evidence.

(c) Promising evidence.

(d) Demonstrates a rationale, including the corresponding logic model.

Proposed Priority 2—Promoting STEM Education

Background: We propose a priority that aligns with Priority 6—Promoting Science, Technology, Engineering, or Math (STEM) Education, With a Particular Focus on Computer Science, from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096) (Supplemental Priorities). Proposed Priority 2 pertains to projects designed to improve student achievement or other education outcomes in STEM. However, as discussed below, we propose a separate priority, Proposed Priority 3, to focus on projects designed to improve student achievement or other education outcomes in computer science.

Preparing secondary and postsecondary CTE students for career opportunities in industries in the STEM sectors, such as advanced manufacturing and health care, is essential to promoting innovation and economic growth. Furthermore, STEM jobs that require less than a bachelor's degree pay higher wages than non-STEM jobs with similar educational requirements.[1] Proposed Priority 2 is designed to support projects that prepare students for, and promote access to, employment opportunities in STEM fields.

Proposed Priority: Projects designed to improve student achievement or other education outcomes in one or more of the following areas: Science, technology, engineering, math. These projects must address one or more of the following priority areas:

(a) Increasing access to STEM coursework and hands-on learning opportunities, such as through expanded course offerings, dual enrollment (as defined in Perkins V),

[1] Real-Time Insight into the Market for Entry-Level STEM Jobs, Burning Glass Technologies (2014). Retrieved from: *www.burning-glass.com/wp-content/uploads/Real-Time-Insight-Into-The-Market-For-Entry-Level-STEM-Jobs.pdf.*

high-quality online coursework, or other innovative delivery mechanisms.

(b) Creating or expanding partnerships between schools, local educational agencies (LEAs), State educational agencies (SEAs), businesses, not-for-profit organizations, or institutions of higher education (IHEs) (as defined in section 101 of the Higher Education Act of 1965, as amended, and section 3(30) of Perkins V) to give students access to internships, apprenticeships, or other work-based learning (as defined in section 3(55) of Perkins V) experiences in STEM fields.

(c) Supporting programs that lead to recognized postsecondary credentials (as defined in section 3 of the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113–128, 29 U.S.C. 3102) and section 3(43) of Perkins V) or skills that align to the skill needs of industries in the State or regional economy for careers in STEM fields.

Proposed Priority 3—Promoting Computer Science Education

Background: We propose an additional priority that aligns with Priority 6 in the Supplemental Priorities but focuses on projects that address computer science (as defined in this document), specifically. The proposed priority also aligns with the Presidential Memorandum for the Secretary of Education [2] on Increasing Access to High-Quality Science, Technology, Engineering, and Mathematics (STEM) Education that directs the Department of Education to increase the focus on computer science in existing K–12 and postsecondary programs. Projects that address computer science may include those that focus on cybersecurity-related education, training, and apprenticeship programs, consistent with Executive Order 13800 on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure, as well as coding and data science. According to *Code.org,* only 45 percent of high schools teach computer science. Further, students in rural communities and in schools with higher percentages of students from low-income families are less likely to have access to computer science education.[3] Proposed Priority 3 is designed to support projects that prepare students for, and promote access to, employment opportunities in computer science.

Proposed Priority: Projects designed to improve student achievement or other education outcomes in computer science, as defined in this document. These projects must address one or more of the following priority areas:

(a) Increasing access to computer science coursework, and hands-on computer science learning opportunities, such as through expanded course offerings, dual-enrollment, high-quality online coursework, or other innovative delivery mechanisms.

(b) Creating or expanding partnerships between schools, LEAs, SEAs, businesses, not-for-profit organizations, or IHEs to give students access to computer science internships, apprenticeships, or other work-based learning experiences in computer science fields.

(c) Supporting programs that lead to recognized postsecondary credentials (as defined in section 3 of WIOA (29 U.S.C. 3102)) in computer science or skills that align with the skill needs of industries in the State or regional economy for careers in computer science.

Proposed Priority 4—Serving Students From Low-Income Families

Background: Section 114(e)(4) of Perkins V instructs the Secretary to give priority to Perkins I and M projects that will predominantly serve students from low-income families. To encourage and support efforts to increase the number of innovative and high-quality CTE programs available to students from low-income families, particularly in the Nation's high-poverty areas, we propose to implement this statutory priority by requiring an applicant to describe its plan to serve students from low-income families and demonstrate that a specific minimum percentage of students to be served by the project will be students from low-income families over the course of the grant project period.

Under the proposed priority, an applicant would describe its plan to predominantly serve students from low-income families. The plan would include the specific activities, a proposed timeline, and a rationale for how the proposed activities will result in projects in which the students to be served are predominantly students from low-income families, and would name the parties responsible for implementation of the proposed activities. Additionally, applicants would provide data to demonstrate that at least 51 percent of the students that will be served by the project would be from low-income families, based on where the students reside. We propose the following data sources that applicants would use to demonstrate that the proposed student population is predominantly from low-income families: Children aged five through 17 in poverty counted in the most recent census data approved by the Secretary; students eligible for a free or reduced-price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*); students who are Federal Pell Grant recipients; or a composite of such indicators. We invite public comment on whether these sources are the most appropriate.

Proposed Priority: To meet this priority, applicants must submit a plan demonstrating that the project will serve students who are predominantly from low-income families.

The plan must include—

(a) The specific activities that the applicant proposes;

(b) The timeline for implementing the activities;

(c) Names of the parties responsible for implementing the activities; and

(d) Evidence that at least 51 percent of the students to be served by the project are from low-income families, including—

(1) A description of the key data sources and measures for such evidence; and

(2) The most recent data demonstrating that the students to be served by the project are from low-income families.

When demonstrating that the project is designed to predominantly serve students from low-income families, the applicant must use one or more of the following data sources and measures: (1) Children aged 5 through 17 in poverty counted in the most recent census data approved by the Secretary; [4] (2) students eligible for a free or reduced-price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*); (3) students who are Federal Pell Grant recipients; or (4) a composite of such indicators.

Proposed Priority 5—Serving Middle School, High School, and Postsecondary Students

Background: This proposed priority is for applicants serving students enrolled at particular levels of schooling and is intended to support efforts to increase the number of programs that offer innovative and high-quality CTE to such students. We propose three subparts to this priority, each of which would require that a project serve students who

[2] Trump, Donald, J., Increasing Access to High-Quality Science, Technology, Engineering, and Mathematics (STEM) Education. Presidential Memorandum for the Secretary of Education, 82 FR 45417 (September 28, 2017).

[3] *Code.org.* 2019 State of Computer Science Education. (2019).

[4] The U.S. Census Bureau LEA poverty estimates are available at: *www.census.gov/data/datasets/2017/demo/saipe/2017-school-districts.html.*

are enrolled in a particular education level—middle school, high school, or postsecondary school—over the course of the grant project period. The Secretary could choose one or more of the subparts of this priority in a given competition based on an assessment of the field. For example, for a particular competition, the Secretary might give priority to applications from projects that propose to serve students in the middle grades (any of grades 5 through 8). Alternatively, the Secretary might invite applications from projects that focus at the postsecondary level or give priority to projects that are designed to serve students in all three education levels.

Proposed Priority: To meet this priority, applicants must propose a project to serve one or more of the following:

(a) Students enrolled in the middle grades (any of grades 5 through 8) in a local educational agency or education service agency eligible to receive funds under section 131 of the Act.

(b) Students enrolled in the high school grades (any of grades 9 through 12) in a local educational agency or education service agency eligible to receive funds under section 131 of the Act.

(c) Students enrolled in a certificate or associate degree postsecondary education program at an institution of higher education eligible to receive funds under section 132 of the Act.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements

We are proposing the following application and program requirements. We may apply one or more of these requirements for a Perkins I and M competition in FY 2020 or in subsequent years.

Proposed Requirement 1—Demonstration of Matching Funds

Background: Section 114(e)(2)(A) of Perkins V requires each grantee to provide from non-Federal sources (*e.g.,* State, local, or private sources), an amount equal to not less than 50 percent of the funds provided under the grant, which may be provided in cash or through in-kind contributions, to carry out activities supported by the grant. To implement this requirement and ensure an applicant has the necessary commitments for match funding prior to submitting its grant application, we propose to require each applicant to include in its grant application a budget detailing the source of the matching funds and a letter committing to the match from an individual from the entity providing the matching funds who has authority to make legally binding commitments on behalf of the entity.

Proposed Requirement: Each applicant must demonstrate in its application that it will provide from non-Federal sources (*e.g.,* State, local, or private sources), an amount equal to not less than 50 percent of funds provided under the grant, which may be provided in cash or through in-kind contributions, to carry out activities supported by the grant. The evidence must include a budget detailing the source of the matching funds, whether the funds will be provided in cash or through in-kind contributions, and a letter committing to the match from an individual who has authority to make legally binding commitments on behalf of the entity that is providing the matching funds.

Proposed Requirement 2—Description of Allowable Activities

Background: Section 114(e)(7) of Perkins V requires each grantee to use Federal grant funds ''to create, develop, implement, replicate, or take to scale evidence-based, field-initiated innovations to modernize and improve effectiveness and alignment of career and technical education and to improve student outcomes in career and technical education, and rigorously evaluate such innovations'' by carrying out one or more of the activities listed in that section. To implement this requirement, we propose to require each applicant to identify in its grant application which activities it proposes to carry out with grant funds during the project period.

Proposed Requirement: Each applicant must describe how it will use Perkins I and M Grant Program funds and also must identify one or more of the activities described in section 114(e)(7) of Perkins V that it proposes to implement with Perkins I and M grant funds.

Proposed Requirement 3—Rural Communities

Background: Section 114(e)(5) of Perkins V requires the Department to award no less than 25 percent of Perkins I and M funds to eligible entities, eligible institutions, and eligible recipients (as defined in sections 3(19), (20), and (21) of Perkins V) proposing to fund CTE activities that serve rural communities. In order to implement this requirement, the Department proposes to require applicants proposing to fund CTE activities that serve rural communities to demonstrate, in a clear and consistent manner, that the proposed project will serve students in rural communities. Accordingly, the Department proposes that an applicant identify, by name and locale code, the rural LEA(s) that it proposes to serve.

Proposed Requirement: Each applicant proposing to serve students in rural communities must identify, both by name and National Center for Education Statistics (NCES) LEA locale code, the rural LEA(s) that it proposes to serve in its grant application. Applicants may retrieve locale codes from the NCES School District search tool (*nces.ed.gov/ccd/districtsearch/*), where districts can be looked up individually to retrieve locale codes.

Proposed Definition

Background: As in the 2019 NIA, we expect that most of the definitions that will be used in future competitions will be statutory or from the Education Department General Administrative Regulations (EDGAR). We propose to establish the definition for one term, ''computer science,'' that is neither defined in the program statute or applicable regulations, but was used in the 2019 NIA. We propose this definition to ensure that this term has a clear and commonly understood meaning. This is the same definition for ''computer science'' in the Supplemental Priorities.

Proposed Definition

We propose the following definition for this program. We may apply this

definition in any year in which this program is in effect.

Computer science means the study of computers and algorithmic processes and includes the study of computing principles and theories, computational thinking, computer hardware, software design, coding, analytics, and computer applications.

Computer science often includes computer programming or coding as a tool to create software, including applications, games, websites, and tools to manage or manipulate data; or development and management of computer hardware and the other electronics related to sharing, securing, and using digital information.

In addition to coding, the expanding field of computer science emphasizes computational thinking and interdisciplinary problem-solving to equip students with the skills and abilities necessary to apply computation in our digital world.

Computer science does not include using a computer for everyday activities, such as browsing the internet; use of tools like word processing, spreadsheets, or presentation software; or using computers in the study and exploration of unrelated subjects.

Proposed Selection Criteria

Background: We propose the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria in any year in which this program is in effect. The proposed selection criteria could be used in combination with any of the selection criteria in 34 CFR 75.210 or criteria based on the statutory requirements for the Perkins I and M Grant Program in accordance with 34 CFR 75.209.

The proposed selection criteria are consistent with the purposes of the Act and its statutory requirements. We believe these criteria would be valuable tools for peer reviewers to evaluate the quality of applications and how well an applicant's proposed project aligns with the purposes of the Perkins I and M Grant Program.

Proposed selection criterion (a) ''Significance'' would focus on the contribution that the proposed project would make in testing new CTE practices and strategies to support positive student outcomes. This proposed criterion aligns with section 114(e)(1) of Perkins V, the statutory purpose of the Perkins I and M Grant Program, which includes identifying and supporting innovative strategies and activities to improve and modernize CTE and ensuring that workforce skills taught in CTE programs align with labor market needs. Proposed selection criterion (a) ''Significance'' would encourage applicants to discuss their project plans and articulate how the project will meet this goal.

Proposed selection criterion (b) ''Quality of the Project Design'' would focus on the applicant's plan for implementing activities and the scope of the project. This criterion would enable reviewers to assess the strength of an applicant's plans and the extent to which the project addresses the competition's priorities. Under this selection criterion, an applicant would describe its explicit plans or proposed actions to implement its project and logic model.

Proposed selection criterion (c) ''Quality of the Management Plan'' would focus on how the project will be implemented and managed, including key objectives and responsibilities of project staff. Under this selection criterion, applicants would discuss commitment and resources from partners, including employers, the project's staffing plan, and the qualifications of key personnel.

Proposed selection criterion (d) ''Quality of the Project Evaluation'' would focus on another key statutory purpose of the Perkins I and M Grant Program from section 114(e)(1) of Perkins V to rigorously evaluate the evidence-based innovative strategies and activities that grantees are using to modernize and improve CTE programs. Additionally, under section 114(e)(8) of Perkins V, grantees are required to provide for an independent evaluation of the grant activities. This criterion would require applicants to discuss their evaluation plans and demonstrate the extent to which the plans are well-developed with key questions, and descriptions of the analytical approaches planned, with qualitative and quantitative methods and an explanation of intended project outcomes.

Proposed selection criterion (e) ''Support for Students from Rural Communities'' would apply to applicants that propose to improve education and employment outcomes for students from rural communities. Under this proposed selection criterion, the Department would consider the degree to which an applicant has demonstrated a plan to improve the education and employment outcomes of students from rural communities.

Proposed Selection Criteria

(a) *Significance*

In determining the significance of the proposed project, the Secretary considers one or more of the following factors:

(1) The extent to which the proposed project addresses a regional or local need that was identified in a comprehensive local needs assessment carried out under section 134(c) of Perkins V by a Perkins-eligible recipient.

(2) The extent to which the proposed project would implement a new and innovative approach to delivering CTE (as defined in section 3(5) of Perkins V) as compared with strategies previously implemented by the applicant.

(3) The extent of the expected impact of the project on relevant outcomes (as defined in 34 CFR 77.1), including the estimated impact of the project on student outcomes and the breadth of the project's impact, compared with alternative practices or methods of addressing similar needs.

(4) The extent to which the proposed project demonstrates that the project will serve students who are predominantly from low-income families.

(b) *Quality of the Project Design*

In determining the quality of the project design, the Secretary considers one or more of the following factors:

(1) The extent to which the proposed project has a clear set of goals and an explicit plan of action to achieve those goals.

(2) The extent to which the project goals are clear, complete, and coherent, and the extent to which the project activities constitute a complete plan aligned to those goals, including the identification of potential risks to project success and strategies to mitigate those risks.

(3) The extent to which the applicant will use grant funds to address a particular barrier or barriers that prevented the applicant, in the past, from implementing a similar project or strategy.

(c) *Quality of the Management Plan*

In determining the quality of the management plan, the Secretary considers one or more of the following factors:

(1) The extent to which the management plan articulates key responsibilities for each party involved in the project and also articulates well-defined objectives, including the timelines and milestones for completion of major project activities, the metrics that will be used to assess progress on an ongoing basis, and annual performance targets the applicant will use to monitor whether the project is achieving its goals.

(2) The extent of the demonstrated commitment of any partners whose

participation is critical to the project's long-term success, including the extent of any evidence of support from, or specific resources from, employers and other stakeholders.

(3) The adequacy of the project's staffing plan, particularly for the first year of the project, including the identification of the project director and, in the case of projects with unfilled key personnel positions at the beginning of the project, a description of how critical work will proceed.

(4) The extent to which the project director has experience managing projects similar in scope to that of the proposed project.

(d) *Quality of the Independent Evaluation*

In determining the quality of the project's independent evaluation, the Secretary considers one or more of the following factors:

(1) The clarity and importance of the key questions to be addressed by the project's independent evaluation, and the appropriateness of the methods for how each question will be addressed.

(2) The extent to which the methods of evaluation will provide performance feedback and permit at least annual, periodic assessment of progress toward achieving intended outcomes.

(3) The extent to which the independent evaluation plan includes a clear and credible analysis plan and an analytical approach for addressing the research questions.

(4) The extent to which the independent evaluation plan includes a clear, well-documented, and rigorous method for measuring implementation of the critical features of the project, as well as the intended outcomes.

(5) The extent to which the evaluation plan clearly articulates the key components and outcomes of the project, as well as a measurable threshold for acceptable implementation.

(e) *Support for Rural Communities*

In determining the extent of the support for rural communities, the Secretary considers one or more of the following factors:

(1) The extent to which the applicant presents a clear, well-documented plan for primarily serving students from rural communities.

(2) The extent to which the applicant proposes a project that will improve the education and employment outcomes of students in rural communities.

Final Priorities, Requirements, Definition, and Selection Criteria

We will announce the final priorities, requirements, definition, and selection criteria in the **Federal Register**. We will determine the final priorities, requirements, definition, and selection criteria after considering responses to the proposed priorities, requirements, definition, and selection criteria and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use any of these proposed priorities, requirements, definition, or selection criteria, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

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

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

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

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

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because the proposed regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed priorities, requirements, definition, and selection criteria only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal

governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Summary of Costs and Benefits: The Department believes that the proposed priorities, requirements, definition, and selection criteria would not impose significant costs on applicants applying for assistance under section 114 of Perkins V. We also believe that the benefits of implementing the proposed priorities, requirements, definition, and selection criteria justify any associated costs.

The Department believes that the proposed priorities, requirements, definition, and selection criteria would help to ensure that: Grants provided under section 114(e) of Perkins V are awarded only for allowable, reasonable, and necessary costs; and eligible applicants consider carefully in preparing their applications how the grants may be used to improve CTE programs and the outcomes of the students who enroll in them. The program requirements and related definitions are necessary to ensure that taxpayer funds are expended appropriately.

The Department further believes that the costs imposed on an applicant by the proposed priorities, requirements, definition, and selection criteria would be largely limited to the paperwork burden related to preparing the application and that the benefits of preparing an application and receiving an award would justify any costs incurred by the applicant. The costs of these proposed priorities, requirements, definition, and selection criteria would not be a significant burden for any eligible applicant.

Paperwork Reduction Act of 1995

The proposed priorities, requirements, definition, and selection criteria contain information collection requirements that are approved by OMB under OMB control number 1894–0006; the proposed priorities, requirements, definition, and selection criteria do not affect the currently approved data collection.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priorities, requirements, definition, and selection criteria easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are school districts and institutions of higher education. We believe that the costs imposed on an applicant by the proposed priorities, requirements, definition, and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of the proposed priorities, requirements, definition, and selection criteria would outweigh any costs incurred by the applicant.

Participation in the I and M Grants Program is voluntary. For this reason, the proposed priorities, requirements, definition, and selection criteria would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a program grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the proposed priorities, requirements, definition, and selection criteria would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from eligible small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Scott Stump,

Assistant Secretary for Career, Technical, and Adult Education.

[FR Doc. 2020–18304 Filed 9–23–20; 8:45 am]

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Notices

Federal Register
Vol. 85, No. 186
Thursday, September 24, 2020

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 21, 2020.

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; 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; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and 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 26, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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

Animal & Plant Health Inspection Service

Title: APHIS Credit Account and User Fee Programs.

OMB Control Number: 0579–0055.

Summary of Collection: The Food, Agriculture, Conservation and Trade Act of 1990, as amended, authorizes the Secretary of Agriculture and the Animal and Plant Health Inspection Service (APHIS) to prescribe and collect fees to cover the costs of providing certain agricultural quarantine, inspection, and veterinary diagnostics services. Reimbursable overtime fees may also be assessed for inspection services requested during non-duty hours. The Secretary is authorized to use the revenue to provide reimbursements to any appropriation accounts that incur costs associated with the services provided. The Debt Collection Improvement Act of 1996 authorizes the Agency to collect information from person(s) requesting to establish credit accounts with the U.S. government. APHIS charges the appropriate fees to respondents using billing information obtained from several APHIS documents.

Need and Use of the Information: APHIS will collect information from requests to establish credit accounts to conduct credit checks and to ensure credit worthiness prior to extending credit services. APHIS will also collect information required to identify fees associated with provided services, and to ensure that the correct amounts are collected and remitted in full in a timely manner. Without the information, APHIS would not be able to ensure substantial compliance with the statute. Noncompliance with the statute could result in misappropriation of public funds and lost revenue to the Federal Government.

Description of Respondents: Business or other for-profit; Individuals.

Number of Respondents: 8,374.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 93,465.

Title: APHIS Pest Reporting and Asian Longhorned Beetle Program.

OMB Control Number: 0579–0311.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701, *et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into, or their dissemination within, the United States. Plant health regulations promulgated by the United States Department of Agriculture under this authority specifically address control programs for a number of pests and diseases of concern, including Asian longhorned beetle, emerald ash borer beetle, and citrus greening, to name a few. The Animal and Plant Health Inspection Service (APHIS) will collect information using a Plant Protection and Quarantine pest reporting form and Asian longhorned beetle unified survey form, and other information collection activities.

Need and Use of the Information: APHIS relies on the public to report sightings of plant pests or suspicious signs of pest or disease damage they may see in their local area. This reporting will be done through online forms for reporting pests, and additional information collection activities such as cooperative agreements for inspection; compliance training workshops; contracts for inspection; homeowner releases or refusals to inspect; homeowner chemical treatment releases; letters of warning of litigation and warrant; litigations and warrants; homeowner releases for tree removal; removals and monitoring; contracts for treatment; removals and disposals; disposal and marshalling yard activities; and certificate or permit cancellation appeals. Failing to collect this information could result in APHIS not receiving information about where infestations may exist, causing them to linger unreported and grow. Infestations of high-consequence pests or diseases, such as Asian longhorned beetle, emerald ash borer beetle, citrus greening, and others, could lead to significant economic damage to crops, forests, and landscapes.

Description of Respondents: Individuals; Business or other for-profit; State, Local, and Tribal Governments.

Number of Respondents: 7,055.

Frequency of Responses: Recordkeeping: Reporting: On occasion.

Total Burden Hours: 438,719.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–21069 Filed 9–23–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 21, 2020.

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 required regarding; 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; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and 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 26, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Transfer of Farm Records Between Counties.

OMB Control Number: 0560–0253.

Summary of Collection: Farm Service Agency (FSA) programs are administered on the basis of ''farm''. For program purposes, a farm is a collection of tracts of land that have the same owner and the same operator. Land with different owners may be considered to be a farm if all the land is operated by one person and additional criteria are met. A farm is typically administered in the FSA county office where the farm is physically located. A farm can be transferred from the physical location county office if the principal dwelling of the farm operator has changed, a change has occurred in the operation of the land, or there has been a change that would cause the receiving administrative county office to be more accessible. FSA–179, ''Transfer of Farm Record between Counties,'' is used as the request for a farm transfer from one county to another initiated by the producer.

Need and Use of the Information: The information collected on the FSA–179 is collected only if a farm transfer is being requested and is collected in a face-to-face setting with county office personnel. The information is used by county office employees to document which farm is being transferred, what county it is being transferred to, and why it is being transferred. The FSA–179 assists county committees in determining why the farm transfer is being requested and that it is not being requested for the purpose of increased program benefits, avoiding payment reductions, establishing eligibility to transfer base acres, or for circumventing any other programs provision. Without the information county offices will be unable to determine whether the producer desires to transfer a farm.

Description of Respondents: Farms.

Number of Respondents: 21,240.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,540.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–21094 Filed 9–23–20; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2020–0016]

Availability of FSIS Import Guidance

AGENCY: Food Safety and Inspection Service, Agriculture (USDA).

ACTION: Notice of availability and response to comments.

SUMMARY: In July 2017, FSIS published and requested comment on guidance for importing meat, poultry, and egg products into the United States. FSIS is announcing updates to this guidance and responding to comments received on the guidance. FSIS intends for this guidance to help U.S. importers, customs brokers, official import inspection establishments, and other interested persons understand and comply with FSIS import requirements. The guidance represents current FSIS thinking, and FSIS will update it as necessary to reflect comments received and any additional information that becomes available.

ADDRESSES: A downloadable version of the FSIS import guidance is available to view and print at *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/guidelines.* No hard copies of the compliance guideline have been published.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development by telephone at (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) is the public health regulatory agency responsible for ensuring that domestic and imported meat, poultry, and egg products are safe, wholesome, and correctly labeled and packaged. FSIS inspects imported meat, poultry, and egg products under the authority of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (15 U.S.C. 1031 *et seq.*). Imported meat, poultry, and egg products must originate from eligible countries and from establishments or plants (for egg products) that are certified to export to the United States (21 U.S.C. 620, 466, and 1046). A country becomes eligible following an equivalence determination process completed by FSIS in coordination with the country's central competent authority (CCA). Foreign establishments or plants become eligible when the CCA certifies to FSIS that the establishments or plants meet requirements that are equivalent to FSIS requirements. All imported shipments of meat, poultry, and egg products must be presented to FSIS for inspection, with certain exceptions, as detailed in the guidance (*i.e.,* a meat, poultry, or dried egg products shipment that does not exceed 50 pounds, or a liquid egg products shipment that does not exceed

30 pounds, for personal consumption only).

Updated Guidance

On July 7, 2017, FSIS announced the availability of and requested comments on import guidance that summarized existing requirements for importing meat, poultry, and egg products into the U.S. and best practices for complying with those requirements (82 FR 31549). FSIS has updated the guidance based on comments received. Specifically, FSIS revised and reorganized a section on industry supply chain best practices; clarified approaches to levels of reinspection; added information about generic labeling approvals, food defense, slaughter dates on import certification, and barcoding; and made minor editorial changes to improve the guidance's clarity.

This guidance represents current FSIS thinking, and FSIS will update it as necessary to reflect comments received and any additional information that becomes available. The updated guidance is posted at: *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/guidelines.*

Comments and Responses

FSIS received public comments from one trade association and two non-profit consumer groups. The following is a summary of the comments and the Agency's responses.

Product Lot Grouping & Certification

Comment: The trade association asked that FSIS use an updated FSIS import application and ''physical manifest'' as a cross-reference when lots on the foreign inspection certificate and import inspection application misalign.

Response: FSIS regulations require that foreign inspection certificates accompany each consignment of meat, poultry, or egg products offered for import into the United States and thoroughly identify the product (by species, process category, number of units, lot weight, etc.) certified by the foreign CCA as meeting all applicable FSIS requirements (9 CFR 327.4, 381.197, 557.4, and 590.915). Thus, the foreign inspection certificate is the primary lotting reference for FSIS import inspectors. FSIS acknowledges the importance of complete import documentation for meeting all commercial and government requirements, but the import inspection application and a ''physical manifest'' are not adequate to rectify misaligned lotting.

Barcoding

Comment: A trade association requested that the guidance reference the use of barcodes as an alternative identifier when shipping marks are missing or illegible and recommended that the guidance include a link to FSIS instructions on this topic.

Response: FSIS agrees with this recommendation. The use of barcodes is currently an option when shipping marks are missing or completely illegible and FSIS has updated the guidance to note this option. To use the barcode option, countries must first submit a barcoding plan to FSIS to be approved for this process, so that FSIS can verify that imported products meet requirements. FSIS is currently engaging with countries and industry to develop and verify alternative identification (*e.g.,* barcode) processes. FSIS is also implementing a pilot to apply the official import mark of inspection to imported product (currently for raw meat shipments exported to the United States from participating establishments in Australia) using barcodes instead of shipping marks on shipping containers.

Level of Reinspection (LOR) Applicability

Comment: The trade association requested clarification on whether levels of reinspection (LOR), such as normal, increased, or intensified, apply to lab sampling only, or other types of inspection (TOI) also (physical exams, container condition, etc.).

Response: Normal, increased, and intensified LORs can apply to any TOI. FSIS clarified this in the guidance.

Sampling

Comment: The trade association asked whether imported products shipped after a related shipment fails a specific lab analysis would be subject only to intensified sampling for the same lab analysis, or the full range of TOI (*e.g.,* product exam, condition of container, sampling, etc.).

Response: Future associated shipments are subject only to the specific TOI failed in the original shipment. FSIS has clarified this in the guidance.

Generic Labeling

Comment: A trade association and non-profit consumer group requested guidance about how generic labeling approval (*i.e.,* labeling that does not need to be submitted to FSIS for review) would be applied to imported shipments.

Response: Any entity responsible for designing or modifying meat or poultry labels may use generic approval of labels, including foreign exporters and U.S. importers, provided the label is eligible for generic labeling approval. In August 2017, FSIS published a compliance guide on generic labeling to assist industry in realizing the efficiencies of generic labeling. The guideline is available at *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/labeling.* FSIS also held a webinar for trading partners, foreign exporters, and U.S. importers in February 2018 to provide guidance on generic labeling (*https://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings/newsletters/constituent-updates/archive/2018/ConstUpdate011218*). FSIS updated the import guidance to indicate that the generic labeling approval process applies to labels from foreign establishments, provided the label is eligible for generic labeling approval.

Tray Packs and Palletized Shipments

Comment: A non-profit consumer group requested information on labeling requirements for imported tray packs and single pallets in the guidance document, and a trade association requested that FSIS consider expanding its policy of permitting application of shipping marks to the outside of pallets in certain cases to include shipments destined for processing as an intact unit. The trade association noted that, currently, palletized, consumer-packaged, fully marked and labeled products may be presented with the shipping mark and shipping container label applied to the outside of the pallet, rather than to individual tray packs or cartons, when only one type and size of product is presented as a lot, and the entire pallet will be distributed to retail or the end user as an intact unit.

Response: This proposal is currently under consideration within FSIS but is outside the scope of this guidance. Imported tray packs are subject to immediate container labeling requirements found in 9 CFR 327.14. Pallets are subject to labeling requirements if the pallets themselves are the outside or shipping container (*e.g.,* shrink-wrapped pallet) of the shipment (9 CFR 327.15, 9 CFR 301.2). Regarding an expansion of the policy allowing the shipping or identification mark and label on pallets of the products referenced above, FSIS is considering the proposal for the shipping or identification mark and label to be applied to the outside of pallets of product destined for further processing as an intact unit.

Cooked Meat/Poultry Requirements

Comment: A non-profit consumer group requested that FSIS include requirements for imported cooked meat and poultry from countries with exotic animal disease outbreaks in the guidance document.

Response: Animal disease restrictions are under the jurisdiction of the Animal and Plant Health Inspection Service (APHIS) and can be found in 9 CFR part 94. Since announcing the draft import guidance, FSIS has published a new Import Library on its website. The Import Library provides links to country-specific pages for equivalent countries that can export to the United States detailing the eligible species, process categories, product categories, and product groups the country can export. The information detailed on the country-specific pages aligns with the FSIS product categorization guide and the Public Health Information System (PHIS) (*https://www.fsis.usda.gov/wps/wcm/connect/abbf595d-7fc7-4170-b7be-37f812882388/Product-Categorization.pdf?MOD=AJPERES*).

Each eligible country page will also list any applicable APHIS animal disease restrictions, and includes direct, disease-specific links to APHIS' website and regulations. FSIS has updated the import guidance to include reference to the Import Library, which can be found online at *https://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/eligible-countries-products-foreign-establishments/eligible-countries-and-products.*

Imported Carcasses

Comment: A non-profit consumer group requested FSIS include requirements for reinspecting imported carcasses in the guidance document.

Response: Section VI of FSIS Directive 9900.2, available at *https://www.fsis.usda.gov/wps/wcm/connect/e262834a-80f7-4502-bf1d-1a79b03899cd/9900.2.pdf?MOD=AJPERES,* includes FSIS inspection program personnel (IPP) instructions for reinspecting imported carcasses. FSIS did not update the import guidance with this information because this guidance is intended for importers and foreign countries, not FSIS inspection program personnel.

Prohibiting Imports of Beef Derived From Cattle Subject to Certain Pre-Slaughter Restraints

Comment: A non-profit consumer group requested that FSIS prohibit the import of beef from cattle slaughtered using ''shackle/hoist'' and ''shackle/drag'' methods, which are not permitted in the United States, specifically from South American countries.

Response: Prohibiting entry of a product derived from a specific method of slaughter is a matter of equivalence, not import inspection. Equivalence is the process of determining whether a country's food safety inspection system achieves FSIS's appropriate level of public health protection as applied domestically in the United States. Additionally, the foreign food safety inspection system is to provide standards equivalent to FSIS to ensure other non-food safety requirements (such as humane handling, accurate labeling, and assurance that meat, poultry, or egg products are not economically adulterated) are met.

As part of the equivalence process, FSIS completes a review of a country's laws, regulations, policies, and procedures pertaining to its food safety inspection. This review includes assessment of humane handling and slaughter, animal disease restrictions, and postmortem inspection. FSIS assesses the supporting documents to determine whether each country's food safety inspection system provide standards equivalent to FSIS regarding these and other factors of inspection. If FSIS concludes that these documents support that the country maintains a food safety inspection system that provides an equivalent level of protection, then FSIS conducts an on-site verification audit of the country's food safety inspection system. The purpose of the audit is to verify that the inspection system is implementing its laws, regulations, policies, and procedures as described in its documents. Information on the equivalence process is available at: *https://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/Equivalence/equivalence-process-overview.*

At the time of this Notice, Argentina, Brazil, Chile, and Uruguay are South American countries that maintain equivalence with the United States for certain meat products. FSIS auditors have determined that slaughter establishments that produce eligible meat products in these countries comply with the animal welfare, humane slaughter, and postmortem inspection requirements of the government's requirements, which are equivalent to FSIS requirements.

FSIS Changes

Based on further internal review, FSIS has updated the guidance as follows:

Slaughter dates: FSIS added language to reflect that slaughter dates may be required on the official inspection certificate when FSIS has first determined that a country's system is equivalent to the United States, or FSIS reinstates a country's equivalence status.

Reinspection failures and appeals: FSIS added language to clarify the existing policy on intensified rates of reinspection when a shipment fails reinspection, to align with current PHIS programming. FSIS also added a sub-section for establishment appeals of inspection decisions.

Equivalence page: FSIS has updated links in the guidance to the current FSIS equivalence page.

Food defense: FIS has added a section on food defense.

Industry Supply Chain Best Practices: FSIS has expanded and revised the industry supply chain best practices section.

Siluriformes: FSIS has added regulatory references for Siluriformes throughout the guidance.

Congressional Review Act

Pursuant to the Congressional Review Act at 5 U.S.C. 801 *et seq.,* the Office of Information and Regulatory Affairs has determined that this notice is not a ''major rule,'' as defined by 5 U.S.C. 804(2).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication online through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service, which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the

option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC.

Paul Kiecker,

Administrator.

[FR Doc. 2020–21061 Filed 9–23–20; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Service Manual 7700 Travel Management; Chapter 7700, Zero Code; Chapter 7710 Travel Planning

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of availability for public comment.

SUMMARY: The United States Department of Agriculture (USDA), Forest Service, is proposing to revise its directives to update and clarify guidance on management of electric bicycle (e-bike) use on National Forest System (NFS) lands. E-bikes have become increasingly popular nationwide among outdoor recreationists on NFS and other federal lands. E-bikes expand recreational opportunities for many people, particularly the elderly and disabled, enabling them to enjoy the outdoors and associated health benefits. Currently e-bike use is not allowed on NFS roads, on NFS trails, and in areas on NFS lands that are not designated for motor vehicle use. To promote designation of NFS roads, NFS trails, and areas on NFS lands for e-bike use, the proposed revisions include new definitions for an e-bike and a Class 1, Class 2, and Class 3 e-bike, as well as guidance and criteria for designating e-bike use on NFS roads, on NFS trails, and in areas on NFS lands.

DATES: Comments must be received in writing by October 26, 2020.

ADDRESSES: Comments may be submitted electronically to *https://cara.ecosystem-management.org/Public/ReadingRoom?project=ORMS-2619.* Written comments may be mailed to Director, Recreation Staff, 1400 Independence Avenue SW, Washington, DC 20250–1124. All timely received comments, including names and addresses, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received at *https://cara.ecosystem-management.org/Public/CommentInput?project=ORMS-2619.*

FOR FURTHER INFORMATION CONTACT: Penny Wu, Recreation Staff, *penny.wu@usda.gov*, (303) 275–5168. Individuals who use telecommunication devices for the deaf may call the Federal Relay Service at (800) 877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Over 27 States have adopted a standard definition for an e-bike and a three-tiered classification system for e-bikes. Additionally, the United States Department of the Interior (DOI) recently issued proposed e-bike rules for the Bureau of Land Management, U.S. Fish and Wildlife Service, Bureau of Reclamation, and the National Park Service pursuant to a Secretarial Order that promotes e-bike use on DOI-managed federal lands.

The Forest Service's proposed directive revisions align with the 27 States and DOI's proposed e-bike rules in adopting a standard definition for an e-bike and a three-tiered classification for e-bikes and align with DOI's proposed e-bike rules in requiring site-specific decision-making and environmental analysis at the local level to allow e-bike use. In particular, the proposed revisions would add a paragraph to Forest Service Manual (FSM) 7702 to establish promotion of e-bike use on NFS lands as an objective; would add a cross-reference in FSM 7703.13 and 7703.14 to specific guidance on designating NFS trails and areas on NFS lands for motor vehicle use; would add definitions in FSM 7705 for ''bicycle'' and ''e-bike,'' including ''Class 1,'' ''Class 2,'' and ''Class 3 e-bike''; would revise FSM 7711.3, paragraph 6, to add a category for designating e-bike use on NFS trails; would add a paragraph to FSM 7715.03 to establish promotion of e-bike use on NFS lands as a policy; would revise FSM 7715.5 to add a criterion to consider trail management objectives in designating trails for motor vehicle use generally and to add criteria and guidance for designating e-bike use on NFS trails; and to add a paragraph in FSM 7715.72 to enhance coordination with appropriate Federal, State, and local governmental entities and Tribal governments on travel management decisions and operational practices on routes crossing multiple jurisdictions to provide continuity of recreation experiences.

After the public comment period closes, the Forest Service will consider timely comments that are within the scope of the proposed revisions to the directives in the development of the final revisions. A notice of the final revisions, including a response to timely comments, will be posted on the Forest Service's web page at *https://www.fs.fed.us/about-agency/regulations-policies.*

Tina Johna Terrell,

Associate Deputy Chief, National Forest System.

[FR Doc. 2020–21128 Filed 9–23–20; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Hawai'i Advisory Committee; Correction

AGENCY: Commission on Civil Rights.

ACTION: Notice; correction.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** on Friday, September 18, 2020, concerning a meeting of the Hawai'i Advisory Committee. The document contained an incorrect day of the week, which now has changed to Monday the correct day of the week.

FOR FURTHER INFORMATION CONTACT: Angelica Trevino, (202) 695–8935, *atrevino@usccr.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of Friday, September 18, 2020, in FR Doc. 2020–20598, on page 58332, second column of 58332, correct the day of the week to Monday, September 28, 2020.

Dated: September 19, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–21057 Filed 9–23–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[9/15/2020 through 9/18/2020]

Firm name	Firm address	Date accepted for investigation	Product(s)
Team 1 Plastics, Inc	927 Elliott Road, Albion, MI 49224	9/16/2020	The firm manufactures injection molded plastic auto parts and assemblies.
The Liberty Technology Company, LLC.	630 Liberty Road, Delaware, OH 43015.	9/16/2020	The firm manufactures iron castings used in gearing and gear boxes.
Thomas Moser Cabinet Makers, Inc.	72 Wrights Landing Road, Auburn, ME 04210.	9/17/2020	The firm manufactures wooden furniture.
Bio Med Sciences, Inc	7584 Morris Court, Allentown, PA 18106.	9/18/2020	The firm manufactures bandages, dressings, and related wound care products.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Bryan Borlik,

Director.

[FR Doc. 2020–21093 Filed 9–23–20; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–163–2020]

Foreign-Trade Zone 168—Dallas, Texas; Application for Subzone; Sager Electronics; Carrollton, Texas

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Metroplex International Trade Development Corporation, grantee of FTZ 168, requesting subzone status for the facility of Sager Electronics, located in Carrollton, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on September 17, 2020.

The proposed subzone (1.46 acres) is located at 2940 Eisenhower Street, Suite 100, Carrollton (Denton County), Texas. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 168.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is November 3, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 18, 2020.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: September 18, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–21038 Filed 9–23–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–58–2020]

Foreign-Trade Zone (FTZ) 134—Chattanooga, Tennessee; Notification of Proposed Production Activity; Volkswagen Group of America Chattanooga Operations, LLC (Passenger Motor Vehicles), Chattanooga, Tennessee

Volkswagen Group of America Chattanooga Operations, LLC (Volkswagen), submitted a notification of proposed production activity to the FTZ Board for its facility in Chattanooga, Tennessee. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 18, 2020.

Volkswagen already has authority to produce passenger motor vehicles within FTZ 134. The current request would add finished products and foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Volkswagen from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Volkswagen would be able to choose the duty rates during customs entry procedures that apply to electric vehicles and electric vehicle batteries (duty rate ranges from 2.5% to 3.4%). Volkswagen would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Gap fillers (fills the space between the battery modules and battery packs); battery housings; battery housing frames; cross beams; side members; extruded aluminum structural members for battery housings; floor piece assemblies; floor piece cooling systems; crash protection assemblies; battery cover plates; automatic circuit breaker molded cases; relays; electric insulation polymer padding; plastic lids/covers for supporting plates; box assemblies comprised of supporting plates, box insulation, box protection, fuses and cover assemblies; box cover assemblies made from a mix of nylon polymer and copper alloys; supporting plates (metal construction with a plastic shield that is used to support battery control modules); and, transportation covers used to protect the connectors for battery packs (duty rate ranges from 2.7% to 3.4%). The request indicates that certain materials/components are subject to duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) and Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is November 3, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: September 18, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–21102 Filed 9–23–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–33–2020]

Foreign-Trade Zone (FTZ) 137—Washington Dulles International Airport, Virginia; Authorization of Production Activity; FN America, LLC (Disassembly of Machine Guns), Dulles, Virginia

On May 22, 2020, CDS Air Freight Inc., an operator within FTZ 137, submitted a notification of proposed production activity to the FTZ Board on behalf of FN America, LLC, within FTZ 137, in Dulles, Virginia.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (85 FR 33622, June 2, 2020). On September 21, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: September 21, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–21101 Filed 9–23–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of: Walid Chehade, 4855 Hawthorn Lane, Unit 20, Westlake, OH 44145.

On May 8, 2019, in the U.S. District Court for the Western District of Michigan, Walid Chehade (''Chehade''), was convicted of violating 18 U.S.C. 371. Specifically, Chehade was convicted of knowingly and willfully conspiring to export from the United States to Lebanon guns and gun parts designated as defense articles on the United States Munitions List, without first obtaining the required licenses from the U.S. Department of State. Chehade was sentenced to time served, one year of supervised release, a $5,000 fine, and a $100 special assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[2] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any BIS licenses or other authorizations issued under ECRA in which the person had an interest at the time of the conviction may be revoked. *Id.*

BIS received notice of Chehade's conviction for violating 18 U.S.C. 371, and has provided notice and opportunity for Chehade to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[3] BIS

[2] ECRA was enacted as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852. Chehade's conviction post-dates ECRA's enactment on August 13, 2018.

[3] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2020). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001

Continued

has received a written submission from Chehade.

Based upon my review of the record, including Chehade's written submission from Counsel, and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Chehade's export privileges under the Regulations for a period of seven years from the date of Chehade's conviction. I have also decided to revoke any BIS-issued licenses in which Chehade had an interest at the time of his conviction.

Accordingly, it is hereby *ordered*:

First, from the date of this Order until May 8, 2026, Walid Chehade, with a last known address of 4855 Hawthorn Lane, Unit 20, Westlake, OH 44145, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of the Export Control Reform Act (50 U.S.C. 819(e) and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Chehade by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Chehade may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Chehade and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until May 8, 2026.

Issued this 21st day of September, 2020.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2020–21113 Filed 9–23–20; 8:45 am]

BILLING CODE 3510–DT–P

(3 CFR, 2001 Comp. 783 (2002)), which was extended by successive Presidential Notices, continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) (''IEEPA''). Section 1768 of ECRA, 50 U.S.C. 4826, provides in pertinent part that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. *See* note 1, *supra.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BI59

Atlantic Highly Migratory Species; Amendment 14 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces the availability of Draft Amendment 14 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP). Draft Amendment 14 is being undertaken to revise the mechanism or ''framework'' used in establishing quotas and related management measures for Atlantic shark fisheries. The current framework was established in Amendment 3 to the 2006 Consolidated Atlantic HMS FMP. The revised framework would modify the procedures followed in establishing the acceptable biological catch (ABC) and annual catch limits (ACLs) for Atlantic sharks and the process used to account for carryover or underharvests of quotas. It would also allow the option to phase-in ABC catch control rules and to adopt multi-year overfishing status determination criteria in some circumstances. Amendment 14 will not make changes to the current quotas or other management measures. Such changes would be adopted through subsequent rulemaking.

DATES: Written comments must be received by December 31, 2020. NMFS will hold two operator-assisted public hearings via conference calls and webinars on Draft Amendment 14 in October and November 2020. For specific dates and times, see the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Electronic copies of Draft Amendment 14 to the 2006 Consolidated HMS FMP may be obtained on the internet at: *https://www.fisheries.noaa.gov/action/amendment-14-2006-consolidated-hms-fishery-management-plan-shark-quota-management.*

You may submit comments on this document, identified by NOAA–NMFS–2019–0040, via the Federal e-Rulemaking Portal. Go to *www.regulations.gov,* enter NOAA–NMFS–2019–0040 into the search box, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

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

FOR FURTHER INFORMATION CONTACT: Guy DuBeck (*Guy.DuBeck@noaa.gov*), Ian Miller (*Ian.Miller@noaa.gov*), or Karyl Brewster-Geisz (*Karyl.Brewster-Geisz@noaa.gov*) by email, or by phone at (301) 427–8503.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that any FMP or FMP amendment be consistent with 10 National Standards (NS). Specifically, NS1 requires ''conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.'' In 2016, NMFS revised the NS1 guidelines to improve, streamline, and enhance their utility for managers and the public and to facilitate compliance with the requirements of the Magnuson-Stevens Act and provide management flexibility in doing so (81 FR 71858; October 18, 2016). The revisions addressed a range of issues, such as providing guidance on options to phase in changes to catch limits and carry over unused quota from one year to the next. In Draft Amendment 14, NOAA Fisheries is taking action to revise the mechanism or ''framework'' used in establishing quotas and related management measures in Atlantic shark fisheries, considering the revised guidance. The current framework was established in Amendment 3 to the 2006 Consolidated HMS FMP. The revised framework would incorporate for potential use several optional fishery management tools in the revised NS1 guidelines.

The revised NS1 guidelines have provided NMFS the opportunity to increase management flexibility to ensure scientific uncertainty is accurately accounted for and properly account for variability in shark harvests. NMFS has explored options to revise the management framework for Atlantic shark stocks and management complexes. Specifically, within Draft Amendment 14, NMFS has identified the following objectives:

- Optimize the ability for the commercial shark fishery to harvest available, science-based shark quotas, to the extent practicable, while also considering the fairness among sectors;
- Revise the ABC control rule methodology as established in Amendment 3 to increase accountability and transparency when implementing ABCs for shark fisheries, consistent with provisions in the revised NS1 guidelines;
- Revise the ACL framework to reflect changes in the ABC control rule methodology to ensure that effective ACLs are established for non-prohibited shark species, taking into account scientific uncertainty;
- Modify the process for accounting for and distributing quota underharvest or overharvest in the commercial sector ACLs;
- Increase management flexibility to react to and account for changes in the distribution of shark harvest among sectors; and
- Increase management flexibility to appropriately react to scientific uncertainties, changes in stock status, or changes in allowable harvest levels to ensure stability within the fishery.

NMFS published a notice of intent (NOI) to prepare an environmental impact statement (EIS) for Amendment 14 (84 FR 23014; May 21, 2019). NMFS prepared an Issues and Options paper on management options and held four scoping meetings to discuss scoping regarding Amendment 14. NMFS initially was prepared to undertake an EIS for Amendment 14 but determined after considering public comments, the structure of the Draft Amendment, and National Environmental Policy Act (NEPA) guidance that an EIS is not required for the Amendment. Amendment 14 will only establish the procedures to follow in setting the ABC, ACLs, and in accounting for carryover or underharvests of quotas. Amendment 14 will not make changes to the current quotas or other management measures. Any changes to ABCs, ACLs, quotas, or other measures would be made in future rulemakings, and would be informed by the appropriate NEPA analyses and public review.

In Draft Amendment 14, NMFS considers management options in order to revise the shark framework that established in Amendment 3. The management options being considered include modifying the ABC control rule, revising processes for the implementation of an ABC, and modifying carry-over and phase-in provisions and multi-year overfishing status determinations. A full description of the management options considered, including the preferred management options, are provided in Draft Amendment 14. Draft Amendment 14 does not consider any changes to management of the prohibited shark complex.

Public Hearings

NMFS will take into consideration public comments on Draft Amendment 14 before finalizing the preferred management options. The preferred management options may be altered or different management options may be adopted at the final Amendment stage. NMFS anticipates that Final Amendment 14 and its related documents would be available in 2021.

Comments on Draft Amendment 14 may be submitted via *www.regulations.gov,* and comments may also be submitted at the public hearings. NMFS solicits comments on this action by December 31, 2020. During the comment period, NMFS will hold two operator-assisted public hearings via conference calls and webinars (Table 1). In addition, NMFS will present to the HMS Advisory Panel to discuss this action. NMFS will announce the times of HMS Advisory Panel discussion in a future **Federal Register** notice.

TABLE 1—DATES AND TIMES OF UPCOMING WEBINARS/CONFERENCE CALLS

Venue	Date	Time	Instructions
Webinar	October 13, 2020	2–4 p.m.	*Link: https://noaanmfs-meets.webex.com/noaanmfs-meets/j.php?MTID=mc9a709850a6b36f6bce20d4fe3921108. Meeting number:* 199 057 6075. *Password:* 2utD84dRnPv. *Join by phone:* 1–415–527–5035. *Access code:* 199 057 6075.
Webinar	November 18, 2020 ..	2–4 p.m.	*Link: https://noaanmfs-meets.webex.com/noaanmfs-meets/j.php?MTID=m1eef6e3722eef5185452c5e4139a5fa7. Meeting number:* 199 661 2520. *Password:* mMS2QWuuF43. *Join by phone:* 1–415–527–5035. *Access code:* 199 661 2520.

The public is reminded that NMFS expects participants at public webinars/conference calls to conduct themselves appropriately. At the beginning of each webinar/conference call, the moderator will explain how the webinar/conference call will be conducted and how and when participants can provide comments. NMFS representative(s) will structure the webinars so that all members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Participants are expected to respect the ground rules, and those that do not may be asked to leave the webinar/conference call.

Authority: 16 U.S.C. 971 *et seq.,* and 1801 *et seq.*

Dated: September 18, 2020.

Samuel D. Rauch, III,

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

[FR Doc. 2020–21086 Filed 9–23–20; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burdens.

DATES: Comments must be submitted on or before October 26, 2020.

ADDRESSES: Written comments regarding the burden estimated or any other aspect of the information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0023 and 3038–0072, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

[1] 17 CFR 145.9.

FOR FURTHER INFORMATION CONTACT: Joshua Sterling, Director, (202) 418–6700, *jsterling@cftc.gov;* Amanda Olear, Deputy Director, (202) 418–5283, *aolear@cftc.gov;* or Christopher W. Cummings, Special Counsel, (202) 418–5445, *ccummings@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581, and refer to OMB Control Numbers 3038–0023 and 3038–0072.

SUPPLEMENTARY INFORMATION:

Titles: Registration Under the Commodity Exchange Act (OMB control number 3038–0023); Registration of Swap Dealers and Major Swap Participants (OMB control number 3038–0072). This is a request for extension and revision of these currently approved information collections.

Abstract: In *Adoption of Revised Registration Form 8–R,* 85 FR 37880 (June 24, 2020), the Commission published a revised version of Commission Form 8–R. The Form 8–R is the application form that individuals must use to register with the Commission as an associated person, floor broker, floor trader, floor trader order enterer, or to be listed as a principal of a registrant. Separately, in *Agency Information Collection Activities: Notice of Intent to Extend and Revise Collections, Comment Request: Adoption of Revised Registration Form 8–R,* 85 FR 37922 (June 24, 2020) (''60-Day Notice''), the Commission addressed the PRA

implications of the revisions to Form 8–R. As indicated above, Form 8–R is covered by two OMB control numbers. OMB control number 3038–0023 applies to Form 8–R in connection with registering as a floor broker or as a floor trader, or registering as an associated person of, or being listed as a principal of, a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, floor trader firm or leverage transaction merchant.[2] OMB control number 3038–0072 applies to Form 8–R in connection with applying to be listed as a principal of a swap dealer or major swap participant.[3]

I. Revision of Commission Form 8–R

The revised Form 8–R contains several changes that increase the existing information collection burden (currently 1 hour) associated with Form 8–R. The Commission estimates that the changes, which are discussed below, when considered together in aggregate add a total of 0.1 burden hours to the information collection burdens associated with Form 8–R.

First, in the ''Completing the Proficiency Requirements Section,'' a new paragraph is added describing the obligation of an individual seeking approval as a swap associated person or as a sole-proprietor swap firm to satisfy the Swaps Proficiency Requirements (recently implemented by NFA with the Commission's approval),[4] and what constitutes satisfaction of those requirements. Second, in the application itself, a new question is added asking whether the applicant has completed the Swaps Proficiency Requirements within the past two years.

The revised Form 8–R also contains several changes that do not alter the information collection burdens associated with Form 8–R. First, the revised form replaces the FBI-mandated disclosure, for persons whose fingerprints are taken for purposes other than criminal justice, with an updated version of that disclosure. Second, in the ''Definition of Terms'' section, the definition of ''adversary action'' is revised to conform the definition to the way the term is used in the form's ''Disciplinary Information Section.'' Finally, the words ''entity'' and ''person'' are underlined where they occur in the text to indicate that these are terms that are defined in the ''Definition of Terms'' section.

II. Comments

In the 60-Day Notice, the Commission provided 60 days for public comment on the extension and revision of the currently approved information collections under OMB control numbers 3038–0023 and 3038–0072 including, among other things, its estimates regarding the modified information collection burdens associated with the amendments to Form 8–R. The Commission did not receive any comments that addressed any of its estimates or any other aspect of the information collection.

Burden Statement: As explained above, the Commission believes that the revisions to Form 8–R will increase the information collection burdens associated with that Form under OMB control numbers 3038–0023 and 3038–0072.

- OMB control number 3038–0023

The Commission estimates the burden of this collection of information under OMB control number 3038–0023 to be:

Respondents/Affected Entities: Users of Form 8–R, specifically (i) associated persons of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, and leverage transaction merchants; floor brokers; (ii) principals of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, floor trader firms, or leverage transaction merchants; (iii) floor brokers; (iv) floor traders; and (v) floor trader order enterers.

Estimated number of respondents: 78,055.

Estimated total annual burden on respondents: 7,856 hours.

Frequency of collection: Periodically.

There are no capital costs or operating and maintenance costs associated with this collection.

- OMB control number 3038–0072

The Commission further estimates that as a result of the revisions to Form 8–R, the burden of the collection of information under OMB control number 3038–0072 will be:

Respondents/Affected Entities: (1) Users of Form 8–R, specifically swap dealers and major swap participants; and (2) users of Form 8–R, specifically principals of swap dealers and of major swap participants.

Estimated number of respondents: 772.

Estimated total annual burden on respondents: 683 hours.

Frequency of collection: Periodically.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: September 21, 2020.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2020–21097 Filed 9–23–20; 8:45 am]

BILLING CODE 6351–01–P

[2] OMB control number 3038–0023 also covers Commission Forms 7–R, 7–W and 8–T in connection with various registration activities involving floor brokers, floor traders, futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, floor trader firms or leverage transaction merchants, and their principals and associated persons, as applicable. Forms 7–R, 7–W and 8–T were not amended in connection with the revision of Form 8–R.

[3] OMB control number 3038–0072 also covers Commission Forms 7–R, 7–W and 8–T in connection with various registration activities involving swap dealers and major swap participants, and principals thereof. Forms 7–R, 7–W and 8–T were not amended in connection with the revision of Form 8–R.

[4] *See,* NFA Interpretive Notice entitled ''NFA Bylaw 301 And Compliance Rule 2–24: Proficiency Requirements for Swap APs,'' effective January 31, 2020.

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before October 26, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0079, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Jacob Chachkin, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418–5496; email: *jchachkin@cftc.gov,* and refer to OMB Control No. 3038–0079.

SUPPLEMENTARY INFORMATION:

Title: Swap Dealer and Major Swap Participant Conflicts of Interest and Business Conduct Standards with Counterparties (OMB Control No. 3038–0079). This is a request for an extension of a currently approved information collection.

[1] 17 CFR 145.9.

Abstract: Section 731 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010)) amended the Commodity Exchange Act (CEA) to add sections 4s(h) and 4s(j)(5) (7 U.S.C. 6s(h) and (j)(5)) which provide the Commission with both mandatory and discretionary rulemaking authority to impose business conduct requirements on swap dealers (SDs) and major swap participants (MSPs) in their dealings with counterparties, including ''Special Entities,'' [2] and require that each SD and MSP implement conflicts of interest systems and procedures. Congress granted the Commission broad discretionary authority to promulgate business conduct requirements, as appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the CEA.[3]

Accordingly, the Commission has adopted Subpart H of Part 23 of its regulations (EBCS Rules) and Commission regulation 23.605,[4] requiring SDs and MSPs to follow specified procedures and provide specified disclosures in their dealings with counterparties, to adopt and implement conflicts of interest procedures and disclosures, and to maintain specified records related to those requirements.

In addition, the Commission recently finalized certain exceptions from the EBCS Rules for certain foreign swaps in § 23.23(e).[5] To the extent a swap dealer or major swap participant avails itself of one or more of these exceptions, when effective, § 23.23(h)(1) imposes information collection requirements in lieu of such requirements in the EBCS Rules.[6]

The recordkeeping and third-party disclosure obligations imposed by the regulations are essential to ensuring that SDs and MSPs develop and maintain procedures and disclosures required by the CEA and Commission regulations.[7]

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. On July 20, 2020, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 85 FR 43821 (''60-Day Notice''). The Commission did not receive any relevant comment on the 60-Day Notice.

Burden Statement: The Commission is revising its estimate of the burden for this collection based on the current number of registered SDs.[8] The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 109.

Estimated Average Burden Hours per Respondent: 2352.9 hours.[9]

Estimated Total Annual Burden Hours: 256,470 hours.[10]

[2] Such entities are generally defined to include Federal agencies, States and political subdivisions, employee benefit plans as defined under the Employee Retirement Income Security Act of 1974 (ERISA), governmental plans as defined under ERISA, and endowments.

[3] See CEA Section 4s(h)(3)(D) (Business conduct requirements adopted by the Commission shall establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the CEA.); see also Sections 4s(h)(1)(D), 4s(h)(5)(B) and 4s(h)(6).

[4] 17 CFR part 23, subpart H and 17 CFR 23.605. Subpart H of Part 23 is titled ''Business Conduct Standards for Swap Dealers and Major Swap Participants Dealing with Counterparties, Including Special Entities.'' Subpart H includes the following provisions: § 23.400 (Scope); § 23.401 (Definitions); § 23.402 (General Provisions); § 23.410 (Prohibition on fraud, manipulation and other abusive practices); § 23.430 (Verification of counterparty eligibility); § 23.431 (Disclosures of material information); § 23.432 (Clearing disclosures); § 23.433 (Communications—fair dealing); § 23.434 (Recommendations to counterparties—institutional suitability; § 23.440 (Requirements for SDs acting as advisors to Special Entities); § 23.450 (Requirements for SDs and MSPs acting counterparties to Special Entities); and § 23.451 (Political contributions by certain SDs). § 23.605 is titled Conflicts of interest policies and procedures.

[5] 17 CFR part 23.23(e). *See* Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants, 85 FR 56924 (Sep. 14, 2020).

[6] 17 CFR part 23.23(h)(1).

[7] Reporting under Commission regulation 23.451 (Political contributions by certain SDs) is optional and it is unknown how many registrants, if any, will engage in such reporting and how much burden, if any, will be incurred. Nevertheless, the Commission is providing an estimate of the regulation's burden for purposes of the PRA below.

[8] Specifically, the change for the renewal is based solely on the increased number of entities registered as SDs (102 at the last renewal in 2017 and 109 as of September 9, 2020), since the burden hour per respondent remains the same, at approximately 2352.9 hours. The total annual burden estimate in the 60-Day Notice was based on 107 registered SDs, but, as noted above, this number has increased to 109. (And just as before, there are no entities currently registered as MSPs.)

[9] The Commission expects the paperwork burden of § 23.23(h)(1), where applicable, in relation to exceptions from the EBCS Rules in § 23.23(e) would be less than that of the EBCS Rules. However, in an effort to be conservative, because the Commission does not know how many swap dealers and/or major swap participants will choose to avail themselves of the exceptions in § 23.23(e) and for how many of their swaps, the Commission is not reducing the estimated burden of these rules to reflect the availability of such exceptions.

[10] The total annual burden estimated in the 60-Day Notice, at 251,765 hours, was based on 107 entities registered as SDs. (*See* also fn.8.) Since this number has increased to 109, the current total annual burden, at 256,470 hours, reflects this increase.

Frequency of Collection: Ongoing.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: September, 21, 2020.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2020–21096 Filed 9–23–20; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:30 a.m. EDT, Wednesday, September 30, 2020.

PLACE: This meeting will be convened on a conference call.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.cftc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: September 21, 2020.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2020–21131 Filed 9–22–20; 11:15 am]

BILLING CODE 6351–01–P

COUNCIL ON ENVIRONMENTAL QUALITY

Emergencies and the National Environmental Policy Act Guidance

AGENCY: Council on Environmental Quality (CEQ).

ACTION: Notice.

SUMMARY: On September 14, 2020, the Council on Environmental Quality (CEQ) issued guidance, CEQ–NEPA–2020–01, in a memorandum to the heads of Federal departments and agencies (agencies) to assist agencies with compliance with the National Environmental Policy Act (NEPA) during emergencies. The CEQ regulations implementing NEPA provide for alternative arrangements during emergencies when an agency's action is likely to have significant effects and would require preparation of an environmental impact statement. This guidance also addresses compliance with NEPA when the action is unlikely to have significant effects and might require preparation of an environmental assessment or application of a categorical exclusion.

DATES: This guidance is effective on September 14, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas Sharp, Principal Deputy Associate Director for NEPA, 202–395–5750, *Thomas.L.Sharp2@ceq.eop.gov.*

SUPPLEMENTARY INFORMATION:

Guidance No. CEQ–NEPA–2020–01

Memorandum for Heads of Federal Departments and Agencies

From: Mary B. Neumayr, Chairman.

Subject: Emergencies and the National Environmental Policy Act Guidance.

This guidance [1] updates and replaces previous guidance from the Council on Environmental Quality (CEQ) on the environmental review of proposed emergency response actions under the National Environmental Policy Act, 42 U.S.C. 4321–4347 (NEPA).[2] Federal departments and agencies (agencies) should distribute this guidance as part of their general guidance on emergency actions to agency offices that are or may become involved in developing and taking actions in response to emergencies.

As agencies respond to situations involving immediate threats to human health or safety, or immediate threats to valuable natural resources, they must consider whether there is sufficient time to follow the procedures for environmental review established in the CEQ National Environmental Policy Act Implementing Regulations, 40 CFR parts 1500–1508 (CEQ NEPA regulations),[3] and their agency NEPA procedures.

This guidance does not establish new requirements. CEQ established the regulation addressing alternative arrangements in emergency circumstances in 1978,[4] and amended it in 2020 to clarify that it provides for alternative arrangements for compliance with NEPA section 102(2)(C) (42 U.S.C. 4332(C)).[5] 40 CFR 1506.12. CEQ has approved, and agencies have applied successfully, numerous alternative arrangements to allow a wide range of proposed actions in emergency circumstances including natural disasters, catastrophic wildfires, threats to species and their habitat, economic crisis, infectious disease outbreaks, potential dam failures, and insect infestations.[6]

Attachment 1 provides agencies with a step-by-step process for determining the appropriate path forward for the NEPA environmental review of all actions proposed in response to an emergency situation.

Environmental Impact Statements

The CEQ regulations, at 40 CFR 1506.12, provide for alternative arrangements for NEPA compliance in emergency situations when the agency proposal has the potential for significant environmental impacts and would require an environmental impact statement (EIS) if the situation were not an emergency:

> Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of the regulations in [parts 1500–1508], the Federal agency taking the action should consult with the Council about alternative arrangements for compliance with section 102(2)(C) of NEPA. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

Agencies develop these alternative arrangements, based on emergency-specific facts and circumstances, during consultation with CEQ. The alternative arrangements developed by an agency address the actions necessary to respond immediately to the impacts of an emergency. The long-term response to the emergency, including recovery actions, remains subject to the regular NEPA process set forth in the CEQ NEPA regulations.

Alternative arrangements do not waive the requirement to comply with the statute, but establish an alternative means for NEPA compliance. Alternative arrangements also do not complete or alter other environmental requirements (except as provided by other environmental statutes or regulations); however, engaging other resource and regulatory agencies about other environmental requirements during development and implementation of alternative arrangements can facilitate meeting other compliance requirements. Final agency action taken pursuant to alternative arrangements for compliance with NEPA under 40 CFR 1506.12 may

[1] The contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This memorandum is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

[2] This guidance replaces guidance issued by CEQ on September 29, 2016, May 12, 2010, and September 8, 2005. CEQ rescinds the prior guidance.

[3] *https://ceq.doe.gov/laws-regulations/regulations.html.*

[4] 43 FR 55977, Nov. 29, 1978.

[5] 85 FR 43304, July 16, 2020.

[6] A synopsis of previous alternative arrangements is available at *https://ceq.doe.gov/nepa-practice/alternative_arrangements.html.*

be subject to judicial review if a statute, such as the Administrative Procedure Act, provides for such review.

Attachment 1 describes the factors for an agency to address when requesting and designing alternative arrangements. Once the agency develops the alternative arrangements, CEQ will provide documentation detailing the alternative arrangements and the considerations on which they are based.

Environmental Assessments

When agencies are considering proposals with less than significant impacts or are uncertain about the significance of impacts, the agency can prepare a concise, focused environmental assessment (EA). Attachment 2 of this memorandum provides guidance for preparing an EA. Some agency NEPA procedures provide processes for preparing EAs for emergency actions.[7] Agencies must continue their efforts to notify and inform the affected public and relevant Federal, State, Tribal, and local agency representatives of the Federal agency activities and proposed actions. Agencies must comply with the CEQ NEPA regulatory requirements for content, interagency coordination, and public involvement to the extent practicable.[8]

Attachment 1

Emergency Actions Under the National Environmental Policy Act (NEPA)

In the case of an emergency:

1. Do not delay immediate actions necessary to secure lives and safety of citizens or to protect valuable resources. Consult with CEQ as soon as feasible. Please coordinate any communications with your Federal agency NEPA contacts. *See https://ceq.doe.gov/nepa-practice/agency-nepa-contacts.html.*

2. Determine if NEPA applies and the appropriate level of NEPA analysis:

- Determine if a Federal agency is taking the proposed action (*e.g.,* city or State action does not trigger NEPA; Federal decisions to fund city or State action may trigger NEPA, depending on the nature of the funding arrangements) or is exempt from NEPA (*e.g.,* certain Federal Emergency Management Agency response actions under the Stafford Act are statutorily exempt from NEPA; additional information is available at *https://www.fema.gov/media-library-data/20130726-1748-25045-1063/stafford_act_nepa_fact_sheet_072409.pdf.*).
- If the Federal agency's proposed emergency response activity is not statutorily exempt from NEPA, and the agency has a categorical exclusion (CE) that includes that type of activity, then apply the CE unless there are extraordinary circumstances that indicate using the CE in this particular case is not appropriate. Agency NEPA personnel can assist in identifying agency-specific actions that are categorically excluded.
- If the proposed Federal agency emergency response activity is not statutorily exempt from NEPA, a CE is not available, and the agency does not expect the potential environmental impacts of the proposed response activity to be significant, then an environmental assessment (EA) is appropriate. Prepare a focused, concise EA as described in Attachment 2. Alternative arrangements, as outlined at 40 CFR 1506.12, do not apply because the environmental impacts are not expected to be significant. Agency NEPA personnel can assist in identifying agency-specific actions that typically require an EA.
- If the proposed Federal emergency response activity is not statutorily exempt from NEPA, and the agency expects it would have significant environmental impacts, the agency should determine whether an existing NEPA analysis covers the activity (*e.g.,* implementing pre-existing spill response plans). If so, the agency may rely upon its existing analysis or adopt the analysis of another agency consistent with 40 CFR 1506.3.
- If the proposed Federal emergency response activity is not statutorily exempt from NEPA, the agency expects it to have significant environmental impacts, and an existing NEPA analysis does not cover the activity, then the agency should consult with CEQ to determine whether alternative arrangements can take the place of an EIS. Contact CEQ to develop alternative arrangements under 40 CFR 1506.12. CEQ's main phone number is (202) 395–5750.

3. Factors to address when requesting and designing alternative arrangements include the:

- Nature and scope of the emergency;
- Actions necessary to control the immediate impacts of the emergency;
- Potential adverse effects of the proposed action;
- Components of the NEPA process that the agency can follow and provide value to decision making (*e.g.,* coordination with affected agencies and the public);
- Duration of the emergency; and
- Potential mitigation measures.

Attachment 2

Preparing Focused, Concise and Timely Environmental Assessments

An agency can prepare a concise and focused EA in a short time in those situations where:

- There is no statutory exemption from NEPA requirements;
- There is no CE available, either because the agency has none that cover the activity or there are extraordinary circumstances;
- An existing NEPA analysis (EA or EIS) does not cover the proposed recovery or response actions; and
- The environmental impacts of the proposed recovery or response actions are not likely to be significant.

The following outline with notations addresses the core elements of an EA as required by 40 CFR 1501.5:

- The purpose and need for the proposed action;
- Alternatives as required by NEPA section 102(2)(E);
- The description of environmental impacts of the proposed action and the alternatives; and
- The list of agencies and persons consulted.

Purpose and Need for the Proposed Action

The agency should briefly describe information that substantiates the purpose and need for the action and incorporate by reference information that is reasonably available to the public. For example, ''This agency is preparing to erect a temporary emergency response facility to replace facilities disrupted or destroyed by the [hurricane/flooding/contamination/etc.] to facilitate rescue or relief efforts in an effort to [minimize further adverse health conditions/restore communications/restore power].''

The agency should briefly describe the existing conditions and the projected future conditions of the area impacted by the action. For example, ''The area(s) in which the temporary facility will be located or relocated is identified in the attached map. This area consists of [add brief description of the environmental state of the area that will

[7] *See* Agency NEPA procedures, for example: Department of Homeland Security Instruction Manual 023–01–001–01, Revision 01 at VI–1, *https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf;* U.S. Forest Service, 36 CFR 220.4(b), *http://www.fs.fed.us/emc/nepa/nepa_procedures/includes/fr_nepa_procedures_2008_07_24.pdf;* and Department of the Interior, 43 CFR 46.150, *https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=2a2ce144c79da6f3e773bfa9cdf17bcf&mc=true&n=sp43.1.46.b&r=SUBPART&ty=HTML#se43.1.46_1150.*

[8] 40 CFR 1501.5, 1501.6, and 1506.6 (these regulations address required content and public involvement for preparing EAs and Findings of No Significant Impact).

be affected by the location and operation of the facility, focusing on those areas that are potentially sensitive. The goal is to show that environmental effects have been considered and the facts found indicate no significant impact (for example, refueling sites are not on top of aquifers, nesting areas, graves, sacred sites, etc.). These are examples to show the utility of and need to identify actual place-based environmental issues rather than compiling lists of environmental resources not at issue].''

Proposed Action and Alternatives

The agency should list and briefly describe its proposed action and reasonable alternatives that meet the purpose and need. The agency must use its discretion to ensure the number and range of reasonable alternatives is reasoned and not arbitrary or capricious. The purpose and need for the proposed action and its environmental impacts should focus the alternatives. For example, the need to use existing infrastructure necessary to support the facility is a reasoned basis for focusing on a discrete number of alternatives.

When there is no conflict over the resource effects of the proposed action based on input from interested parties, the agency can consider the proposed action and proceed without consideration of additional alternatives. Otherwise, the agency must identify reasonable alternatives that meet the action's purpose and need, consistent with section 102(2)(E) of NEPA.

Environmental Impacts of the Proposed Action and Alternatives

The agency should describe the environmental impacts of its proposed action and each alternative. The description should provide enough information to support a determination to either prepare an EIS or a finding of no significant impact.

The agency should focus on whether the action would significantly affect the quality of the human environment. The agency should follow CEQ's NEPA regulations in considering whether the effects of a proposed action are significant. 40 CFR 1501.3. Agency NEPA contacts and contacts at resource agencies can assist in this effort.

Tailor the length of the discussion to the complexity of each issue. Focus on those human and natural environment issues where impacts are a concern. Telephone or email discussions with State, Tribal, and local governments and agencies, and other Federal agencies that operate in the area, will help focus those issues.

The agency must discuss the impacts of each alternative and may discuss those impacts together in a comparative description, or discuss each alternative separately. The agency should use the approach that will be most effective in the time available. The agency may contrast the impacts of the proposed action and alternatives with the current condition and expected future condition in the absence of the action. This constitutes consideration of a no action alternative as well as demonstrating the need for the action.

The agency should incorporate by reference data, inventories, other information, and analyses relied on in the EA. CEQ encourages the use of hyperlinks in web-based documents. This information must be reasonably available to the public. For example, include relevant existing programmatic agreements and generally accepted best management practices.

The agency should be clear and concise about its conclusions and their bases.

List of Agencies and Persons Consulted

The agency must involve the public, relevant agencies, and any applicants, to the extent practicable in preparing EAs, and list the agencies and persons consulted. For example, include the people, offices, and agencies that the agency coordinated with to ensure that the location of the action did not cause unintentionally an adverse impact. Also include information about individuals consulted to comply with substantive environmental requirements and regulations, for example: The Clean Water Act, the National Historic Preservation Act, and the Endangered Species Act (ESA). [Note that the ESA emergency provisions at 50 CFR 402.05 may be applicable to the proposed action.]

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375.

Mary B. Neumayr,

Chairman.

[FR Doc. 2020–21044 Filed 9–23–20; 8:45 am]

BILLING CODE 3225–F0–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

Meetings

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Announcement of open and closed virtual meetings.

SUMMARY: This notice sets forth the agenda for a National Assessment Governing Board (hereafter referred to as Governing Board) meeting in September 2020. This notice provides information to members of the public who may be interested in attending the meeting or providing written comments related to the work of the Governing Board. Notice of this meeting is required under the Federal Advisory Committee Act (FACA). Participation in the open sessions of the meeting is via advance online registration at *www.nagb.gov,* which will open five working days prior to September 29, 2020.

DATES: The September 2020 meeting will be held on the following dates:

Open Meeting: September 29, 2020 3:00–3:30 p.m. (ET)

Closed Meeting, 3:45–5:15 p.m. (ET)

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer/Designated Federal Official for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–6938, fax: (202) 357–6945, email: *Munira.Mwalimu@ed.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act, Title III of Public Law 107–279. Information on the Governing Board and its work can be found at *www.nagb.gov.*

The Governing Board is established to formulate policy for the National Assessment of Educational Progress (NAEP) administered by the National Center for Education Statistics (NCES). The Governing Board's responsibilities include the following: (1) Selecting subject areas to be assessed; (2) developing assessment frameworks and specifications; (3) developing appropriate student achievement levels for each grade and subject tested; (4) developing standards and procedures for interstate and national comparisons; (5) improving the form and use of NAEP; (6) developing guidelines for reporting and disseminating results; and (7) releasing initial NAEP results to the public.

Written comments related to the work of the Governing Board may be submitted electronically or in hard copy to the attention of the Executive Officer/Designated Federal Official (see contact information noted above).

Governing Board Full Meeting: Open Meeting: September 29, 2020: 3:00–3:30 p.m. (ET); Closed Meeting, 3:45–5:15 p.m.

On September 29, 2020, the Governing Board will meet in open

session from 3:00 p.m. to 3:30 p.m. The Governing Board Chair will lead a discussion on the final draft of the Strategic Vision, and the Governing Board will take action on its adoption. After this session, the Board will break for 15 minutes and begin the closed session at 3:45 p.m.

On September 29, 2020, the full Governing Board will convene in two closed sessions from 3:45 p.m. to 5:15 p.m.

The first closed session will convene from 3:45 p.m. to 4:30 p.m. to receive a briefing on embargoed results from the 2019 Nation's Report Cards in Reading and Mathematics for grade 12 students. These results have not been yet been released to the public and must be kept confidential until that time to maintain the security of the data and results. The discussions are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

Following this briefing, the Governing Board will meet in a second closed session from 4:30 p.m. to 5:15 p.m. to discuss independent cost estimates related to the impact of the COVID–19 pandemic on the NAEP 2021 operations and subsequent potential impacts on the NAEP budget and assessment schedule. The discussions may impact current and future NAEP contracts and budgets and must be kept confidential. Public disclosure of this confidential information would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code. The September 29, 2020 meeting will adjourn at 5:15 p.m.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may also inspect the meeting materials at *www.nagb.gov* five working days prior to each meeting. The official verbatim transcripts of the public meeting sessions will be available for public inspection no later than 30 calendar days following the meeting.

Reasonable Accommodations: The meeting is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice no later than ten working days prior to each meeting.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress § 301.

Lesley Muldoon,

Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2020–20267 Filed 9–23–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

List of Borrowers Who Have Defaulted on Their Health Education Assistance Loans

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: Federal Student Aid (FSA), as required by the Public Health Service Act (the Act), is publishing this list of Health Education Assistance Loan (HEAL) borrowers who have defaulted on their loans as of August 1, 2020. This information is also made available for use by organizations authorized by the Act.

FOR FURTHER INFORMATION CONTACT:

For Defaulted HEAL Borrowers with Account-Related Questions:

A borrower who is in default on a HEAL program loan and who has an account-related question should contact: HHS Program Support Center, Accounting Services, Debt Collection Center, Mailstop 10230B, 7700 Wisconsin Avenue, Suite 8–8110D, Bethesda, MD 20857. Telephone: (301) 492–4664.

For General HEAL Information:

For general HEAL program questions, contact the HEAL program team: Telephone: (844) 509–8957. Email: *HEAL@ed.gov.*

For Organizations Requesting HEAL Defaulted Borrower Information or Confirmation under Section 709(c)(2) of the Act (42 U.S.C. 292h(c)(2)):

To request information related to a HEAL defaulted borrower or confirmation of the borrower's default status, contact the HEAL program team: Telephone: (844) 509–8957. Email: *HEAL@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: From fiscal year 1978 through fiscal year 1998, the HEAL program insured loans made by participating lenders to eligible graduate students in schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, public health, pharmacy, and chiropractic, and in programs in health administration and clinical psychology. Authorization for new HEAL program loans was discontinued on September 30, 1998.

Under division H, title V, section 525 of the Consolidated Appropriations Act, 2014 (Pub. L. 113–76), and title VII, part A, subpart I of the Public Health Service Act (42 U.S.C. Chapter 6A), the authority to administer the HEAL program, including servicing, collecting, and enforcing any loans made under the HEAL program that remain outstanding, was transferred from the Secretary of Health and Human Services to the Secretary of Education effective July 1, 2014. The Act and a system of records notice published in the **Federal Register** on August 14, 2018 (83 FR 40264), permits the publishing of the list of HEAL borrowers who have defaulted on their loans.

Information on the HEAL program is available on the Department of Education's Information for Financial Aid Professionals (IFAP) website at: *www.ifap.ed.gov.*

List of Defaulters: The following list provides the names and other information of borrowers who have defaulted on their HEAL program loans as of August 1, 2020. Specifically, the list includes the borrower's name, last known city and State of residence, area of practice, and the total amount due on the HEAL debt. The Department publishes this information in order to correctly identify the person in default and to provide relevant information to the authorized recipients of this information, such as State licensing boards and hospitals.

In accordance with section 709(c)(2) of the Act (42 U.S.C. 292h(c)(2)), FSA will provide the information included in this **Federal Register** notice and updated information on the borrower's default status to relevant Federal agencies and to schools, school associations, professional and specialty associations, State licensing boards,

hospitals with which listed borrowers may be associated, and other relevant organizations, upon written request to the email address listed under **FOR FURTHER INFORMATION CONTACT**. Any written request must be on the letterhead of the organization making the request.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the HEAL program team: Telephone: (844) 509–8957. Email: *HEAL@ed.gov.*

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070b *et seq.* and 1087aa *et seq.;* 42 U.S.C. 2751 *et seq.* and 42 U.S.C. 292h(c)(1).

Mark A. Brown,

Chief Operating Officer, Federal Student Aid.

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 1, 2020

Last name	First name	MI	City	State	Discipline	Date reported	Amount due
Abe	Gregory	N	Tujunga	CA	PHA	1/21/1998	$75,209
Ackley	Brainard	L	Kitty Hawk	NC	CHM	1/21/1998	6,449
Acosta-Delgado	Feliberto	D	Bronx	NY	DEN	3/1/1999	96,773
Adams	Stephen		League City	TX	CHM	3/1/1999	91,774
Adeli	Mojgan	E	Los Angeles	CA	DEN	3/1/1999	151,397
Adkins	Margo	M	Austin	TX	MED	1/21/1998	969,306
Aiken	Richard	F	Gardena	CA	CHM	8/21/2015	92,733
Al-Amin	Ihsaan		Ringgold	GA	MED	11/2/2000	103,658
Alana	Manuela	L	Pharr	TX	POD	9/24/2014	244,818
Alden	Thomas	E	Cambridge	MA	CHM	11/2/2000	134,994
Allen	Lawrence	P	Temecula	CA	CHM	7/31/1998	366,716
Alston	Linda	D	Philadelphia	PA	OST	5/21/2019	195,400
Alter	Dale	N	Redding	CA	MED	2/5/2009	447,873
Anaya	Enid	L	South Setauket	NY	MED	5/21/2019	26,655
Anderson	Angela	J	Torrance	CA	MED	1/21/1998	188,572
Anderson	Gwendolyn		Lansdowne	PA	POD	1/21/1998	288,132
Anyaji	George	I	San Diego	CA	MED	4/25/2014	121,825
Aquino	Sayira	I	Homestead	FL	POD	8/15/2019	83,575
Armstrong	Daniel	J	San Francisco	CA	CHM	5/17/1999	167,355
Arnesen	Douglas	W	Atascadero	CA	CHM	5/17/1999	58,329
Azcueta	Justina	Q	San Jose	CA	DEN	5/7/2013	170,277
Bacon	Pamela	M	Hollister	MO	DEN	5/17/1999	260,320
Baez	Ana	V	Somerset	NJ	DEN	5/14/2002	150,312
Bahadue	George	P	Matawan	NJ	OST	3/1/1999	274,187
Bailey	David	W	San Bernadino	CA	MED	3/25/2019	49,126
Baird	Curtis	J	Mount Airy	MD	MED	5/14/2002	113,080
Baker	Walter	A	Mill Valley	CA	DEN	5/11/2005	487,968
Baker	Gale		Olympia Flds	IL	DEN	5/17/2001	80,691
Ball JR	Thomas		Detroit	MI	POD	11/12/2013	111,481
Baranco	Patricia	E	Lake Charles	LA	DEN	3/1/1999	909,599
Baratta	George		Danville	CA	CHM	11/2/2000	31,819
Barber	Mildred	L	Washington	DC	MED	11/14/2007	151,852
Barile	Joseph	V	Valatie	NY	CHM	3/25/2019	12,874
Barnes	De Elward	F	Los Angeles	CA	CHM	11/10/2004	58,170
Barnett	Brian	D	Pearland	TX	CHM	1/21/1998	78,261
Barney	Thomas	W	Sugar Grove	IL	CHM	8/22/2017	48,880
Barrows	Joni		Newmarket	NH	DEN	5/19/2009	714,385
Bayles	Jay	C	Westlake Village	CA	CHM	8/11/2005	117,070
Beckford	Audrey	L	East Orange	NJ	OST	2/15/2002	74,318
Bennett	Kathy		Caldwell	ID	CHM	8/12/2016	83,325
Bentley JR	James	W	Van Nuys	CA	DEN	8/12/2016	26,088
Bergstrom	Eric	R	Anaheim Hills	CA	CHM	5/7/2013	33,412
Bertin	Michael	W	West Bloomfield	MI	DEN	1/21/1998	6,434
Bertsch	Dar	A	Santa Cruz	CA	CHM	4/25/2014	43,535
Bettis	Gail	M	Bellrose	NY	DEN	1/21/1998	103,131
Biosah-Coleman	Ada	N	Houston	TX	PUB	9/24/2014	51,712
Bisbocci	Brady	M	Belmont	OH	CHM	11/14/2019	16,397
Bittenbender	Robert	G	Clarks Summit	PA	CHM	11/7/2001	44,649
Bland JR	Henry	N	Jacksonville	FL	DEN	5/14/2002	250,274
Blase	Richard	M	Worcester	MA	DEN	1/21/1998	501,213
Bolton	Paul	K	Kansas City	MO	CHM	11/2/2000	136,488
Booher	Janette	L	South San Francisco	CA	CHM	2/1/2001	65,972
Boshes	Perri	D	Deerfield Beach	FL	CHM	1/21/1998	84,799
Bowman	Jeffrey	S	Salt Lake City	UT	CHM	1/21/1998	23,903
Boyd	Brian	D	Bellingham	WA	CHM	2/18/2020	4,054

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 1, 2020—Continued

Last name	First name	MI	City	State	Discipline	Date reported	Amount due
Brandt	Susan	J	Winston Salem	NC	MED	7/6/2012	101,043
Brantley	Carl	E	Houston	TX	DEN	9/24/2014	45,621
Breazeale	Michael	E	Marietta	GA	CHM	1/21/1998	332,016
Brodie	Douglas	K	San Antonio	TX	DEN	1/21/1998	405,665
Brodsky	Barbara	L	San Francisco	CA	CHM	1/21/1998	22,616
Bronk	Brian	R	Santa Monica	CA	CHM	1/21/1998	76,250
Broussard	Charlotte	R	Carrollton	TX	CHM	11/2/2000	17,292
Broussard	Linda	C	Los Angeles	CA	CHM	2/10/2011	307
Brown	Darla	J	Highlands	TX	CHM	1/21/1998	497,716
Brown	Jeffrey	T	Gainesville	GA	CHM	11/7/2001	33,172
Brown-Collins	Jannas	E	Columbia	SC	DEN	5/31/2018	596,289
Bruyning	Edwin	F	Miami	FL	DEN	1/21/1998	359,357
Buchta	Joseph	F	Bradenton	FL	DEN	7/26/2018	35,853
Buchwald-Heilig	Bonnie	I	Tucson	AZ	CHM	1/21/1998	40,251
Buford	John	I	Philadelphia	PA	OST	5/17/2001	64,233
Bui	Khai	T	Springfield	MA	DEN	8/16/2006	91,273
Bulen	Jerry	L	Brandon	FL	OST	2/28/2005	187,429
Bunce	Christine	T	Sonoma	CA	CPY	2/1/2001	203,401
Caballero	Jorge	R	Los Angeles	CA	CHM	1/21/1998	294,613
Cabrera	Cecilia	I	Pembroke Pines	FL	OPT	2/5/2009	20,199
Caldwell	William	G	Concord	MA	DEN	5/14/2002	121,857
Calix	Raul	O	Lennox	CA	CHM	5/16/2011	11,673
Campanale	Paul	R	Jacksonville	FL	CHM	1/21/1998	96,130
Canillas	Gregorio	L	Long Beach	CA	CPY	5/16/2011	78,451
Caporaso	Nicholas	G	West Liberty	OH	CHM	2/1/2001	32,479
Caputo	Francesco	J	Plainview	NY	CHM	7/6/2012	271,631
Carlos	Lester	B	San Leandro	CA	CHM	8/5/2004	73,081
Carney	Timothy	M	East Patchogue	NY	CHM	11/26/2012	37,320
Carpenter	Richard	P	Saginaw	MI	CHM	1/21/1998	38,912
Carrie	Thomas	T	Mount Vernon	NY	MED	3/1/1999	374,500
Carthen	Michael		Brooklyn	NY	POD	1/21/1998	401,700
Castaline	Perren	V	Canyon Country	CA	CHM	8/11/2005	143,822
Castellanos	Loretta	M	Key Biscayne	FL	DEN	2/3/2014	285,745
Castro	Henry	G	Corpus Christi	TX	CHM	5/20/2004	59,578
Caulkins	Robert	M	Shrewsbury	MA	MED	8/5/2004	507,575
Cha	Chris	S	Garden Grove	CA	DEN	11/12/1999	358,947
Chalgujian	Hilda	A	Palm Desert	CA	CPY	5/16/2011	153,618
Chen	Syng-Fu	F	Pls Vrds Pnsl	CA	MED	5/20/2004	57,819
Cheney	Julian	L	Reseda	CA	CHM	1/21/1998	9,631
Choi	Seong	Y	Diamond Bar	CA	DEN	3/1/1999	170,092
Christian	Roy	P	Saratoga	CA	DEN	7/6/2012	62,214
Christiansen	John	C	Pleasant Grove	UT	CHM	5/19/2009	82,188
Clark	Garth	A	Humble	TX	MED	8/10/2001	165,063
Cleere	Carrol	E	Las Vegas	NV	CHM	1/21/1998	230,612
Clifton	Rhea	S	Dallas	TX	CHM	8/5/2004	8,533
Cline	Sherri	L	Sylmar	CA	OST	1/21/1998	9,643
Clouse	William	J	San Antonio	TX	POD	3/1/1999	233,731
Coate	Linda		Reno	NV	CHM	11/9/2010	192,941
Cobrin	Bettina	B	Marina Del Rey	CA	CPY	1/21/1998	284,179
Coleman JR	Harold	J	Tacoma	WA	DEN	5/16/2011	291,279
Collier	George	R	Ponderay	ID	DEN	1/21/1998	269,584
Collins JR	Gail	W	Fullerton	CA	OPT	3/1/1999	33,424
Connaughton	Edward	M	Hermosa Beach	CA	CHM	8/12/2016	39,198
Connor	Kenneth	J	Newport Beach	CA	CHM	11/7/2001	85,776
Cook	Karen		Redwood City	CA	CHM	7/6/2012	519,322
Cook	Ian	K	Christiansted	VI	POD	2/8/2017	196,640
Cooke	Courtney	W	Van Nuys	CA	CHM	5/18/2010	47,272
Coombs	Timothy	R	Anaheim	CA	CHM	5/15/2000	124,230
Cooney	Carey	E	Eugene	OR	DEN	1/21/1998	43,884
Coonts	Terry	A	Eldorado Springs	MO	CHM	2/17/2000	13,564
Cooper	April	D	Hazel Crest	IL	MED	1/21/1998	520,178
Cooper	Carol	A	Keizer	OR	CHM	3/25/2019	216,102
Corcoran	Jamie	M	Bronx	NY	DEN	4/24/1998	568,426
Cothran	Lonnie	A	Shady Point	OK	CHM	11/12/1999	252,359
Cox	Michael	A	Oakland	CA	CHM	11/15/2005	27,842
Coyle	Michele	M	Mission Viejo	CA	CPY	5/12/2020	302,048
Cummins	David	F	St Michael Barbados	FC	DEN	1/21/1998	164,573
Curtin	Michael	M	Fairfax	CA	CHM	1/21/1998	36,668
Cutts	David	P	Temecula	CA	DEN	1/21/1998	182,597
Daniels	Peter	J	San Jose	CA	CHM	2/20/2007	99,539
Darrow	Victoria	L	Boca Raton	FL	CHM	11/26/2012	144,946
Davalos	Steven	M	Carmel Valley	CA	CHM	8/1/2000	53,711

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 1, 2020—Continued

Last name	First name	MI	City	State	Discipline	Date reported	Amount due
Davidson	Blake	L	Richardson	TX	CHM	8/5/2004	48,612
Davitiashvili	Nodari		Rego Park	NY	DEN	11/12/2013	154,909
Dawe	Michael	E	Fort Worth	TX	OPT	2/18/2020	17,984
De Jesus-Miranda	Luis	A	Fajardo	PR	OPT	5/14/2002	104,003
Deck	Robert	E	Crowley	TX	CHM	2/14/2013	59,801
Deleonardis	Michael	S	Houston	TX	MED	8/10/2001	122,310
Demaria	Lynn	A	Albany	NY	MED	2/2/2018	87,065
Dennis	Gwenda	B	Aliso Viejo	CA	MED	5/14/2016	136,728
Densmore	Robert	D	Tampa	FL	CHM	8/17/2007	51,248
Derbonne	John	R	Lake Jackson	TX	CHM	9/24/2014	45,706
Desai	Nemish	J	West Bloomfield	MI	DEN	5/21/2019	116,285
Dewitt	Eldon	L	Fort Pierce	FL	CHM	2/5/2009	144,565
Dhaliwal	Emaline	K	Riverside	CA	CHM	1/21/1998	12,962
Diaz	James	A	Redwood Valley	CA	CHM	8/22/2017	16,521
Diesen	James	D	Orange Park	FL	CHM	1/21/1998	454,576
Difiore JR	William	E	Fountain Valley	CA	CHM	1/21/1998	77,138
Dinh	Michael	K	McAllen	TX	CHM	9/24/2014	11,814
Ditroia	Frederick		Warrington	PA	DEN	1/21/1998	66,874
Divanbeigi	Farah	Z	Las Vegas	NV	DEN	3/25/2019	187,176
Dominic	Anthony	J	Manasquan	NJ	MED	2/15/2002	55,310
Dominicis	Beth	A	Lake Arrowhead	CA	CHM	2/1/2001	28,271
Doom	Randolph	H	Murrells Inlet	SC	CHM	8/17/2012	166,988
Dorian	Saro	S	Glendale	CA	CHM	11/7/2001	35,492
Ructor	James	D	Pittsburgh	PA	MED	8/10/2001	72,275
Duarte	Leonardo		Jackson	NJ	CHM	11/14/2019	40,544
Dudley	Raynold	R	Houston	TX	PHA	1/21/1998	125,811
Dungan	Kim	V	Fort Lauderdale	FL	CHM	11/14/2007	137,275
Dupuis	Kenneth	J	Orono	ME	CHM	5/14/2002	203,102
Durham	Ricky	L	Houston	TX	CHM	1/21/1998	249,338
Dwight	Benton	J	Albuquerque	NM	PHA	7/26/2018	17,381
Dykeman	Peter	J	Hawthorne	CA	CHM	1/21/1998	143,653
Elbayar	Nader	K	Port Washington	NY	POD	1/21/1998	163,422
Elder	Terry	M	Glendale Heights	IL	CHM	8/1/2000	273,435
Eli	Desiree	D	Soquel	CA	CHM	1/21/1998	79,577
Ellis	Mark	S	Miami	FL	POD	2/17/2000	146,088
Emerson	Edwin	A	Selden	NY	CHM	1/21/1998	254,862
Engel	Rob	L	Garden Grove	CA	CHM	2/17/2000	31,869
Ensminger	Aletha	M	Carmichael	CA	DEN	11/9/2010	100,523
Epstein	Judy	J	Carlsbad	CA	CPY	2/17/2000	164,300
Eslao	Caesar	G	Carson	CA	DEN	1/21/1998	161,603
Esmailbeigui	Babak		Pacific Palisades	CA	DEN	9/24/2014	9,910
Etienne	Fernande		West Palm Beach	FL	POD	5/11/2006	189,698
Etumnu	Patrick	C	Houston	TX	CHM	9/24/2014	31,222
Evans	William	L	Spring	TX	CHM	9/24/2014	106,107
Fabricant	Michael	J	Fort Lauderdale	FL	CHM	1/21/1998	269,489
Fair	David	F	Knoxville	TN	CHM	3/1/1999	149,703
Falkinburg	Rory	D	Point Pleasant Boro	NJ	CHM	7/26/2018	94,217
Fallman	James	M	Alhambra	CA	CHM	5/15/2000	50,335
Falth-Vanvollenhoven	Annika	M	San Francisco	CA	MED	3/1/1999	149,119
Fanizzi	Thomas		Brightwaters	NY	POD	4/24/1998	525,277
Farris	Farral	W	Pagosa Springs	CO	CHM	5/15/2000	69,590
Fayazfar	Mitra		Oak Park	CA	CHM	11/7/2001	30,139
Feinman	Brian	M	Tampa	FL	POD	2/20/2007	847,719
Fenton	Mark	A	Van Nuys	CA	CHM	5/11/2006	101,799
Fiore	James	P	Santa Ana	CA	CHM	8/10/2001	70,454
Fletcher	Leonard	G	Corona	CA	MED	8/21/2015	73,551
Flores	Otto	O	Antario	CA	CHM	1/21/1998	187,774
Fluck	Dennis	W	New Tripoli	PA	OST	10/30/2003	317,675
Flunker	Edward	J	Houston	TX	CHM	8/12/2016	13,664
Ford	Leslie	E	Keller	TX	CHM	8/15/2019	15,507
Ford	Thomas	M	Yorba Linda	CA	CHM	2/1/2001	4,877
Formaker	James	W	West Hollywood	CA	DEN	1/21/1998	114,792
Fox	Carl	A	Dana Point	CA	CHM	5/11/2005	115,019
Franco	Michael	G	Glendale	CA	MED	3/3/2015	221,517
Francus	Irwin	N	East Northport	NY	CHM	4/24/1998	497,321
Franks	Michael	A	Wharton	TX	CHM	9/24/2014	29,267
Freeze	Kenneth	J	Amarillo	TX	CHM	8/15/2019	161,579
Fridrick	Tim	P	Las Vegas	NV	CHM	1/21/1998	66,250
Friedman	Marc	H	Huntington Beach	CA	POD	8/12/2016	56,240
Fulton	William	C	Oakland	CA	CPY	11/7/2001	83,021
Funcia	Ana	T	Miami	FL	DEN	2/1/2001	213,417
Gaber	Alan	M	Levittown	PA	DEN	5/14/2002	61,841

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 1, 2020—Continued

Last name	First name	MI	City	State	Discipline	Date reported	Amount due
Gain	John	J	Wilmington	DE	MED	5/2/2003	375,826
Galliher	Jack	T	Wimberley	TX	OPT	11/7/2001	3,638
Gallucci	Don	A	Malden	MA	DEN	3/1/1999	159,249
Garner	Jeffrey	L	Cedar Rapids	IA	OPT	3/25/2019	70,242
Gasso	Joaquin	A	Hollywood	FL	CHM	1/21/1998	255,395
Gaydos	Richard	F	Fontana	CA	CHM	11/7/2001	63,956
Gdula	William	J	Brookline	MA	MED	5/16/2011	20,507
Genna	Stephen	A	Bayville	NY	DEN	7/26/2018	43,149
Ghalbi	Abdollnasser		Santa Ana	CA	CHM	5/14/2002	40,649
Gifford	Craig	P	Keller	TX	DEN	2/17/2000	119,614
Gilyot	Glenn	D	New Orleans	LA	DEN	2/15/2002	316,122
Giorgio	Stephen	R	Middle Island	NY	CHM	7/26/2018	27,918
Gipson	Bruce	C	Easton	PA	CHM	5/14/2016	17,241
Giventer	Alex		Los Angeles	CA	CHM	5/16/2011	71,650
Gloshinski	Laura	E	Portland	PA	CHM	1/21/1998	148,493
Gloskowski	Aaron		Phoenix	AZ	OST	11/14/2019	10,300
Goins	Rondy	D	Detroit	MI	POD	3/25/2019	335,815
Goldbeck	Donald	E	Woodland Hills	CA	CHM	8/12/2016	105,551
Gomes	Steven	P	Santa Rosa	CA	CHM	4/24/1998	53,774
Gomez	Meneleo	P	Glendale	CA	DEN	5/15/2000	299,060
Gonzalez	Maria	E	East Rockaway	NY	DEN	5/15/2000	73,757
Goodman	William	D	Thorp	WI	DEN	1/21/1998	37,744
Goodwin	Randall	J	Satanta	KS	CHM	7/6/2012	111,034
Gosa-Kersee	Angela	J	Chicago	IL	DEN	3/1/1999	305,609
Gottschling	Carl	F	Cleveland	OH	MED	11/7/2001	163,650
Grant	Terry	E	Hempstead	NY	DEN	2/1/2001	83,374
Gray	David	M	San Francisco	CA	POD	3/2/2004	72,329
Green JR	Edwin	A	Brownwood	TX	MED	12/11/2018	60,585
Greeno	Vincent	A	Bolton	MA	CHM	2/28/2005	63,172
Greeson-Cargioli	Leisa	A	Noblesville	IN	CHM	7/26/2018	40,155
Gregory	Thomas	M	Brentwood	NY	CHM	8/22/2017	337,397
Gregory	Todd	A	Pismo Beach	CA	CHM	1/21/1998	57,119
Gregson	Randall		Kailua	HI	CHM	8/22/2017	104,967
Grenier	Paul	S	Viroqua	WI	CHM	8/9/2010	48,429
Grob-Mick	Renee	J	Dover	DE	MED	5/31/2018	42,570
Grossman	Brian	W	Tulra	CA	CPY	8/12/2016	93,062
Gulas	Carl	M	Los Gatos	CA	CHM	11/18/2011	42,434
Guyer	Larry	G	Santa Rosa	CA	CHM	11/7/2001	43,998
Hahn	Peter	S	Placentia	CA	CHM	1/21/1998	44,313
Haines	Steven	M	Jackson	NJ	CHM	3/1/1999	61,158
Hall	Pamela	A	Miami Gardens	FL	CPY	8/17/2007	211,814
Hamilton	Cynthia	R	Chino Hills	CA	MED	5/16/2011	43,067
Hampton	Jubal		Long Beach	CA	POD	11/12/1999	48,558
Hankins	Dean	G	Anaheim	CA	CHM	8/12/2016	97,827
Hankins	Douglas	A	Anaheim	CA	CHM	8/22/2017	62,511
Hansen	Kristen	T	Washington	UT	CHM	2/6/2003	115,709
Harp	Richard	B	Hacienda Heights	CA	CHM	8/10/2011	25,551
Harris	Conrad	W	Lanham	MD	DEN	1/21/1998	141,977
Harris	Sabrina	D	San Antonio	TX	MED	12/11/2018	168,534
Harris	Darryl	C	Atlanta	GA	MED	11/14/2019	254,879
Harrison	Rodney	B	Claremont	CA	DEN	5/19/2009	477,098
Hasley	Steven	J	Rock Island	IL	CHM	2/28/2005	78,246
Hassid	Sharona	H	Kings Point	NY	DEN	7/26/2018	28,406
Hatfield	Brian	L	Brentwood	CA	CHM	1/21/1998	64,724
Haygood	Regina	J	Brooklyn	NY	POD	4/24/1998	198,916
Hazelwood III	Harry	H	Daytona Beach	NJ	PUB	3/1/1999	314,684
Heckler	Rodney	R	Wheaton	IL	CHM	11/15/2005	25,868
Hempsey	William	C	North Hollywood	CA	CHM	1/21/1998	120,396
Henderson	Charles	A	Baltimore	MD	POD	8/22/2017	46,689
Hennell-Larue	Renata	A	Mapleton	OR	CHM	9/24/2014	44,453
Hernandez	Orestes	M	Los Angeles	CA	CHM	1/21/1998	96,005
Hernandez	Agapito		McAllen	TX	CHM	11/7/2001	203,093
Herrera	Diego	F	Long Island City	NY	DEN	8/5/1999	347,175
Hibbert	Harold	H	Mountain View	CA	MED	11/2/2000	30,549
Ho	Wook		Los Angeles	CA	DEN	3/1/1999	61,494
Hoang	Dat	T	Anaheim	CA	MED	8/12/2016	73,422
Hobowsky	Martin	R	South Charleston	OH	OST	11/9/2010	267,265
Hoehn	James	D	Thousand Oaks	CA	DEN	1/21/1998	83,579
Hoffman	Stuart		Venice	CA	CHM	8/12/2016	23,861
Hollingsworth	Derek	J	Kalispell	MT	OST	2/18/2020	60,017
Holt	Kenneth	G	Riverside	CA	CHM	1/21/1998	112,418
Holzer	Richard	M	Glendale	AZ	CHM	8/17/2007	170,722

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 1, 2020—Continued

Last name	First name	MI	City	State	Discipline	Date reported	Amount due
Hopkins	Keith	T	Kissimmee	FL	CHM	1/21/1998	13,908
Horsley	Ronald	G	Yulee	FL	CHM	1/21/1998	91,544
Hough JR	Reginio	T	Lancaster	CA	CHM	8/1/2000	34,812
Howell	Ralph	G	Clovis	CA	CHM	11/7/2001	255,760
Hungerford	Richard	D	Portola	CA	CHM	1/21/1998	94,260
Hunt	Richard	D	Pasadena	CA	CHM	2/15/2002	152,882
Hunter	Donald	E	Fairborn	OH	CHM	5/19/2009	77,733
Hush	George	G	Rose City	MI	CHM	1/21/1998	110,643
Ichiuji	Arnold	T	Salinas	CA	DEN	8/10/2001	112,597
Iliou	Claude	B	Punta Gorda	FL	MED	8/16/2006	26,352
Ionova-Zalivchy	Irina	I	Brooklyn	NY	DEN	7/26/2018	68,384
Iqal	Robert	S	Claremont	CA	PHA	1/21/1998	12,224
Ito	Stephen	M	Menifee	CA	CHM	4/24/1998	159,556
Jackson	Harold	O	Atlanta	GA	DEN	5/16/2011	26,115
Jackson	Francesca	A	San Francisco	CA	CHM	4/24/1998	97,136
Jacob-France	Elizabeth		St Petersburg	FL	CHM	2/10/2011	72,974
Jaimes	Laura		Pico Rivera	CA	MED	7/26/2018	9,410
Jansson	Susanne	E	Westhampton Beach	NY	GHA	1/21/1998	127,532
Jeffcoat	Lori	M	Vallejo	CA	CHM	10/30/2003	38,054
Jennifer	Jai		Oakland	CA	MED	7/6/2012	62,263
Jernigan	Sherry	S	Land O' Lakes	FL	OST	3/25/2019	167,458
Jewett	Charles	D	Portsmouth	OH	CHM	1/21/1998	110,045
Joergens JR	Donald	W	Staten Island	NY	CHM	1/21/1998	60,946
Johnson	John	B	Pasadena	TX	CHM	8/12/2016	17,342
Johnson	Steven	R	Hillsboro	TN	CHM	8/1/2000	163,347
Johnson	Anthony		Detroit	MI	MED	1/21/1998	11,714
Johnson	Gary	M	Burbank	CA	CHM	4/24/1998	100,000
Johnson	Eric	D	Folsom	CA	CHM	1/21/1998	402,509
Kahan	Robert	M	Mission Viejo	CA	CHM	1/21/1998	80,836
Kamel	Luca		Canyon Country	CA	MED	8/12/2016	248,093
Kantro	Scott	R	New York	NY	POD	8/16/2006	449,219
Katz	Steven	M	Sherman Oaks	CA	CHM	8/10/2001	211,460
Kaufmann	Todd	S	Corte Madera	CA	CHM	8/5/1999	148,434
Kea	Rattana	D	Highland	CA	DEN	11/7/2001	222,855
Keeler-Jones	Dawn	M	Port Saint Lucie	FL	CHM	5/14/2002	120,728
Keenan	John	M	Watertown	NY	CHM	2/5/2009	52,390
Kelly-Soluri	Laura		Farmingdale	NY	POD	5/17/1999	272,003
Kempis	Richard	A	Santa Clara	CA	DEN	2/17/2000	106,833
Kessler	Bill	R	Fountain Valley	CA	CHM	8/10/2011	39,571
Khalsa	Har Hari	S	Beverly Hills	CA	CHM	8/10/2011	68,325
Khalsa	Gururakha	S	Springfield	VA	CHM	7/31/1998	151,337
Khan	Tariq	A	San Leandro	CA	DEN	7/6/2012	62,544
Kim	Won Kak		Torrance	CA	CHM	8/12/2016	105,518
King	Susan	M	Apache Junction	AZ	CHM	9/24/2014	188,383
King	James	H	Washington	DC	DEN	1/21/1998	50,209
Kirkpatrick	Ira	P	Hurst	TX	CHM	7/26/2018	215,116
Kiss	Kathleen	M	Blue Point	NY	CHM	1/21/1998	139,018
Klapper	Gerald	P	Hollywood	FL	POD	2/11/2008	56,305
Klejnot	Timothy	A	Marietta	GA	CHM	1/21/1998	236,329
Knight	Patricia	A	Bayport	NY	CPY	1/21/1998	99,193
Ko	Joo	H	Marina	CA	CHM	4/25/2014	20,374
Koukeh-Sackett	F	M	San Bernardino	CA	CHM	1/21/1998	160,575
Kowalski	Brian	A	Irvine	CA	CHM	8/21/2015	29,404
Kralj	Mladen	M	Chicago	IL	DEN	4/24/1998	638,350
Krichevsky	Rita	A	Newtown	PA	MED	2/2/2018	149,906
Krystosik	James	D	Streetsboro	OH	CHM	11/9/2006	262,208
Kunen	Frederick	J	Miami	FL	MED	3/1/1999	205,124
Kyprie	Warren		Boca Raton	FL	CPY	2/14/2012	80,955
Lafleur	Allen	R	Hull	MA	CHM	3/1/1999	477,044
Lamb	Robert	D	Portland	OR	CHM	1/21/1998	204,019
Lampley	Joseph	C	Hamlin	TX	OST	3/25/2019	167,254
Lampman	Chuck	D	Sylmar	CA	CHM	1/21/1998	276,260
Lancaster	Barry	D	Marietta	GA	CHM	1/21/1998	141,015
Landou	Lissa	S	Belleville	NJ	CHM	5/14/2002	221,990
Lane	Craig	R	Baltimore	MD	POD	3/25/2019	333,199
Langham	Mary	L	Talkeetna	AK	OST	5/19/2009	589,068
Lauffer	Mark	A	Mineral Point	PA	CHM	5/16/2011	90,721
Lawton	Michael	D	Riverside	CA	MED	11/12/1999	250,192
Lee	Steve	Y	Livingston	NJ	DEN	8/10/2001	97,748
Lent	Rosella	M	Nahant	MA	CHM	8/11/2005	240,618
Leonor	Lillian		Riverside	CA	DEN	8/10/2011	50,120
Leshinger	Craig	L	Bayport	NY	DEN	3/25/2019	379

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 1, 2020—Continued

Last name	First name	MI	City	State	Discipline	Date reported	Amount due
Lester	Robert	C	Waxahachie	TX	CHM	2/17/2000	61,941
Leung	Leo	S	Woodside	NY	CHM	1/21/1998	244,156
Levin	Nancy	E	Palm Beach Gardens	FL	CHM	1/21/1998	256,516
Lewis	Richard	C	Colorado Springs	CO	CHM	8/17/2012	23,744
Light	David	N	Winter Garden	FL	DEN	2/28/2005	136,096
Lim	Jong	S	Elmhurst	NY	DEN	11/12/2013	155,518
Lippay	Ronald	W	Fresno	CA	CHM	10/30/2003	78,714
Lipschutz	Robert	B	Philadelphia	PA	POD	2/1/2006	150,657
Little	Carlton	E	Niles	IL	MED	11/12/2013	323,806
Littleton	Charles	R	Edmond	OK	DEN	7/31/1998	1,155
Lodwig	Michael	J	Castro Valley	CA	CHM	1/21/1998	57,289
Lopez	Luis		Cathedral City	CA	CHM	5/7/2013	229,599
Lottie	Mark	E	Covina	CA	CHM	8/21/2015	119,914
Lowry-Brooks	Paulette	M	Summerville	SC	CHM	1/21/1998	231,655
Lucero	Lucky	E	San Bernardino	CA	DEN	4/25/2014	80,827
Lunceford	Glenn	W	Norco	CA	CHM	1/21/1998	61,948
Luta	Patricia	L	Santa Rosa	CA	CHM	2/17/2000	101,422
Maghloubi	Seyed	M	Pacific Palisades	CA	CHM	8/12/2016	44,653
Major	David	C	Whittier	CA	CHM	8/12/2016	10,982
Mannino	Guy	C	North Pole	AK	CHM	3/1/1999	363,958
Manriquez JR	Antonio	M	Coachella	CA	CHM	5/11/2005	99,928
Manvel	Barry	J	Napa	CA	CHM	7/31/1998	40,929
Marcel	Perry	L	Alvarado	TX	DEN	11/12/2013	183,246
Marcus	Alex		Orlando	FL	CHM	2/10/2011	126,522
Marquez	Evelyn	W	Reseda	CA	CPY	2/28/2005	144,902
Martin JR	John	W	Zephyrhills	FL	CHM	1/21/1998	254,991
Marts	Richard	A	Los Angeles	CA	CHM	11/12/1999	102,823
Mattson	James	A	Berkeley	CA	OST	11/7/2001	184,684
Maxfield-Brown	Bobbi	L	Evansville	IN	CHM	1/21/1998	748,733
Mays-Good	Kathryn	M	Reseda	CA	CHM	1/21/1998	369,127
Mazhar	Mark		Los Angeles	CA	CHM	8/11/2005	128,669
McAdams	Glen	R	Spring	TX	CHM	3/1/1999	274,281
McAlees	Raymond	M	North Palm Beach	FL	CHM	11/12/1999	254,333
McCallum III	Ronald	D	Sunnyvale	CA	CHM	5/20/2004	24,007
McClure	Brian	C	Daytona Beach	FL	DEN	1/21/1998	15,960
McCombs	Martin		Long Beach	CA	CPY	11/12/1999	291,729
McConner	Sadie	B	Daytona Beach	FL	POD	1/21/1998	66,781
McElhinney	Thomas	E	Saint Augustine	FL	CHM	1/21/1998	1,314,339
McGee	Billie	J	Simi Valley	CA	CHM	1/21/1998	139,996
McMorris	Bruce		Long Beach	CA	CHM	11/12/1999	180,215
McRoberts	Lynne	S	Ontario Canada	FC	CHM	1/21/1998	107,137
Mcatamney	John	P	Garden City	NY	CHM	11/9/2010	26,988
Mcghee	Stephanie	Y	La Marque	TX	CHM	5/19/2009	41,065
Mckay	Kevin	J	Dallas	TX	CHM	11/10/2004	67,992
Mcmahan	Gregory	E	Anaheim	CA	DEN	11/18/2011	32,026
Meade	Madeline	M	Cleveland	OH	DEN	1/21/1998	75,797
Meggs	Carl	M	Belize	FC	DEN	8/15/2003	114,213
Melendez	Angelina		Bronx	NY	POD	5/19/2009	302,414
Melker	Neil	L	Princeton	NJ	DEN	5/19/2009	239,751
Menezes	Michael	H	Tampa	FL	DEN	2/10/2011	216,799
Mihalakis	Georgia		Bronx	NY	OST	1/21/1998	505,900
Milanes-Scott	Barbara	J	Northridge	CA	MED	1/21/1998	213,074
Milgram	Roman		Brooklyn	NY	DEN	1/19/2017	44,694
Miller	Gaylon	D	Bixby	OK	CHM	2/14/2012	95,135
Miller	Brad	T	Costa Mesa	CA	CHM	1/21/1998	23,056
Miller	Bradley	G	Beverly Hills	CA	MED	1/21/1998	102,590
Millon	Jeffrey	M	Lithonia	GA	MED	1/21/1998	201,274
Mills	Stephen	M	Powell	OH	CHM	3/25/2019	6,122
Mitchell	Warren	A	Yucaipa	CA	DEN	8/1/2000	477,750
Mizell	William	L	Los Lunas	NM	OST	8/12/2016	281,160
Moarefi	Mahmdud	R	Los Angeles	CA	CHM	2/17/2000	74,067
Mohammadkhani	Alireza	D	Chatsworth	CA	CHM	8/11/2005	55,775
Moler	Amy	M	Westerville	OH	MED	8/22/2017	20,067
Moore	Scott	P	Citrus Heights	CA	CHM	2/20/2007	23,364
Morita	Phuong	T	Irvine	CA	CHM	3/1/1999	122,335
Moroney	William	P	Nashville	TN	CHM	4/24/1998	80,072
Morrone	Mark	J	Los Angeles	CA	DEN	7/31/1998	222,053
Moulds JR	Dan	R	Chattanooga	TN	DEN	2/1/2001	211,036
Mouton	Marsha	E	Los Angeles	CA	MED	1/21/1998	107,103
Muecke	Lee	N	Houston	TX	MED	8/12/2016	1,279
Muenker	Mark	E	Hillsboro	OR	CHM	7/31/1998	293,653
Mullinax	Jeffrey	S	Windsor	CA	CHM	5/11/2005	27,832

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 1, 2020—Continued

Last name	First name	MI	City	State	Discipline	Date reported	Amount due
Munoz	Luis	R	Chicago	IL	MED	11/12/2013	617,903
Murphy	John	P	Black Earth	WI	CHM	7/6/2012	35,967
Murphy	Richard	N	North Bergen	NJ	CHM	1/21/1998	1,484,705
Murphy	Marc	A	Rancho Santa Margar	CA	CHM	1/21/1998	159,861
Myers	Karen	A	Redondo Beach	CA	MED	10/30/2003	237,719
Myers	Michael	D	San Rafael	CA	CPY	7/6/2012	52,944
Nagel	Douglas		Herndon	VA	CHM	8/12/2016	48,038
Nappi	Neil	A	West Palm Beach	FL	CHM	3/1/1999	225,187
Nason	Christian	W	Holly Springs	NC	CHM	5/18/2010	96,934
Navai	Mehdi	N	Alhambra	CA	CHM	1/21/1998	425,026
New	Richard	A	Conway	SC	CHM	2/14/2013	85,670
Newsome	Raymond	E	Desoto	TX	CHM	11/2/2002	243,268
Newsome	Dorita		Livingston	NJ	DEN	5/19/2009	71,296
Nguyen	Michael	M	Milpitas	CA	MED	11/9/2006	55,331
Nguyen	Ho	H	La Puente	CA	CHM	11/18/2011	147,421
Nguyen	Anh		Sacramento	CA	DEN	11/18/2011	33,669
Nguyen	Charlene	D	La Habra	CA	CHM	5/7/2013	33,786
Nguyen	Tuan	H	Fountain Valley	CA	OST	11/12/2013	158,525
Nichols	Victoria	G	Encinitas	CA	CPY	8/12/2016	12,196
Nieman	Edward		Riverside	CA	CHM	2/1/2001	116,972
Ninomiya	Jesse	K	Honolulu	HI	DEN	5/17/2001	165,462
Nipper-Collins	Kristie	L	Lutz	FL	OST	2/10/2011	42,876
Nkuku	Christopher	N	Berkeley	IL	MED	5/17/2001	73,692
Nnokam	Kennedy	I	Jasper	TX	PUB	9/24/2014	64,501
Nolasco	Elizabeth	R	Brooklyn	NY	MED	11/12/2013	18,258
Norville	Michael	T	Costa Mesa	CA	CHM	1/21/1998	217,393
Ocon	Luis	E	Salinas	CA	CHM	10/30/2003	11,590
Ofor	Chukwu	E	Houston	TX	OPT	8/12/2016	45,010
Olajide	Gbolahan	A	Corona	CA	CHM	5/19/2009	349,634
Olberg	Gregory	S	Hayward	CA	CHM	3/1/1999	119,556
Owens	James	R	Evans	GA	CHM	1/21/1998	14,967
Owens	Gregory	A	Claremore	OK	CHM	1/21/1998	52,448
Pacheco	Carlos	A	McAllen	TX	MED	9/24/2014	33,062
Padilla-Torres	Carlos		Ponce	PR	OPT	5/31/2018	21,654
Palmer	Becky	A	Fallbrook	CA	CHM	1/21/1998	193,936
Palmer	Richard	M	Thousand Oaks	CA	CHM	3/1/1999	264,347
Palmer-Mitchell	Donna	C	Phoenix	AZ	POD	1/21/1998	137,282
Pankey	John		Oakland	CA	CHM	8/5/2004	149,617
Parkin	Dianne	E	Houston	TX	MED	9/24/2014	21,440
Parsa-Forspte	Sepideh		San Clemente	CA	CHM	11/18/2011	49,579
Patterson JR	Arthur	E	Holmdel	NJ	CHM	9/24/2014	62,183
Paunovic	Susan	J	Hopewell Jct	NY	DEN	11/2/2000	14,606
Payne	Patricia	D	Long Beach	CA	OPT	11/14/2019	126,105
Peerenboom-Grenier	Paula	J	Viroqua	WI	CHM	11/7/2001	45,212
Pehush	Marie	L	Florida	NY	CHM	3/25/2019	103,633
Pellegrini	John	H	Huntington	WV	OST	3/25/2019	182,098
Pennington	Bradley	R	Denver	CO	CHM	5/31/2018	34,893
Perez	Daysi	E	New York	NY	CHM	4/24/1998	160,784
Perkins	Daniel	R	Lahaina	HI	CHM	2/18/2020	126,466
Perlmutter	Mark	A	Ann Arbor	MI	CHM	2/23/2010	75,617
Perrault	Mark	D	Culver City	CA	MED	5/19/2009	145,841
Perry	John	E	Houston	TX	MED	9/24/2014	57,728
Petrosky	Michael	J	Mandeville	LA	CHM	4/24/1998	302,618
Pham	Nghi	D	Fountain Valley	CA	CHM	1/21/1998	121,540
Pham	Vinh	H	Fountain Valley	CA	DEN	5/17/2001	261,559
Philipson	David		Huntington Beach	CA	CHM	11/12/1999	182,475
Pierson	Steven	R	Minneapolis	MN	CHM	8/17/2007	95,921
Pigott	Abu	G	Alameda	CA	CHM	11/12/2013	82,603
Pinson	Jeffrey	R	El Paso	TX	CHM	11/12/1999	119,880
Podry	Robert	J	Simi Valley	CA	CHM	1/21/1998	143,407
Ponder III	Alvin	F	Brooklyn	NY	MED	1/21/1998	222,633
Porter	Jacqueline	R	Washington	DC	POD	1/21/1998	160,053
Potok	Leonard	A	Brooklyn	NY	DEN	3/1/1999	105,181
Potts	David	A	Pasadena	TX	CHM	9/24/2014	29,902
Powell	Carlton	F	Elkins Park	PA	DEN	1/21/1998	145,803
Powers	Thomas	P	Oklahoma City	OK	CHM	2/15/2002	3,725
Pratt	Kerrie	G	Los Angeles	CA	CHM	7/6/2012	58,095
Price	Steven	V	Los Angeles	CA	DEN	1/21/1998	3,931
Pritchard	Doyle	P	El Centro	CA	CHM	11/7/2001	33,054
Prom	Van	S	Modesto	CA	CHM	8/22/2017	73,621
Pulli	Louise	A	Green Lane	PA	CHM	8/22/2017	6,042
Puryear	Cheryll	D	Houston	TX	CHM	2/17/2000	207,427

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 1, 2020—Continued

Last name	First name	MI	City	State	Discipline	Date reported	Amount due
Pust	Keith	W	Lake Elsinore	CA	CPY	1/21/1998	127,685
Quirke	Clement		Venice	FL	POD	2/8/2017	223,147
Radetic	Peter	M	Eagle	ID	CHM	11/17/2009	98,328
Radtke	Joseph	D	Pueblo	CO	OST	9/24/2014	75,960
Ramirez	Richard	R	Houston	TX	CHM	2/28/2005	35,756
Ramu	Nalaya		Beaumont	CA	DEN	5/14/2002	100,696
Rappa	Richard	J	North Haven	CT	CHM	5/11/2005	69,785
Rashti	Kouros		Encino	CA	DEN	5/14/2002	308,772
Ratliff	Cynthia		Aptos	CA	CHM	2/1/2006	292,160
Ravinski	Deborah	G	Plymouth	MA	CHM	8/12/2016	6,715
Rayas-Felix	Magdalena		Los Angeles	CA	CHM	1/21/1998	74,196
Reddick	David	J	Miami	FL	MED	11/14/2007	163,075
Reese-Thurmond	Elaine	M	Chicago	IL	MED	1/21/1998	171,395
Renz	Howard	W	Astoria	NY	CHM	1/21/1998	96,022
Rey	Jorge	E	Chino	CA	CHM	2/1/2001	34,486
Reyes	Danniell	J	Bethlehem	PA	CHM	7/6/2012	146,609
Rhine	Cecil	T	Lawrenceville	GA	CHM	1/21/1998	100,245
Ribera	Alfred	R	Miami	FL	CHM	3/1/1999	243,981
Rice	William	M	Malden	MA	CHM	8/5/1999	188,566
Richardson	Joseph	M	Fayetteville	NC	DEN	1/21/1998	793,443
Richardson	Katherine	J	Oakland	CA	CPY	7/6/2012	449,026
Richichi	Mark	S	Center Moriches	NY	CHM	2/15/2002	181,448
Richmond	Katherine	L	Cleveland	OH	OST	2/18/2020	182,084
Ritto	Sharlene	M	Corona	CA	POD	11/12/2013	263,990
Robinson	Bruce	K	Jupiter	FL	CHM	1/21/1998	422,950
Robinson	Glenn	R	Dallas	TX	CHM	3/3/2015	127,772
Rogers	Thomas	C	Santa Ana	CA	CHM	3/1/1999	233,334
Romero	Gloriana	M	Guaynabo	PR	MED	2/8/2017	133,085
Rosenfeld	Jeffre	B	Los Angeles	CA	CHM	1/21/1998	126,026
Roshy	Gary	L	Lake City	FL	CHM	1/21/1998	505,534
Ross	Roger	A	Coraopolis	PA	CHM	1/21/1998	48,901
Rostami	Helena		Calabasas	CA	CHM	5/16/2011	31,041
Rothman	Laura	L	Arroyo Grande	CA	CHM	11/7/2001	10,734
Rubinstein	David	M	Fort Lauderdale	FL	CHM	2/15/2002	68,973
Rushing	Gary	W	Matawan	NJ	CHM	2/15/2002	160,183
Russell	Rosalind	L	Houston	TX	DEN	3/11/2015	1,727
Russell	Robert	J	Hollywood	FL	CHM	1/21/1998	10,538
Ryan	Kathleen		West Springfield	MA	POD	5/19/2009	126,838
Saadia	Sammy		Brooklyn	NY	DEN	7/30/2013	185,309
Sainez	Juana	A	Maryland	NY	MED	2/2/2018	85,920
Sainten	Adrienne	C	San Leandro	CA	CHM	8/26/2009	18,950
Saldana-Quinonez	Salvador	S	La Puente	CA	CHM	7/6/2012	39,908
Sambor	David	H	Lockport	NY	DEN	11/12/1999	11,706
Santa Cruz	Matthew	E	Tampa	FL	CHM	5/19/2009	46,252
Sargent	John	F	Lawndale	CA	CHM	1/21/1998	231,139
Sastre	Armando	A	Cortez	CO	DEN	11/9/2010	107,262
Saunders	Ronald	W	San Antonio	TX	CHM	3/25/2019	34,127
Savage	Robert	L	Harrisburg	PA	DEN	5/31/2018	128,262
Schalk	Ronald	R	Corpus Christi	TX	CHM	5/14/2016	68,612
Schiff	Barbara	S	Woodland Hills	CA	CHM	2/17/2000	137,583
Schow	Kenneth	M	Glendale	CA	CHM	1/21/1998	169,732
Schroder	Anthony	M	Middletown	NY	DEN	1/21/1998	91,207
Schulten	Eric	A	Sarasota	FL	MED	11/2/2000	219,991
Schwartz	Eric	G	Atlantic Beach	NY	DEN	1/21/1998	250,250
Scruggs	Virginia	M	Seneca	SC	OST	11/26/2012	71,356
Scully	Stephen	M	Redondo Beach	CA	CHM	3/1/1999	52,841
Sek	Amaramony	B	Houston	TX	CHM	8/12/2016	23,873
Selko	Robert	L	Morro Bay	CA	CHM	3/1/1999	174,733
Sellitto	Rocco	V	Brooklyn	NY	POD	8/1/2000	267,510
Senatore	Salvatore		Kenilworth	NJ	CHM	11/9/2010	152,228
Sepahbody	Cyrus	J	Asbury Park	NJ	DEN	5/21/2019	69,903
Serratos	Ernesto		Crestline	CA	CHM	1/21/1998	134,890
Shahrestani	Shahriar		Anaheim	CA	CHM	3/1/1999	58,190
Shanefelter III	Charles	D	San Francisco	CA	CHM	1/21/1998	41,928
Shapiro	Michael	S	Newhall	CA	CHM	1/21/1998	129,774
Shapley	Kevin	N	Concord	CA	CHM	3/2/2004	46,084
Shaw	Michael	G	Inglewood	CA	MED	1/21/1998	115,574
Shaw	Linda	J	Gladwyne	PA	DEN	1/21/1998	32,687
Shear	David	S	Staten Island	NY	CHM	1/21/1998	220,815
Sheehan	Alex	J	West Palm Beach	FL	CHM	9/24/2014	46,255
Sheehy	Daniel	J	Middletown	CA	CHM	2/28/2005	66,825
Shin	Hui-Yong		Los Angeles	CA	DEN	1/21/1998	100,412

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 1, 2020—Continued

Last name	First name	MI	City	State	Discipline	Date reported	Amount due
Shoeleh	Hossien	M	Irvine	CA	DEN	1/21/1998	248,979
Siguenza	Francisco	A	Maspeth	NY	OST	8/12/2016	156,147
Simon	Greg	L	Murrieta	CA	CHM	1/21/1998	234,190
Simpson	Ashley	L	Allston	MA	MED	2/10/2011	343,627
Slusher-Maroudas	Patricia	L	Gilroy	CA	CHM	11/12/2013	11,552
Smith	Stacey	D	Malibu	CA	CHM	8/1/2000	171,955
Smith	Jessica		Downey	CA	CHM	1/21/1998	168,455
Smith	Michael	P	Santa Ana	CA	MED	5/21/2019	74,489
Smith	Lee	A	Sterling	VA	CHM	5/31/2018	55,737
Smith	Rusty	A	Santa Barbara	CA	CHM	3/1/1999	10,083
Smith	Michael	D	Bethel Park	PA	DEN	8/5/2004	414,010
Smith	George		Philadelphia	PA	MED	1/19/2017	611,048
Smukler	Evie	L	Los Angeles	CA	CPY	1/21/1998	39,520
Snavely	Danny	H	San Juan Capistrano	CA	CHM	8/21/2015	324,001
Snyder	Mark	S	Roslyn	NY	CHM	12/11/2018	17,306
Sokol	Louis	J	Stuart	FL	CHM	11/12/1999	61,971
Sosa	Richard		Colton	CA	CHM	3/1/1999	97,326
Soto	Vera	A	Fort Lauderdale	FL	OPT	5/7/2008	20,883
Sparks	Stacey	L	Houston	TX	CHM	11/26/2012	80,889
Spears	Timothy	P	Arlington	TX	CHM	3/25/2019	45,258
Spicer	Mary	C	Essex Junction	VT	CHM	7/26/2018	16,616
St Juste	Dominique		Brooklyn	NY	DEN	8/1/2000	113,441
Staley	Judith	M	Annapolis	MD	CPY	4/25/2014	113,566
Stalker	James	W	Castro Valley	CA	CHM	2/10/2011	15,550
Stanbridge	Gary	R	Whittier	CA	CHM	2/28/2005	44,121
Steder	Sandra		San Rafael	CA	CPY	8/5/2004	82,621
Steiner	Jean Marie		Sunnyvale	CA	CHM	5/15/2000	22,460
Steinfeld	Audrey	G	Tarzana	CA	CHM	2/17/2000	267,064
Stephens	Charles	N	Milledgeville	GA	CHM	5/19/2009	58,651
Stevenson	Teresa	M	Los Angeles	CA	CPY	1/21/1998	150,851
Stoltz	William	D	Grants Pass	OR	CHM	5/19/2009	332,700
Stone	Steven	D	San Leandro	CA	CHM	1/21/1998	63,787
Street	James	F	Gainesville	GA	CHM	11/12/2013	84,639
Stricklan	David	K	Haverton	PA	MED	7/26/2018	204,036
Strus	Deborah	A	San Antonio	TX	MED	11/12/2013	129,549
Sturgeon	David	E	Malibu	CA	DEN	11/14/2019	194,991
Sullivan	Daniel	B	Fruita	CO	DEN	5/31/2018	5,244
Sullivan	John	M	Corpus Christi	TX	CHM	8/22/2017	124,090
Sullivan	Joseph	C	Burbank	CA	CHM	1/21/1998	129,405
Sullivan	John	K	Eugene	OR	DEN	8/15/2019	52,504
Taylor	Scott	M	Thousand Oaks	CA	DEN	7/6/2012	179,117
Tchakalian	Leon	J	Van Nuys	CA	CHM	11/7/2001	20,109
Teague	Jenette		Los Angeles	CA	DEN	11/7/2001	151,928
Tennant	Michael	D	Wheat Ridge	CO	CHM	11/12/1999	98,332
Thomas	Randy	L	Fairbanks	AK	DEN	4/24/1998	236,784
Thomas	Gordon	A	Atlanta	GA	CHM	1/21/1998	225,169
Thomas Sr	Robert	B	Stone Mountain	GA	DEN	1/21/1998	475,572
Thompson	Emma	R	Grenada West Indies	FC	MED	2/15/2002	90,259
Tierney	Richard	W	Atlanta	GA	POD	8/5/1999	431,248
Tolbert JR	William		Los Angeles	CA	MED	11/12/2013	79,172
Tomlin-Knight	Teresa	L	Manahawkin	NJ	POD	2/11/2008	83,064
Toporovsky	Nathan	A	White Plains	NY	DEN	2/8/2017	23,139
Townsend	Thomas	E	Fortmill	SC	CHM	4/24/1998	9,498
Tramontana	Raul	E	Cincinnati	OH	OPT	5/14/2002	229,941
Tran	Ngoc	H	Simi Valley	CA	CHM	3/1/1999	109,356
Tran	Huong	N	Carpinteria	CA	CHM	8/12/2016	65,282
Tran	Thuan	K	Henderson	NV	DEN	8/12/2016	103,601
Trumbo	Traig	T	Sunland	CA	CHM	3/1/1999	96,506
Tschabrun	Kevin	L	Holdrege	NE	DEN	3/1/1999	122,068
Tumas	Mary	D	Brielle	NJ	CHM	3/11/2015	90,256
Turner	Nancy	A	San Francisco	CA	CHM	1/21/1998	25,503
Urquhart	Charles	N	Reading	PA	DEN	11/14/2019	71,481
Ussery	Marvin		Los Angeles	CA	DEN	8/12/2016	58,126
Vacula	Nicole	A	Tonawanda	NY	CPY	8/12/2016	58,662
Vafaee	Mohammadali		Santa Monica	CA	CHM	2/28/2005	24,855
Vaishvila	Gail	A	Santa Monica	CA	CHM	8/1/2000	237,141
Valicenti	Patrick	J	Wallkill	NY	DEN	8/5/2004	146,858
Vanrensselaer	Jeffrey	A	Lake Forest	CA	CHM	4/24/1998	101,229
Vardanian	Michael	A	Fullerton	CA	CHM	1/21/1998	118,149
Vega	Javier	J	Rancho Cucamonga	CA	CHM	8/12/2016	53,568
Vernon	Earl	M	Davenport	IA	CHM	1/21/1998	1,794
Vessels	Steven	L	Redlands	CA	CHM	1/21/1998	214,219

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 1, 2020—Continued

Last name	First name	MI	City	State	Discipline	Date reported	Amount due
Vessey	Ned		Arcadia	CA	CHM	8/1/2000	69,014
Villaverde	John	J	Vestavia	AL	MED	8/22/2017	76,266
Villegas	Isreal		Goddard	KS	CHM	3/25/2019	45,503
Villeta	Javier	G	Kissimmee	FL	MED	3/1/1999	341,503
Viloria-Else	Jenifer	A	North Hollywood	CA	CHM	1/21/1998	187,838
Voboril JR	William	R	Carlisle	IA	POD	8/5/1999	27,277
Vosburgh	Stephen	E	Lutz	FL	CHM	1/21/1998	164,740
Wada	Isao	N	Oakland	CA	CHM	7/6/2012	25,308
Wade	Michael	J	La Quinta	CA	OST	5/19/2009	304,309
Wahdan	Buthayna	W	Jordan	FC	DEN	3/1/1999	170,430
Wainwright	Mark		Oakland	CA	DEN	7/6/2012	32,072
Walcher	Kevin	R	Booker	TX	CHM	5/14/2002	107,718
Walker	Joel	W	Annapolis	MD	MED	8/12/2016	57,343
Wall	Michael	J	Sandy	UT	MED	3/3/2015	141,863
Wallace	Owen		Tonkawa	OK	CHM	1/21/1998	53,743
Walsh	Richard	J	Ventura	CA	CHM	1/21/1998	41,976
Walton	Teri	R	Pasadena	CA	CPY	8/5/1999	189,509
Ward	Fairfield	A	Hampton	VA	DEN	8/12/2016	36,946
Warner	Arthur		San Ramon	CA	DEN	5/20/2004	133,942
Warner	Rick	A	Aurora	CO	CHM	11/7/2001	110,908
Washington	George	L	Baldwyn	MS	DEN	5/7/2013	589,338
Washington	Arthur	C	Houston	TX	MED	9/24/2014	24,213
Washington-Houzell	Patricia	L	Lakewood	CA	POD	8/10/2001	561,151
Weatherly	Darrel	F	Jacksonville	FL	OST	5/16/2011	605,593
Weil	Mitchell	A	San Clemente	CA	MED	1/21/1998	68,299
Weisheit-Dasylva	Lyn	D	Marietta	GA	CHM	3/1/1999	59,956
Welch	Ronald	B	Sandpoint	ID	CHM	3/1/1999	102,173
Westing	Denise	D	Alameda	CA	CHM	1/21/1998	121,763
Whedbee	Joseph	I	Redlands	CA	DEN	5/14/2002	144,015
Whigham	Gwendolyn	E	Houston	TX	CHM	3/1/1999	69,018
Whipkey	Douglas	G	Jensen Beach	FL	CHM	1/21/1998	139,400
Whitaker	Aaron	T	Washington	DC	DEN	5/19/2009	215,511
White	Judith	U	Huntington Beach	CA	CHM	1/21/1998	39,062
Whittlesey	James	B	Novato	CA	CHM	1/21/1998	58,546
Williams	Pamela	A	Buena Park	CA	PUB	1/21/1998	41,437
Williams	Simeon	J	Washington	DC	MED	3/1/1999	114,885
Williams	Johnnie		Hayward	CA	MED	3/25/2019	501,103
Williams	Brett	S	Los Angeles	CA	MED	5/14/2016	189,694
Williams	Duane	A	Livermore	CA	CHM	1/21/1998	129,743
Williams	David	L	Pasadena	CA	POD	1/21/1998	96,143
Winston	Gregg	O	Pompano Beach	FL	CHM	3/1/1999	208,726
Wong	Wan Sing	V	South San Francisco	CA	POD	10/30/2003	207,439
Wong	Matt	S	Mountain View	CA	CHM	11/9/2010	49,047
Wright-Benford	Sheila	A	Southfield	MI	POD	2/8/2017	63,078
Yeates	Terrance	C	Brooklyn	NY	DEN	1/21/1998	231,444
Yniguez	Alma	B	Newark	CA	CHM	2/20/2007	277,157
Yoste	Joseph		Brownsville	TX	DEN	8/12/2016	105,079
Yurick	Richard		Bay St Louis	MS	CHM	11/12/2013	62,939
Yurkovich	Mark	R	Bentleyville	PA	CPY	8/12/2016	59,379
Zaun	Timothy	M	Lakewood	OH	DEN	1/21/1998	202,026
Zeitsoff-Mahar	Deborah	L	Aptos	CA	CHM	1/21/1998	140,936
Zucker	Ronald	G	Long Beach	NY	CHM	4/24/1998	229,163
Totals	683						99,697,674

[FR Doc. 2020–21065 Filed 9–23–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0092]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Statewide Family Engagement Centers—Annual Performance Reporting Form

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before October 26, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Yeh, (202) 205–5798.

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: Statewide Family Engagement Centers—Annual Performance Reporting Form.

OMB Control Number: 1810–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 12.

Total Estimated Number of Annual Burden Hours: 360.

Abstract: This is a request for a new information collection in order to collect the Annual Performance Report (APR) for the Statewide Family Engagement Centers (SFEC) program. The collection of this information is part of the government-wide effort to improve the performance and accountability of all federal programs, under the Government Performance and Results Act (GPRA) passed in 1993, the Uniform Guidance, and the Education Department General Administrative Regulations (EDGAR). Under GPRA, a process for using performance indicators to set program performance goals and to measure and report program results was established. To implement GPRA, ED developed GPRA measures at every program level to quantify and report program progress required by the Elementary and Secondary Education Act of 1965 (ESEA), as amended. Under the Uniform Guidance and EDGAR, recipients of federal awards are required to submit performance and financial expenditure information. The GPRA program level measures and budget information for the Statewide Family Engagement Centers (SFEC) Program are reported in the Annual Performance Report (APR). The APR is required under 2 CFR 200.328 and 34 CFR 75.118 and 75.590. The annual report provides data on the status of the funded project that corresponds to the scope and objectives established in the approved application and any amendments. To ensure that accurate and reliable data are reported to Congress on program implementation and performance outcomes, the SFEC APR collects the raw data from grantees in a consistent format to calculate these data in the aggregate.

Dated: September 21, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–21068 Filed 9–23–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Request for Public Comment on the 2020 National Electric Transmission Congestion Study

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of public comment.

SUMMARY: The Department of Energy (Department) invites public comment on the 2020 National Electric Transmission Congestion Study (2020 Congestion Study) and is seeking comments on all aspects of the 2020 Congestion Study.

DATES: Comments must be received on or before November 23, 2020.

ADDRESSES: The study is available for review at *http://energy.gov/oe/congestion-study.* Written comments may be submitted electronically to *2020congestionstudy@hq.doe.gov.* All comments will be posted and available to the public at *http://energy.gov/oe/congestion-study.* Written comments may also be delivered by conventional mail to David Meyer, Office of Electricity, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585. In light of the national emergency and personnel limitations, commenters are encouraged to submit comments electronically. Commenters are further cautioned that all conventional mail to the Department is subject to an automatic security screening process that may take several weeks and sometimes renders mailed material illegible.

FOR FURTHER INFORMATION CONTACT: Mr. David Meyer, Division of Transmission Permitting and Technical Assistance, Office of Electricity, at *David.Meyer@hq.doe.gov,* 202–586–3118.

SUPPLEMENTARY INFORMATION: Section 216(a) of the Federal Power Act, codified at 16 U.S.C. 824p(a), directs the Secretary of Energy to conduct an electric transmission congestion study every three years, and to prepare it in consultation with affected states and regional reliability organizations. Section 216(a) authorizes the Secretary to designate a geographic area in which a congestion study shows that consumers are being adversely affected

by transmission constraints or congestion as a national interest electric transmission corridor. In the 2020 Congestion Study, the Department has not identified conditions that would merit proposing the designation of such a corridor (or corridors). Commenters, however, may believe that congestion is occurring in a specific area, and may wish to bring the area (or areas) to the Department's attention through their comments. The study is available for review at *http://energy.gov/oe/congestion-study.* All comments received will be made publicly available on *http://energy.gov/oe/congestion-study.* After reviewing and considering the public comments, the Department will prepare a report summarizing the comments and its responses to them, and indicating whether one or more national interest electric transmission corridors will be proposed.

Signing Authority

This document of the Department of Energy was signed on September 18, 2020, by Bruce J. Walker, Assistant Secretary, Office of Electricity, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 18, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–21040 Filed 9–23–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3115–006.
Applicants: Waterside Power, LLC.
Description: Third Supplement to April 20, 2020 Triennial Market Power Update for the Northeast Region of Waterside Power, LLC.
Filed Date: 9/17/20.
Accession Number: 20200917–5141.
Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER10–3115–007.
Applicants: Waterside Power, LLC.
Description: Supplement to June 30, 2020 Updated Market Power Analysis of Waterside Power, LLC.
Filed Date: 9/17/20.
Accession Number: 20200917–5140.
Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER10–3117–008.
Applicants: Lea Power Partners, LLC.
Description: Third Supplement to April 20, 2020 Triennial Market Power Update for the Southwest Power Pool Region of Lea Power Partners, LLC.
Filed Date: 9/17/20.
Accession Number: 20200917–5144.
Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER13–445–009; ER11–4060–009; ER11–4061–009; ER14–2823–007; ER15–1170–005; ER15–1171–005; ER15–1172–005; ER15–1173–005.
Applicants: Badger Creek Limited, Bear Mountain Limited, Chalk Cliff Limited, Double C Generation Limited Partnership, High Sierra Limited, Kern Front Limited, Live Oak Limited, McKittrick Limited.
Description: Second Supplement to April 20, 2020 Triennial Market Power Update for the Southwest Power Pool Region of Badger Creek Limited, et al.
Filed Date: 9/17/20.
Accession Number: 20200917–5128.
Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER19–1955–004.
Applicants: Public Service Company of New Mexico.
Description: Compliance filing: Order No. 845 Compliance Filing to be effective 5/22/2019.
Filed Date: 9/18/20.
Accession Number: 20200918–5133.
Comments Due: 5 p.m. ET 10/9/20.

Docket Numbers: ER19–1958–003.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Third Compliance filing per Commission's 5/21/20 order in Docket No. ER19–1958 to be effective 7/20/2020.
Filed Date: 9/18/20.
Accession Number: 20200918–5024.
Comments Due: 5 p.m. ET 10/9/20.

Docket Numbers: ER19–1959–002.
Applicants: Avista Corporation.
Description: Compliance filing: Avista Corp OATT Order 845/845A Compliance Filing to be effective 10/17/2020.
Filed Date: 9/18/20.
Accession Number: 20200918–5122.
Comments Due: 5 p.m. ET 10/9/20.

Docket Numbers: ER19–2745–002.
Applicants: New Creek Wind LLC.
Description: Report Filing: Refund Report Under Docket ER19–2745 to be effective N/A.
Filed Date: 9/18/20.
Accession Number: 20200918–5051.
Comments Due: 5 p.m. ET 10/9/20.

Docket Numbers: ER20–687–001.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Compliance filing: Order Nos. 845 and 845–A Second Compliance Filing to be effective 2/25/2020.
Filed Date: 9/18/20.
Accession Number: 20200918–5132.
Comments Due: 5 p.m. ET 10/9/20.

Docket Numbers: ER20–1648–002.
Applicants: Inter-Power/AhlCon Partners, L.P.
Description: Notice of Change in Status of Inter-Power/AhlCon Partners, L.P.
Filed Date: 9/17/20.
Accession Number: 20200917–5184.
Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER20–2519–000.
Applicants: East Line Solar, LLC.
Description: Supplement to July 28, 2020 East Line Solar, LLC tariff filing.
Filed Date: 9/9/20.
Accession Number: 20200909–5179.
Comments Due: 5 p.m. ET 9/21/20.

Docket Numbers: ER20–2911–000.
Applicants: Appalachian Power Company.
Description: Tariff Cancellation: Notice of Cancellation AEPSC-Wolf Hills Energy Interconnection & Operation Agrmt to be effective 11/21/2020.
Filed Date: 9/17/20.
Accession Number: 20200917–5113.
Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER20–2912–000.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ATSI submits revised IA SA Nos. 3993 to be effective 11/18/2020.
Filed Date: 9/17/20.
Accession Number: 20200917–5127.
Comments Due: 5 p.m. ET 10/8/20.

Docket Numbers: ER20–2914–000.
Applicants: PJM Interconnection, L.L.C.
Description: Request for Waiver of Tariff Provisions, et al. of PJM Interconnection, L.L.C.
Filed Date: 9/17/20.
Accession Number: 20200917–5176.
Comments Due: 5 p.m. ET 9/22/20.

Docket Numbers: ER20–2915–000.
Applicants: NSTAR Electric Company.
Description: Tariff Cancellation: Cancellation of Vineyard Wind Design

and Engineering Agreement to be effective 7/10/2020.

Filed Date: 9/18/20.

Accession Number: 20200918–5095.

Comments Due: 5 p.m. ET 10/9/20.

Docket Numbers: ER20–2916–000.

Applicants: Alabama Power Company.

Description: Tariff Cancellation: Bird Dog Solar LGIA Termination Filing to be effective 9/18/2020.

Filed Date: 9/18/20.

Accession Number: 20200918–5102.

Comments Due: 5 p.m. ET 10/9/20.

Docket Numbers: ER20–2917–000.

Applicants: Alabama Power Company.

Description: Tariff Cancellation: Bulldog Solar (Bulldog Solar I) LGIA Termination Filing to be effective 9/18/2020.

Filed Date: 9/18/20.

Accession Number: 20200918–5103.

Comments Due: 5 p.m. ET 10/9/20.

Docket Numbers: ER20–2918–000.

Applicants: Alabama Power Company.

Description: Tariff Cancellation: Sonny Solar LGIA Termination Filing to be effective 9/18/2020.

Filed Date: 9/18/20.

Accession Number: 20200918–5104.

Comments Due: 5 p.m. ET 10/9/20.

Docket Numbers: ER20–2919–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Request for One-Time, Limited Waiver of Tariff Provision, et al. of Tri-State Generation and Transmission Association, Inc.

Filed Date: 9/18/20.

Accession Number: 20200918–5127.

Comments Due: 5 p.m. ET 10/9/20.

Docket Numbers: ER20–2920–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing: OATT Revisions to Attachment A–1 to be effective 11/18/2020.

Filed Date: 9/18/20.

Accession Number: 20200918–5128.

Comments Due: 5 p.m. ET 10/9/20.

Docket Numbers: ER20–2921–000.

Applicants: Glidepath Ventures, LLC.

Description: Petition for Waiver, et al. of Glidepath Ventures, LLC.

Filed Date: 9/18/20.

Accession Number: 20200918–5129.

Comments Due: 5 p.m. ET 10/2/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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 18, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–21104 Filed 9–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP14–347–000; CP19–19–000; CP14–511–000]

Magnolia LNG, LLC; Kinder Morgan Louisiana Pipeline LLC; Notice of Request for Extension of Time

Take notice that on September 11, 2020, Magnolia LNG, LLC (Magnolia) and Kinder Morgan Louisiana Pipeline LLC (KMLP) (collectively, Applicants) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until April 15, 2026, to construct and place into service the Magnolia LNG and Lake Charles Expansion Projects, as authorized in the April 15, 2016 Order Granting Authorization Under Section 3 of the Natural Gas Act and Issuing Certificates (April 15, 2016, Order).[1] The April 15th Certificate Order required the Applicants to complete construction and make the facilities available for service within five years of issuance, or by April 15, 2021.[2]

Magnolia states that global market conditions have impacted Magnolia's ability to secure long-term offtake contracts and achieve a final investment decision (FID) and that it is confident that it will execute commercial agreements that will support a positive FID within the requested timeframe. KMLP states that construction of the Lake Charles Expansion Project is dependent upon Magnolia achieving FID for the Magnolia LNG Project.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on the Applicants' request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file 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 Natural Gas Act (18 CFR 157.10).[3]

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[4] the Commission will aim to issue an order acting on the request within 45 days.[5] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[6] The Commission will not consider arguments that re-litigate the issuance of the April 15th Certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[7] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[8] The OEP Director, or his or her designee, will act on those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the

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[1] *Magnolia LNG, LLC,* 155 FERC 61,033 (2016), *reh'g denied,* 157 FERC 61,149 (2016).

[2] *Id.* at ordering paras. (B) and (D)(1).

[3] Only motions to intervene from entities that were party to the underlying proceeding will be accepted. *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 39 (2020).

[4] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2020).

[5] *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 40 (2020).

[6] *Id.* P 40.

[7] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[8] *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 40 (2020).

Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFile link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on October 9, 2020.

Dated: September 18, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–21106 Filed 9–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–520–000]

Notice of Request Under Blanket Authorization; Columbia Gas Transmission, LLC

Take notice that on September 9, 2020, Columbia Gas Transmission, LLC (Columbia Gas), 700 Louisiana Street, Suite 700, Houston, Texas 77002, filed in Docket No. CP20–520–000 a prior notice request pursuant to Columbia Gas' blanket authority in Docket No. CP83–76–000 and sections 157.205 and 157.216(b) of the Commission's regulations under the Natural Gas Act for authorization to abandon four injection/withdrawal (I/W) wells and associated pipelines and appurtenances, located in the Holmes Storage Field in Holmes County, Ohio and the Wayne Storage Field located in Wayne County, Ohio (The Holmes and Wayne Wells Abandonment Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing is available for review on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020.

Any questions concerning this application may be directed to Sorana Linder, Director, Modernization & Certificates, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 700, Houston, Texas 77002, at (832) 320–5209, or at sorana *linder@tcenergy.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

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 commenter's will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenter's 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 and will not have the right to seek court review of the Commission's final order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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 the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments in lieu of paper using the eFile link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: September 18, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–21105 Filed 9–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1061–098]

Pacific Gas and Electric Company; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 1061–098.

c. *Date Filed:* August 24, 2020.

d. *Applicant:* Pacific Gas and Electric Company (PG&E).

e. *Name of Project:* Phoenix Hydroelectric Project.

f. *Location:* The existing project is located on the South Fork Stanislaus River and in the Tuolumne River Basin, in Tuolumne County, California. The project occupies 56.78 acres of federal land administered by the U.S. Forest Service and 2.14 acres administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jan Nimick, Vice President, Power Generation, Pacific Gas and Electric Company, 245 Market Street, San Francisco, CA 94105, (415) 973–0629.

i. *FERC Contact:* Jim Hastreiter, (503) 552–2760 or *james.hastreiter@ferc.gov*.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* October 23, 2020.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx* 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–1061–098.

m. This application is not ready for environmental analysis at this time.

n. *Project Description:* The Phoenix Project consists of: (1) A 535-foot-long and 132-foot-high concrete arch dam on the South Fork Stanislaus River, (2) a 172.3 acre reservoir, (3) a 133.1-foot-long and 20-foot-high concrete arch cushion dam, (4) a 15.38-mile-long Main Tuolumne Canal (MTC), (5) a Header Box (forebay), a 5,611-foot-long penstock, and a powerhouse with an impulse turbine rated at 1.6 megawatts.

PG&E operates the project for power generation and to meet Tuolumne Utility Districts (TUD) water supply needs. The water supply for TUD is delivered on a continuous basis to points along the MTC and downstream of the Phoenix Powerhouse. A 1983 Water Supply Agreement provides for TUD to receive water via the MTC during spill and non-spill conditions. During non-spill conditions, PG&E coordinates water deliveries with TUD to meet their demands and during spill conditions, PG&E operates the project to maximize generation, but is still obligated to provide water to TUD and to release the required minimum flows in the South Fork Stanislaus River.

PG&E is proposing to modify the existing project boundary to encompass all facilities necessary for operation and maintenance of the project. PG&E proposes to include many roads and trails within the project boundary (FLA, Volume III, Section 1.2.1.1), and adjust the boundary around Lyons Reservoir, along the Main Tuolumne Canal and several of its spill channels, and along the penstock. With these proposed changes, the area of land within the project boundary will increase for Bureau of Land Management lands to 1.55 acres, National Forest Lands to 29.78 acres, and private lands to 101.16 acres, and decrease for PG&E lands to 216.01 acres.

PG&E proposes to classify water years into five classifications based on unimpaired inflow into New Melones Reservoir: Critically Dry, Dry, Normal-Dry, Normal- Wet, and Wet Water Year (WY) types. The water years in the existing license are classified as either Dry or Normal.

PG&E also proposes to modify minimum instream flow release requirements from Lyons Dam to the South Fork Stanislaus River by WY type as depicted in Table 3.2–18 in Volume III of the application, and to modify the ramping rate requirement below Lyons Dam (limiting the maximum rate of change in river flow not to exceed 50 percent of the existing flow per hour and provide an end of spill ramping rate) to provide for slower recession rates from spills in summer, while maintaining water supply for TUD.

PG&E further proposes the following plans to protect and enhance environmental resources: (1) Spill Channel Erosion Evaluation and Mitigation Plan; (2) Streamflow and Reservoir Level Gaging Plan; (3) Vegetation and Integrated Pest Management Plan; (4) Wildlife Resources Plan; (5) Erosion Control Plan; (6) Hazardous Materials Management Plan; (7) Fire Prevention and Response Plan; (8) Project Roads and Trails Plan; (9) Recreation Plan; and (10) Historic Properties Management Plan.

o. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents via the internet through the Commission's Home Page (*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. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural Schedule:* The application will be processed according

to the following preliminary schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary)	November 2020.
Request Additional Information	November 2020.
Issue Acceptance Letter	February 2021.
Issue Scoping document 1 for comments	March 2021.
Request Additional Information (if necessary)	May 2021.
Issue Scoping Document 2	June 2021.
Issue Notice of Ready for Environmental Analysis	June 2021.
Commission Issues Environmental Assessment	December 2021.

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: September 18, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–21108 Filed 9–23–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0049; FRL–10014–75]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients (August 2020)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. 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 26, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the File Symbol 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 *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Anne Overstreet, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov;* or Marietta Echeverria, 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 pesticide petition 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).

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 *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. 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. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (*http://www2.epa.gov/pesticide-registration/public-participation-process-registration-actions*).

A. New Active Ingredient

1. *File Symbols:* 93778–R, 93778–E, 93778–G, and 93778–U. *Docket ID number:* EPA–HQ–OPP–2020–0250. *Applicant:* AgriMetis, LLC, c/o Wagner Regulatory Associates Inc, P.O. Box 640, Hockessin, DE 19707. *Product names:* L-Glufosinate Ammonium Technical, AgriMetis Glu-L280, AgriMetis Glu-L 280 SL, and AgriMetis Glu-L 280 SLX. *Active ingredient:* Herbicide—L-Glufosinate Ammonium at 77.62% (L-Glufosinate Ammonium Technical) and 24.5% (AgriMetis Glu-L280, AgriMetis Glu-L 280 SL, and AgriMetis Glu-L 280 SLX) *Proposed uses:* Banana; beet, sugar; bushberry, subgroup 13–07B; canola; corn, field; corn, sweet; cotton; fruit, citrus, group 10–10; fruit, pome, group 11–10; fruit, stone, group 12–12; grape; juneberry; lingonberry; nut, tree, group 14–12; non-crop, industrial areas and residential outdoor uses; olive; potato; salal and soybean. *Contact:* RD.

2. *File Symbol:* 94339–R. *Docket ID number:* EPA–HQ–OPP–2020–0457. *Applicant:* Better Air International Limited, 1 Ha-Tsmikha St., High Tech Park, Yokneam Illit 2069205, Israel (c/o Environmental Consulting, 15616 Plain Dealing Place, Manassas, VA 20112). *Product name:* EB–8. *Active ingredients:* Fungicide and Bactericide—*Bacillus subtilis* strain 3 at 0.02%, *Bacillus amyloliquefaciens* strain 298 at 0.02%, and *Bacillus subtilis* strain 281 at 0.02%. *Proposed use:* For the control or suppression of odor-causing and discoloration-causing bacterial and fungal growth in commercial and residential areas. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 10, 2020.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–21109 Filed 9–23–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2014–0738; FRL–10014–68–OAR]

Notice of Final Approval for an Alternative Means of Emission Limitation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; final approval.

SUMMARY: This document announces our approval of the alternative means of emission limitation (AMEL) request under the Clean Air Act (CAA) submitted by Lyondell Chemical Company (Lyondell) to operate multi-point ground flares (MPGFs) at its Channelview chemical plant in Houston, Texas. The U.S. Environmental Protection Agency (EPA) received no adverse comments on the request. This approval document specifies the operating conditions and monitoring, recordkeeping, and reporting requirements that this facility must follow to demonstrate compliance with the approved AMEL.

DATES: The approval of the AMEL request from Lyondell to operate MPGFs at the Lyondell Channelview chemical plant, as specified in this document, is effective on September 24, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2014–0738. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, 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 *https://www.regulations.gov/.*

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.* The EPA continues to carefully and continuously monitor information from the Centers for Disease Control, local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Ms. Angie Carey, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2187; fax number: (919) 541–0516; and email address: *carey.angela@epa.gov.*

SUPPLEMENTARY INFORMATION:

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:

AMEL alternative means of emission limitation
BTU/scf British thermal units per standard cubic foot
CAA Clean Air Act
CFR Code of Federal Regulations
EPA Environmental Protection Agency
Eqn equation
MPGF multi-point ground flare
NESHAP national emission standards for hazardous air pollutants
NHVcz net heating value of combustion zone gas
NHVvg net heating value of flare vent gas
NSPS new source performance standards
OAQPS Office of Air Quality Planning and Standards
POTBA propylene oxide tertiary butyl alcohol unit
scf standard cubic feet

Organization of this document. The information in this document is organized as follows:

I. Background
A. Summary
B. Regulatory Flare Requirements
II. Summary of Public Comments on the AMEL Request
III. AMEL for the MPGFs

I. Background

A. Summary

In a **Federal Register** notice published on May 29, 2020, the EPA provided public notice and solicited comment on the request under the CAA by Lyondell to operate MPGFs at its Channelview chemical plant in Houston, Texas (see 85 FR 32382). In that document, the EPA solicited comment on all aspects of the AMEL request, including the operating conditions specified in that document that are necessary to achieve a reduction in emissions of volatile organic compounds and organic hazardous air pollutants at least equivalent to the reductions required under the applicable CAA section 111(h)(1) or 112(h)(1) standards. Lyondell requested the AMEL for MPGFs to be used at a new propylene oxide tertiary butyl alcohol (''POTBA'') unit at its Channelview chemical plant. According to Lyondell, the POTBA unit is subject to the new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAP) for source categories identified in Table 1 below. These NSPS and NESHAP incorporate the flare design and operating requirements in the 40 CFR parts 60 and 63 General Provisions (*i.e.,* 40 CFR 60.18(b) and 63.11(b)) into the individual subparts. Lyondell submitted an AMEL request to operate a flare with

tip exit velocities greater than those allowed in 40 CFR 60.18 and 63.11 while achieving ≥ 96.5-percent combustion efficiency and 98-percent destruction efficiency.

This action provides a summary of our approval of this AMEL request.

B. Regulatory Flare Requirements

Provided below in Table 1 is a list of regulations, by subpart, that Lyondell has identified as applicable to the new POTBA unit's MPGFs described above. The middle column identifies the requirement in each cited NSPS or NESHAP that requires flares used to satisfy the NSPS or NESHAP meet the flare design and operating requirements in the 40 CFR parts 60 and 63 General Provisions (*i.e.,* 40 CFR 60.18(b) and 63.11(b)). Lyondell is seeking an AMEL for these flare requirements.

TABLE 1—SUMMARY OF APPLICABLE RULES TO EMISSIONS CONTROLLED BY MPGFS FOR THE POTBA

Applicable rules with vent streams going to control device(s)	Emission reduction requirements (allowing for use of a flare)	Provisions for alternative means of emission limitation
NSPS subpart Kb	60.112b(a)(3)(ii)	60.114b.
NSPS subpart VV	60.482–1, 60.482–10(d)	60.484.
NSPS subpart VVa	60.482–1a, 60.482–10a(d)	60.484a.
NSPS subpart III	60.612(b)	
NSPS subpart NNN	60.662(b)	
NSPS subpart RRR	60.702(b)	
NESHAP subparts F, G	63.102, 63.112(e), 63.113(a)(1)(i), 63.116(a)(2), 63.116(a)(3), 63.119(e)(1), 63.120(e)(1) through (4), 63.126(b)(2)(i), 63.128(b), 63.139(c)(3), 63.139(d)(3), 63.145(j).	63.6(g).
NESHAP subpart H	63.162, 63.172(d), 63.180(e)	63.162(b), 63.177.
NESHAP subpart V	61.242–1, 61.242–11(d)	63.6(g).

Lyondell is seeking an AMEL to operate MPGFs during both routine and emergency vent gas flows. Lyondell provided the information specified in the flare AMEL framework for pressure assisted MPGFs that was published in the **Federal Register** on April 21, 2016 (see 81 FR 23486), to support its AMEL request. Accordingly, the request followed the 2016 flare AMEL framework.

II. Summary of Public Comments on the AMEL Request

The Agency received no comments on this action. No adverse comment was received on the request.

III. AMEL for the MPGFs

The EPA is approving the AMEL request by Lyondell to operate MPGFs with tip exit velocities greater than those allowed in 40 CFR 60.18 and 63.11 while achieving ≥96.5-percent combustion efficiency and 98-percent destruction efficiency. We are also establishing in this document the operating conditions for this MPGFs as part of this approval. These operating conditions, which are the same as those set forth in the May 29, 2020, **Federal Register** document, will ensure that these flares will achieve emission reductions at least equivalent to the reductions required under the applicable CAA section 111(h)(1) or 112(h)(1) standards. The operating conditions are as follows:

(1) All MPGFs must be operated such that the combustion zone gas net heating value (NHV_{cz}) is ≥800 British thermal units per standard cubic foot (BTU/scf). Owners or operators must demonstrate compliance with the applicable NHV_{cz} on a 15-minute block average. Owners or operators must calculate and monitor for the NHV_{cz} according to the following:

(a) Calculation of NHV_{cz}

(i) If an owner or operator elects to use a monitoring system capable of continuously measuring (*i.e.,* at least once every 15 minutes), calculating, and recording the individual component concentrations present in the flare vent gas, the net heating value of flare vent gas (NHV_{vg}) shall be calculated using the following equation:

$$NHV_{vg} = \sum_{i=1}^{n} x_i NHV_i \qquad \text{(Eqn. 1)}$$

where:

NHV_{vg} = Net heating value of flare vent gas, BTU/scf.

Flare vent gas means all gas found just prior to the tip. This gas includes all flare waste gas (*i.e.,* gas from facility operations that is directed to a flare for the purpose of disposing the gas), flare sweep gas, flare purge gas, and flare supplemental gas, but does not include pilot gas.

i = Individual component in flare vent gas.

n = Number of components in flare vent gas.

x_i = Concentration of component i in flare vent gas, volume fraction.

NHV_i = Net heating value of component i determined as the heat of combustion where the net enthalpy per mole of offgas is based on combustion at 25 degrees Celsius (°C) and 1 atmosphere (or constant pressure) with water in the gaseous state from values published in the literature, and then the values are converted to a volumetric basis using 20 °C for ''standard temperature.'' Table 3 summarizes component properties including net heating values.

(ii) If the owner or operator uses a continuous net heating value monitor, the owner or operator may, at their discretion, install, operate, calibrate, and maintain a monitoring system capable of continuously measuring, calculating, and recording the hydrogen concentration in the flare vent gas. The owner or operator shall use the following equation to determine NHV_{vg} for each sample measured via the net heating value monitoring system.

$$NHV_{vg} = NHV_{measured} + 938x_{H2} \quad \text{(Eqn. 2)}$$

where:

NHV_{vg} = Net heating value of flare vent gas, BTU/scf.

$NHV_{measured}$ = Net heating value of flare vent gas stream as measured by the continuous net heating value monitoring system, scf.

x_{H2} = Concentration of hydrogen in flare vent gas at the time the sample was input into the net heating value monitoring system, volume fraction.

938 = Net correction for the measured heating value of hydrogen (1,212 –274), BTU/scf.

(iii) NHV_{cz} shall be calculated using Equation 3.

$$NHV_{cz} = \frac{Q_{vg} \times NHV_{vg} + Q_{ag} \times NHV_{ag}}{(Q_{vg} + Q_{ag})} \quad \text{(Eqn. 3)}$$

where:

NHV_{cz} = Net heating value of combustion zone gas, BTU/scf.

NHV_{vg} = Net heating value of flare vent gas for the 15-minute block period as determined according to (1)(a)(i), BTU/scf.

Q_{vg} = Cumulative volumetric flow of flare vent gas during the 15-minute block period, scf.

Q_{ag} = Cumulative volumetric flow of assist gas during the 15-minute block period, standard cubic feet flow rate, scf.

NHV_{ag} = Net heating value of assist gas, BTU/scf; this is zero for air or for steam.

(b) For all flare systems specified in this document, the operator shall install, operate, calibrate, and maintain a monitoring system capable of continuously measuring the volumetric flow rate of flare vent gas (Q_{vg}), the volumetric flow rate of total assist steam (Q_s), the volumetric flow rate of total assist air (Q_a), and the volumetric flow rate of total assist gas (Q_{ag}).

(i) The flow rate monitoring systems must be able to correct for the temperature and pressure of the system and output parameters in standard conditions (*i.e.,* a temperature of 20 °C (68 °F) and a pressure of 1 atmosphere).

(ii) Mass flow monitors may be used for determining volumetric flow rate of flare vent gas provided the molecular weight of the flare vent gas is determined using compositional analysis so that the mass flow rate can be converted to volumetric flow at standard conditions using the following equation:

$$Q_{vol} = \frac{Q_{mass} \times 385.3}{MW_t} \quad \text{(Eqn. 6)}$$

where:

Q_{vol} = Volumetric flow rate, scf/second (sec).

Q_{mass} = Mass flow rate, pounds per sec.

385.3 = Conversion factor, scf per pound-mole.

MW_t = Molecular weight of the gas at the flow monitoring location, pounds per pound-mole.

(c) For each measurement produced by the monitoring system used to comply with (1)(a)(ii), the operator shall determine the 15-minute block average as the arithmetic average of all measurements made by the monitoring system within the 15-minute period.

(d) The operator must follow the calibration and maintenance procedures according to Table 3. Total time spent on maintenance, instrument adjustments or checks to maintain precision and accuracy, and zero and span adjustments may not exceed 5 percent of the time the flare is receiving regulated material.

TABLE 2—INDIVIDUAL COMPONENT PROPERTIES

Component	Molecular formula	MW_i (pounds per pound-mole)	NHV_i (BTU/scf)	LFL_i (volume %)
Acetylene	C_2H_2	26.04	1,404	2.5
Benzene	C_6H_6	78.11	3,591	1.3
1,2-Butadiene	C_4H_6	54.09	2,794	2.0
1,3-Butadiene	C_4H_6	54.09	2,690	2.0
iso-Butane	C_4H_{10}	58.12	2,957	1.8
n-Butane	C_4H_{10}	58.12	2,968	1.8
cis-Butene	C_4H_8	56.11	2,830	1.6
iso-Butene	C_4H_8	56.11	2,928	1.8
trans-Butene	C_4H_8	56.11	2,826	1.7
Carbon Dioxide	CO_2	44.01	0	∞
Carbon Monoxide	CO	28.01	316	12.5
Cyclopropane	C_3H_6	42.08	2,185	2.4
Ethane	C_2H_6	30.07	1,595	3.0
Ethylene	C_2H_4	28.05	1,477	2.7
Hydrogen	H_2	2.02	* 1,212	4.0
Hydrogen Sulfide	H_2S	34.08	587	4.0
Methane	CH_4	16.04	896	5.0
Methyl-Acetylene	C_3H_4	40.06	2,088	1.7
Nitrogen	N_2	28.01	0	∞
Oxygen	O_2	32.00	0	∞
Pentane+ (C5+)	C_5H_{12}	72.15	3,655	1.4

TABLE 2—INDIVIDUAL COMPONENT PROPERTIES—Continued

Component	Molecular formula	MW_i (pounds per pound-mole)	NHV_i (BTU/scf)	LFL_i (volume %)
Propadiene	C_3H_4	40.06	2,066	2.16
Propane	C_3H_8	44.10	2,281	2.1
Propylene	C_3H_6	42.08	2,150	2.4
Water	H_2O	18.02	0	∞

* The theoretical net heating value for hydrogen is 274 BTU/scf, but for these flares, a net heating value of 1,212 BTU/scf shall be used.

TABLE 3—ACCURACY AND CALIBRATION REQUIREMENTS

Parameter	Accuracy requirements	Calibration requirements
Flare Vent Gas Flow Rate	±20 percent of flow rate at velocities ranging from 0.1 to 1 foot per sec. ±5 percent of flow rate at velocities greater than 1 foot per sec.	Evaluate performance biennially (every 2 years) and following any period of more than 24 hours throughout which the flow rate exceeded the maximum rated flow rate of the sensor, or the data recorder was off scale. Check all mechanical connections for leakage monthly. Visually inspect and check system operation every 3 months, unless the system has a redundant flow sensor. Select a representative measurement location where swirling flow or abnormal velocity distributions due to upstream and downstream disturbances at the point of measurement are minimized.
Flow Rate for All Flows Other Than Flare Vent Gas.	±5 percent over the normal range of flow measured or 1.9 liters per minute (0.5 gallons per minute), whichever is greater, for liquid flow.	Conduct a flow sensor calibration check at least biennially (every 2 years); conduct a calibration check following any period of more than 24 hours throughout which the flow rate exceeded the manufacturer's specified maximum rated flow rate or install a new flow sensor.
	±5 percent over the normal range of flow measured or 280 liters per minute (10 cubic feet per minute), whichever is greater, for gas flow.	At least quarterly, inspect all components for leakage, unless the continuous parameter monitoring system (CPMS) has a redundant flow sensor.
	±5 percent over the normal range measured for mass flow.	Record the results of each calibration check and inspection. Locate the flow sensor(s) and other necessary equipment (such as straightening vanes) in a position that provides representative flow; reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.
Pressure	±5 percent over the normal range measured or 0.12 kilopascals (0.5 inches of water column), whichever is greater.	Review pressure sensor readings at least once a week for straight-line (unchanging) pressure and perform corrective action to ensure proper pressure sensor operation if blockage is indicated. Evaluate performance annually and following any period of more than 24 hours throughout which the pressure exceeded the maximum rated pressure of the sensor, or the data recorder was off scale. Check all mechanical connections for leakage monthly. Visually inspect all components for integrity, oxidation, and galvanic corrosion every 3 months, unless the system has a redundant pressure sensor. Select a representative measurement location that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.
Net Heating Value by Calorimeter.	±2 percent of span	Calibrate according to manufacturer's recommendations at a minimum. Temperature control (heated and/or cooled as necessary) the sampling system to ensure proper year-round operation. Where feasible, select a sampling location at least 2 equivalent diameters downstream from and 0.5 equivalent diameters upstream from the nearest disturbance. Select the sampling location at least 2 equivalent duct diameters from the nearest control device, point of pollutant generation, air in-leakages, or other point at which a change in the pollutant concentration or emission rate occurs.

TABLE 3—ACCURACY AND CALIBRATION REQUIREMENTS—Continued

Parameter	Accuracy requirements	Calibration requirements
Net Heating Value by Gas Chromatograph.	As specified in Performance Standard (PS) 9 of 40 CFR part 60, appendix B.	Follow the procedure in PS 9 of 40 CFR part 60, appendix B, except that a single daily mid-level calibration check can be used (rather than triplicate analysis), the multi-point calibration can be conducted quarterly (rather than monthly), and the sampling line temperature must be maintained at a minimum temperature of 60 °C (rather than 120 °C).
Hydrogen Analyzer	±2 percent over the concentration measured, or 0.1 volume, percent, whichever is greater.	Specify calibration requirements in your site specific CPMS monitoring plan. Calibrate according to manufacturer's recommendations at a minimum. Specify the sampling location at least 2 equivalent duct diameters from the nearest control device, point of pollutant generation, air in-leakages, or other point at which a change in the pollutant concentration occurs.

(2) The flare system must be operated with a flame present at all times when in use. Additionally, each stage must have at least two pilots with a continuously lit pilot flame. Each pilot flame must be continuously monitored by a thermocouple or any other equivalent device used to detect the presence of a flame. The time, date, and duration of any complete loss of pilot flame on any of the burners must be recorded. Each monitoring device must be maintained or replaced at a frequency in accordance with the manufacturer's specifications.

(3) The MPGF system shall be operated with no visible emissions except for periods not to exceed a total of 5 minutes during any 2 consecutive hours. A video camera that is capable of continuously recording (*i.e.,* at least one frame every 15 seconds with time and date stamps) images of the flare flame and a reasonable distance above the flare flame at an angle suitable for visible emissions observations must be used to demonstrate compliance with this requirement. The owner or operator must provide real-time video surveillance camera output to the control room or other continuously manned location where the video camera images may be viewed at any time.

(4) The operator of the MPGF system shall install and operate pressure monitor(s) on the main flare header, as well as a valve position indicator monitoring system capable of monitoring and recording the position for each staging valve to ensure that the flare operates within the range of tested conditions or within the range of the manufacturer's specifications. The pressure monitor shall meet the requirements in Table 3. Total time spent on maintenance periods, instrument adjustments or checks to maintain precision and accuracy, and zero and span adjustments may not exceed 5 percent of the time the flare is receiving regulated material.

(5) Recordkeeping Requirements.

(a) All data must be recorded and maintained for a minimum of 3 years or for as long as required under applicable rule subpart(s), whichever is longer.

(6) Reporting Requirements.

(a) The information specified in sections III(6)(b) and (c) below must be reported in the timeline specified by the applicable rule subpart(s) for which the MPGFs will control emissions.

(b) Owners or operators shall include the final AMEL operating requirements for each flare in their initial Notification of Compliance status report.

(c) The owner or operator shall notify the Administrator of periods of excess emissions in their Periodic Reports. The notification shall include:

(i) Records of each 15-minute block for both MPGFs during which there was at least 1 minute when regulated material was routed to the flare and a complete loss of pilot flame on a stage of burners occurred, and for both MPGFs, records of each 15-minute block during which there was at least 1 minute when regulated material was routed to the flare and a complete loss of pilot flame on an individual burner occurred.

(ii) Records of visible emissions events (including the time and date stamp) that exceed more than 5 minutes in any 2-hour consecutive period.

(iii) Records of each 15-minute block period for which an applicable combustion zone operating limit (*i.e.,* NHV_{cz}) is not met for the flare when regulated material is being combusted in the flare. Indicate the date and time for each period, the NHV_{cz} operating parameter for the period, the type of monitoring system used to determine compliance with the operating parameters (*e.g.,* gas chromatograph or calorimeter), and also indicate which high-pressure stages were in use.

(iv) Records of when the pressure monitor(s) on the main flare header show the flare burners are operating outside the range of tested conditions or outside the range of the manufacturer's specifications. Indicate the date and time for each period, the pressure measurement, the stage(s) and number of flare burners affected, and the range of tested conditions or manufacturer's specifications.

(v) Records of when the staging valve position indicator monitoring system indicates a stage of the flare should not be in operation and is or when a stage of the flare should be in operation and is not. Indicate the date and time for each period, whether the stage was supposed to be open, but was closed, or vice versa, and the stage(s) and number of flare burners affected.

Dated: September 18, 2020.

Panagiotis Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2020–21042 Filed 9–23–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2015–0436; FRL–10012–72–OMS]

Information Collection Request Revision Submitted to OMB for Review and Approval; Comment Request; Generic Clearance for TSCA Section 4 Test Rules, Test Orders, Enforceable Consent Agreements (ECAs), Voluntary Data Submissions, and Exemptions From Testing Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR),

Generic Clearance for TSCA Section 4 Test Rules, Test Orders, Enforceable Consent Agreements (ECAs), Voluntary Data Submissions, and Exemptions from Testing Requirement (EPA ICR Number 1139.12 and OMB Control Number 2070–0033) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed revision of the ICR that is currently approved through October 31, 2021. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be received on or before October 26, 2020.

ADDRESSES: Submit your comments, referencing docket identification (ID) number EPA–HQ–OPPT–2015–0436 to EPA online using *www.regulations.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Harlan Weir, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9885; email address: *weir.harlan@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Under TSCA section 4, EPA has the authority to promulgate rules, issue orders, and enter into consent agreements requiring manufacturers and processors to develop information on chemical substances and mixtures. The revisions to this ICR cover the information collection activities associated with the submission of information to EPA pursuant to TSCA section 4, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act. Under TSCA section 4, EPA has the authority to issue regulatory actions designed to gather or develop information related to human and environmental health, including hazard and exposure information, on chemical substances and mixtures. This information collection addresses the burden associated with industry activities involved in the reporting and recordkeeping pursuant to TSCA section 4.

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/affected entities: Manufacturers (including importers) or processors of chemical substances or mixtures, which are mostly chemical companies classified under NAICS Codes 325 and 324.

Respondent's obligation to respond: Mandatory (15 U.S.C. 2603 *et seq.*).

Estimated total number of potential respondents: 175 (total).

Frequency of response: On occasion.

Total estimated burden: 32,147 hours (per year). Burden is defined in 5 CFR 1320.3(b).

Total estimated cost: $7,650,663 (per year), includes $5,227,235 annualized capital or operation & maintenance costs.

Changes in the estimates: The modifications in this request would increase total respondent burden by 87,060 hours (29,020 hours annually) over the three-year period in which the generic ICR will be active. This increase reflects changes in the number of actions, CBI substantiation requirements, and methodological updates. However, there is a reduction in annual cost estimates due to a change in the assumed battery of tests that may be required for this three-year period under potential testing actions. The assumption is based on statutory changes under the Lautenberg Act, such as the mandated tiered testing approach. Further details about these changes are included in this ICR supporting statement.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–21066 Filed 9–23–20; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meetings; Withdrawal

ACTION: Notice of an open meeting of the Board of Directors of the Export-Import Bank of the United States; withdrawal.

SUMMARY: The Export-Import Bank of the United States published a document in the **Federal Register** of September 17, 2020 concerning a Sunshine Act meeting. The Notice provided incorrect information. A correct notice will be published immediately.

DATES: As of September 22, 2020, the notice published September 17, 2020, at 85 FR 58046, is withdrawn.

SUPPLEMENTARY INFORMATION: Original notice, found on pages: 58046–58047: **Federal Register** Citation: 85 FR 58046; FR Doc Number 2020–20626 contained incorrect information regarding the topic of the meeting and contact information. A correct notice will be published immediately.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2020–21273 Filed 9–22–20; 4:15 pm]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 16–271; DA 20–1097; FRS 17087]

Connect America Fund—Alaska Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Wireless Telecommunications Bureau (Bureau) adopts the Alaska Population Distribution Model. The model provides a methodology for estimating the number of Alaskans who receive mobile service within census blocks in remote areas of Alaska, allowing consistent understanding of where providers need to provide coverage for their approved commitments under the Alaska Plan. The Bureau will also use the methodology for creation of an explicit list of census blocks eligible for use of frozen support under the Alaska Plan.

FOR FURTHER INFORMATION CONTACT: Matt Warner, Wireless Telecommunications

Bureau, (202) 418–2419, *matthew.warner@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Order in WC Docket No. 16–271; DA 20–1097, which was released on September 16, 2020. The full text of document DA 20–1097 may be found at: *http://apps.fcc.gov/edocs/*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov,* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

Synopsis

1. In this Order, the Bureau adopts a methodology for estimating the number of Alaskans who receive mobile service within census blocks in remote areas of Alaska. The Bureau will use this methodology to determine whether mobile providers that participate in the Commission's plan for providing support for the deployment of fixed and mobile service in high cost areas of Alaska (the Alaska Plan) have met their performance commitments. The Bureau will also use the methodology to identify census blocks in remote areas of Alaska where these minimum service commitments apply.

2. Alaska faces unique circumstances, including its massive size, varying terrain, harsh climates, isolated populations, shortened construction season, and lack of access to infrastructure, which have made deploying communications infrastructure particularly challenging for Alaskan providers. To address Alaska's unique challenges, the Commission adopted the Alaska Plan Order in 2016, which set forth a ten-year universal service plan specific to Alaska. The Alaska Plan Order froze mobile provider participants' support at December 2014 levels (frozen support), but required them to commit to expanding their Fourth-Generation, Long-Term Evolution (4G LTE) service at speeds of at least 10/1 Mbps in eligible areas, subject to exceptions such as limited middle mile capability.

3. *Mobile Provider Commitments.* Under the Alaska Plan Order's requirements, participating mobile providers must serve a specific number of people in remote parts of Alaska by the end of year 5 (ending December 31, 2021) and year 10 (ending December 31, 2026) of the support term. As part of their commitments, providers must identify the mobile technology that they will use to serve those populations (*e.g.,* 3G, LTE) and the type of middle-mile connectivity (*e.g.,* fiber, satellite) on which they will rely to provide mobile services. The Alaska Plan required participating mobile service providers to submit performance plans with their commitments for Bureau review. In December 2016, the Bureau approved the service commitments made by eight Alaskan mobile service providers, and it subsequently accepted updated commitments from ASTAC and GCI. The Alaska Plan Order stated that the Commission would rely on participating providers' Form 477 coverage data to evaluate whether providers have met their 5 and 10 year commitments. The Commission delegated authority to the Bureau to require additional information necessary to establish clear standards for determining whether providers have met their 5 and 10-year commitments.

4. *Proposed Alaska Population-Distribution Model.* To establish a consistent methodology for determining the number of people served in Alaskan census blocks, the Bureau sought comment on a model, which the Bureau named the Alaska Population-Distribution Model, to estimate the number of Alaskans who receive mobile service in census blocks in remote areas. The Alaska Population Model Public Notice sought comment on using this methodology for the purpose of evaluating whether participating providers have met their performance obligations associated with receiving frozen support under the Alaska Plan. The Alaska Population-Distribution Model identifies areas within a census block where people are likely to live and then evenly distributes the population throughout the livable area of the census block.

5. Specifically, the model uses a multi-step process to identify areas within a census block most likely to be populated and combines those results with service coverage maps to estimate the number of people with mobile wireless service in a partially-served census block. The model uses TIGER road data overlaid onto populated census blocks, under the premise that local roads (not highways or expressways) are a reliable predictor of population locations. Next, the model draws polygons extending 100 meters on either side of those roads, with areas further out assumed to be uninhabited. The model also overlays General Land Status data maintained by the State of Alaska and removes areas where people are unlikely to reside, such as National Forest Service land. Finally, the model evenly distributes the population of each census block within the remaining polygons to reflect the geographic areas where people are likely to live. For those census blocks where no populated areas are identified, the methodology evenly distributes the Census-reported population of each block across land within that block owned by municipalities, private entities, or Alaska Natives. If there is no land owned by those groups, then the population is distributed across the entire census block.

6. The Alaska Population Model Public Notice sought comment on exceptions to the methodology in four areas of Alaska in which the proposed methodology might not accurately reflect population coverage. Specifically, the Bureau proposed to adopt the following deviations from the general methodology:

- In and around Unalaska, in an area covering 31 census blocks, address and other population location information from the local government could be used to create polygons around addresses (with a 50-meter buffer) in residential areas to represent the location of the population.
- Near Nome and Unalakleet, in an area covering 187 census blocks, aerial imagery data from Google Earth can be used to identify building structures, and polygons could be drawn around them as a proxy for the location of population.
- In the Prudhoe Bay area, in an area covering 16 census blocks where 2010 census data likely primarily reflects oil field workers rather than year-round population, Google Earth and internal ASTAC location data can be used to identify populated areas (primarily developed worksites, mobile camps, and staging areas).
- In the Copper Valley, in an area covering 61 census blocks, Google Earth and internal Copper Valley Telephone Company structural location data can be used to identify structures.

7. The Bureau also sought comment on alternatives to the Alaska Population-Distribution Model that may better identify populated areas. The Bureau specifically sought comment on using a database of broadband-serviceable locations to identify the specific locations within a census block where fixed broadband is unavailable.

8. Finally, the Bureau proposed to use the Alaska Population-Distribution Model to identify the census blocks in remote areas of Alaska that are eligible for use of frozen support under the Alaska Plan (frozen-support eligible blocks), and it noted that the Bureau's list of blocks developed using the methodology was the same as the list submitted by GCI. No commenter offered any alternatives to this proposal.

9. The Bureau adopts the Alaska Population-Distribution Model to

estimate the number of people in remote parts of Alaska who have access to mobile service in census blocks partially served by providers participating in the Alaska Plan. To assess a participating provider's satisfaction of its service commitments at the 5 and 10-year performance benchmarks, the Bureau will use 2010 block-level population census data and the provider's Form 477 data, in conjunction with the Alaska Population-Distribution Model, to estimate the number of Alaskans in remote parts of the state who are covered by the provider's network (using the technology identified in the commitment). No commenter proposed an alternative approach, and the sole commenter, ATA, supports use of the model. The Bureau agrees with ATA that the Alaska Population-Distribution Model is the best currently available method for determining whether mobile providers meet their service commitments. In addition, the Bureau believes that the model is the best available methodology that likely will be available by the 5-year mark and that the same methodology should be applied to both the 5 and 10-year benchmark. Using two different methodologies for the 5 and 10-year evaluations would result in inconsistent evaluation of the commitments and could jeopardize the Commission's ability to enforce those commitments.

10. *Determining Whether Providers Have Met Their Commitments.* Although the Alaska Plan Order required mobile participants to specify the number of people that they would commit to serve, it did not address how providers would calculate this number, other than to note that the Commission would use mobile providers' nationwide coverage polygons from Form 477 for the analysis. Form 477 data, however, which reflect mobile providers' coverage area, do not necessarily reflect the number of people served in Alaska. A map that reflects 75% coverage of the geographic area of a census block, for example, does not mean necessarily that 75% of the population of that census block is covered by that provider, given that population generally is not evenly distributed through a census block in remote areas of Alaska and that census blocks may be very large and sparsely populated.

11. To determine whether mobile providers have met their service commitments using their Form 477 nationwide coverage polygons, the Commission will superimpose these coverage polygons onto the Alaska Population-Distribution Model to distribute 2010 census population throughout the census block. Commission staff then will analyze how many people in that census block are located within the mobile provider's coverage area to determine the number of people served by that provider.

12. *Exceptions.* The Bureau also adopts the four exceptions to the model that it proposed in the Alaska Population Model Public Notice (in and around Unalaska, near Nome and Unalakleet, in the Prudhoe Bay area, and in the Copper Valley area). Because of the unique nature of these four areas, the alternate data sources better reflect the location of population than the Alaska Population-Distribution Model; in addition, no commenters object to these exceptions. Allowing these limited exceptions to the model will provide more granular data of where people are located in remote areas, and it will ensure that participating mobile providers are deploying service that will benefit Alaskans.

13. The Bureau rejects ATA's request for mobile providers to ''submit available evidence regarding the true location of population no later than six months before the next approaching benchmark,'' which the Bureau interprets to be a request to submit additional exceptions to the Alaska Population-Distribution Model by June 30, 2021 (six months before the 5-year mark of December 31, 2021). First, the Bureau notes that mobile providers already have had an opportunity to submit additional exceptions in response to the Alaska Population Model Public Notice, issued in February, and no commenter has identified any exceptions other than the four exceptions that the Bureau adopts here. Second, permitting the submission of additional exceptions after providers' four-year performance plan resubmissions, due December 31, 2020, would unnecessarily complicate the Bureau's review of those resubmissions, which must include population coverage commitments based on the model the Bureau adopts herein. The Bureau therefore declines to allow mobile providers to submit additional exceptions to the model and find the amount of time already allowed for such requests to have been sufficient.

14. *Frozen-Support Eligible Census Blocks.* Finally, the Bureau adopts its proposal to use the Alaska Population-Distribution Model to identify those census blocks in remote areas of Alaska that are eligible for frozen support under the Alaska Plan and that can be counted by participating carriers towards their performance commitments. Specifically, the Bureau uses the model to identify those census blocks in remote Alaska where, as of December 31, 2014, less than 85% of the population was covered by 4G LTE service of providers that are either unsubsidized or not eligible for frozen support in Alaska. The Bureau applies the Alaska Population-Distribution Model—in combination with 2010 block-level population census data and Form 477 4G LTE coverage data for those unsubsidized or ineligible providers as of December 31, 2014—to generate the list of frozen-support eligible blocks.

15. As the Bureau explained in the Alaska Population Model Public Notice, the list of census blocks generated using our proposed Alaska Population Distribution Model aligns with the list of census blocks eligible for frozen support that GCI submitted on November 29, 2016. Commenters do not object to this list of census blocks, and the Bureau finds that it is the most accurate list of census blocks eligible for frozen support. Accordingly, the Bureau will use this list of frozen-support eligible census blocks to determine if mobile providers have met their service commitments at the 5 and 10-year benchmarks of the Alaska Plan. Consistent with the Alaska Plan Order, participating providers ''may only satisfy their performance commitments through service coverage'' in those census blocks included on the list.

16. Accordingly, *it is ordered*, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, and sections 0.91, 0.131, 0.291, 0.311, and 1.106 of the Commission's rules, 47 CFR 0.91, 0.131, 0.291, 0.311, and 1.106, and the delegated authority contained in the Alaska Plan Order, 31 FCC Rcd 10139, 10166, para. 85, this Order *is adopted*.

Federal Communications Commission.

Amy Brett,

Associate Division Chief, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau.

[FR Doc. 2020–21045 Filed 9–23–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

[Docket No.: FMCS–2020–0005–0001]

Notice of Succession Plan for the FMCS

AGENCY: Office of the Director (OD), Federal Mediation and Conciliation Service (FMCS).

ACTION: Notice.

SUMMARY: This is notice of the succession plan for the Federal Mediation and Conciliation Service (FMCS) provided by the Director of FMCS at the request of the Federal Transition Coordinator at the General Services Administration and the Office of Management and Budget via OMB Memorandum M–20–33. This notice supersedes all prior succession plans for officials performing the functions and duties of the Director of FMCS.

DATES: September 19, 2020.

ADDRESSES: N/A.

FOR FURTHER INFORMATION CONTACT: For specific questions related to this notice, please contact Sarah Cudahy, 202–606–8090, *scudahy@fmcs.gov.*

SUPPLEMENTARY INFORMATION: This Notice provides the succession plan of officials authorized to perform the functions and duties of the Director of the Federal Mediation and Conciliation Service. The order of succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d).

Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, the following is the succession plan of officials authorized to perform the functions and duties of the Director of the Federal Mediation and Conciliation Service:

- 1st in Order of Succession: Principal Deputy Director
- 2nd in Order of Succession: Deputy Director
- 3rd in Order of Succession: Chief Operating Officer

Dated: September 19, 2020.

Sarah Cudahy,

General Counsel.

[FR Doc. 2020–21054 Filed 9–23–20; 8:45 am]

BILLING CODE 6732–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0199; Docket No. 2019–0003; Sequence No. 28]

Submission for OMB Review; Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding prohibition on contracting for certain telecommunications and video surveillance services or equipment.

DATES: Submit comments on or before October 26, 2020.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site. All items submitted must cite Information Collection 9000–9000–0199, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.
- Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Camara Francis, Procurement Analyst, at telephone 202–550–0935, or *camara.francis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and any Associated Form(s)

9000–0199, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

B. Needs and Uses

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to, nor be subject to, a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number.

DoD, GSA, and NASA requested and OMB authorized emergency processing of an information collection involved in this rule, as OMB Control Number 9000–0199 (FAR case 2018–017), from the provision at FAR 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services and the clause at FAR 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, consistent with 5 CFR 1320.13. DoD, GSA, and NASA have determined the following conditions have been met:

a. The collection of information is needed prior to the expiration of time periods normally associated with a routine submission for review under the provisions of the Paperwork Reduction Act, in view of the deadline for this provision of the NDAA which was signed into law in August 2018 and requires action before the prohibition goes into effect on August 13, 2019.

b. The collection of information is essential to the mission of the agencies to ensure the Federal Government does not purchase prohibited equipment, systems and services, and can respond appropriately if any such purchases are not identified until after delivery or use.

c. The use of normal clearance procedures would prevent the collection of information from contractors, for national security purposes.

This requirement supports implementation of Section 889 of Title VII of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232). This section prohibits agencies from procuring, obtaining, extending or renewing a contract to procure or obtain any equipment, system, or service that uses covered telecommunication equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system on or after August 13, 2019 unless an exception applies.

This requirement is implemented in the Federal Acquisition Regulation (FAR) through the provision at FAR 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment and the clause at FAR 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

This clearance covers the following requirements:

- FAR 52.204–24 requires an offeror to represent whether they will provide any covered telecommunications equipment or services and if so, describe in more detail the use of the covered telecommunications equipment or services; and
- FAR 52.204–25 requires contractors to report covered telecommunications equipment, systems and services identified during performance of a contract.

DoD, GSA, and NASA request approval of this information collection in order to implement the law. The information will be used by agency personnel to identify and remove prohibited equipment, systems, or services from Government use. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor.

C. Annual Reporting Burden

52.204–25:
Respondents: 190,446.
Total Annual Responses: 7,855,881.
Total Burden Hours: 821,274.

The public reporting burden for this collection of information consists of completing the representation, which is estimated will take an average of 5 minutes (.08333 hours) per response if additional detail is not necessary. If additional detail is necessary, completing the representation is estimated will take an average of three hours per response. The average total burden hours per total responses is estimated to average .105 burden hours per response, including time to complete the representation and provide the additional detail.

Annual Reporting Burden

52.204–25:
Respondents: 4,761.
Total Annual Responses: 23,805.
Total Burden Hours: 35,708.

The public reporting burden for this collection of information consists of reports of identified covered telecommunications equipment, systems and services during contract performance as required by 52.204–25. Reports are estimated to average 1.5 hour per response, including the time for reviewing definitions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the report.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 84 FR 54146, on October 9, 2019. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0199, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, in all correspondence.

William Clark,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2020–21033 Filed 9–23–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve proposed updates to the approved information collection project ''Safety Program in Perinatal Care (SPPC)-II Demonstration Project.''

DATES: Comments on this notice must be received by November 23, 2020.

This proposed information collection was previously published in the **Federal Register** on July 16th, 2020 and allowed 60 days for public comment. AHRQ received no substantive comments from members of the public. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received 30 days after date of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

''*Safety Program in Perinatal Care (SPPC)-II Demonstration Project*''

The SPPC–II Demonstration Project has the following goals:

(1) To implement the integrated AIM–SPPC II program in birthing hospitals in OK and TX in coordination with the Alliance for Innovation on Maternal Health program (AIM) and the respective state PQC (Perinatal Quality Collaborative);

(2) To assess the implementation of the integrated AIM–SPPC II program in these hospitals; and

(3) To ascertain the short- and medium-term impact of the integrated AIM–SPPC II program on hospital (*i.e.,* perinatal unit) teamwork and communication, patient safety, and key maternal health outcomes.

The information collected for this Demonstration Project will be used to evaluate the implementation and impact of the SPPC–II program overlaid with AIM patient safety bundles in birthing hospitals in OK and TX. More specifically, the project will:

(a) Provide information on whether the proposed integration of AIM and SPPC–II programs can be implemented as intended, *i.e.,* through the use of a two-tier approach for training all clinical staff in all hospitals, coordination by the AIM Team Lead of the rollout of training clinical staff using e-modules on teamwork and communication, facilitation by AIM Team Leads of in-person sessions to practice teamwork and communication tools and strategies; or, what changes are needed to better facilitate program implementation;

(b) provide information regarding the impact of the integrated AIM–SPPC II program on use of teamwork and communication tools and strategies, teamwork and communication metrics, patient safety culture changes, AIM bundle implementation, and key maternal health outcomes; and

(c) provide information regarding the sustainability of the integrated AIM–SPPC II program 18 months after implementation.

Due to pandemic-related impacts on the SPPC–II study population, we propose updating the SPPC–II data collection by (1) adding questions to the approved qualitative interview guide at 3–4 months to include pandemic-related questions to better understand the implementation context, (2) adding an additional qualitative interview

collection at 15–16 months with a new interview guide to better understand the implementation context, and (3) increasing the total number of qualitative interview participants from 25 to 30 participants to account for the two qualitative interview collections at 3–4 months and 15–16 months. The total estimated annual burden hours for SPPC–II will increase from 54,654 hours in the previous clearance to 54,659 hours in this clearance request, an increase of 5 hours.

This study is being conducted by AHRQ through its contractor, Johns Hopkins University (JHU), and through JHU's subcontractor, AIM, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this project the following updates to the data collections will be implemented:

(a) Qualitative, semi-structured interviews with AIM Team Leads will be conducted by phone about 3–4 months and 15–16 months after the SPPC–II implementation start date to assess the perceived utility of the training and assistance needed with the rollout of training to all frontline clinical staff using the e-modules and facilitation sessions to consolidate the information, and to better understand the implementation context (including barriers, facilitators, and strategies). An interview guide developed based on the Consolidated Framework for Implementation Research framework will be used to conduct the interviews, together with a corresponding consent form.

Estimated Annual Respondent Burden

Exhibit 1 shows only the estimated annualized burden hours for the respondents' time to participate in updates to the information collection of the SPPC–II Demonstration Project.

One-hour qualitative interviews will be conducted with a total of 30 AIM Team Leads in the 2 states about 3–4 months and 15–16 months after the SPPC–II implementation start date.

The total annual burden hours are estimated to be 54,659 hours, an increase of 5 hours from the previous clearance request.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Qualitative semi-structured interviews with AIM Team Leads at 3–4 months and 15–16 months	30	1	1.00	30
Total	30	NA	NA	30

Exhibit 2 shows only the hours and cost of updates to the collection. The cost burden of the updated collection is estimated to be $1,494.90 annually.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Qualitative semi-structured interviews with AIM Team Leads at 3–4 months and 15–16 months	30	30	$49.83	$1,494.90
Total	30	30	.....	1,494.90

* National Compensation Survey: Occupational wages in the United States May 2017 "U.S. Department of Labor, Bureau of Labor Statistics."
[a] Hourly wage for nurse-midwives ($48.36; occupation code 29–1161).
[b] Weighted mean hourly wage for obstetrician-gynecologists ($113.10; occupation code 29–1064; 30%); nurse-midwives ($49.83; occupation code 29–1161; 30%); registered nurses ($35.36; occupation code 29–1161; 20%); and nurse practitioners ($51.86; occupation code 29–1171; 20%).

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: September 18, 2020.

Marquita Cullom-Stott,

Associate Director.

[FR Doc. 2020–21053 Filed 9–23–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Health and Human Services (HHS).

ACTION: Notice of five AHRQ subcommittee meetings.

SUMMARY: The subcommittees listed below are part of AHRQ's Health Services Research Initial Review Group Committee. Grant applications are to be reviewed and discussed at these meetings. Each subcommittee meeting will be closed to the public.

DATES: See below for dates of meetings:

1. *Healthcare Safety and Quality Improvement Research (HSQR)*
   Date: October 14th, 2020
2. *Healthcare Effectiveness and Outcomes Research (HEOR)*
   Date: October 14–15, 2020
3. *Health Care Research and Training (HCRT)*
   Date: October 15–16, 2020
4. *Health System and Value Research (HSVR)*
   Date: October 15–16, 2020
5. *Healthcare Information Technology Research (HITR)*
   Date: October 22–23, 2020

ADDRESSES: Agency for Healthcare Research and Quality (Virtual Review), 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: (To obtain a roster of members, agenda or minutes of the non-confidential portions of the meetings.)

Jenny Griffith, Committee Management Officer, Office of Extramural Research Education and Priority Populations, Agency for Healthcare Research and Quality (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 27–1557.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), AHRQ announces meetings of the above-listed scientific peer review groups, which are subcommittees of AHRQ's Health Services Research Initial Review Group Committee. The subcommittee meetings will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2 section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). 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.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: September 18, 2020.

Marquita Cullom-Stott,

Associate Director.

[FR Doc. 2020–21050 Filed 9–23–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee (MSHRAC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Mine Safety and Health Research Advisory Committee (MSHRAC). This is a virtual meeting. It is open to the public, limited only by web conference lines (500 web conference lines are available). If you wish to attend, please contact Marie Chovanec by email at *MChovanec@cdc.gov* or by telephone at 412–386–5302 at least 5 business days in advance of the meeting. She will provide you the Zoom web conference access.

DATES: The meeting will be held on November 9, 2020, from 10:00 a.m. to 2:30 p.m., EST.

ADDRESSES: This is a virtual meeting.

FOR FURTHER INFORMATION CONTACT: George W. Luxbacher, Designated Federal Officer, MSHRAC, NIOSH, CDC, 2400 Century Parkway NE, Atlanta, GA 30345, telephone 404–498–2808; email *gluxbacher@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters To Be Considered: The agenda will include discussions on mining safety and health research projects and outcomes, including COVID–19 impact on research, funded projects, presentations, guidelines; Office of Mine Safety and Health Research (OMSHR) reshaping status; FY21 new mining projects and redesigning research; lighting research; update on MINER Act extramural research; and mining-related suicides. The meeting will also include an update from the NIOSH Associate Director for Mining. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–21034 Filed 9–23–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP); Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: This gives notice under the Federal Advisory Committee Act of October 6, 1972, that the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP), Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through September 18, 2022.

FOR FURTHER INFORMATION CONTACT: Moises C. Langub, Ph.D., Designated Federal Officer, CDC, 1600 Clifton Road NE, Mailstop TW–2, Atlanta, Georgia 30329–4027, telephone (770) 488–3585; email *MLangub@cdc.gov.*

SUPPLEMENTARY INFORMATION: The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of

meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–21035 Filed 9–23–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–8003, CMS–10633, CMS–10116, CMS–319, and CMS–10540]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by October 26, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* 1915(c) Home and Community Based Services (HCBS) Waiver Application; *Use:* We will use the web-based application to review and adjudicate individual waiver actions. The web-based application will also be used by states to submit and revise their waiver requests. *Form Number:* CMS–8003 (OMB control number 0938–0449); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 47; *Total Annual Responses:* 71; *Total Annual Hours:* 6,005. (For policy questions regarding this collection contact Kathy Poisal at 410–786–5940.)

2. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* QIC Demonstration Evaluation Contractor (QDEC): Analyze Medicare Appeals to Conduct Formal Discussions and Reopenings with DME Suppliers and Part A Providers; *Use:* The Formal Telephone Discussion Demonstration and Reopenings Process is authorized under Section 402(a)(1)(F), U.S.C. 1395–1(a)(1)(F), of the Social Security Amendments of 1967. Primary and secondary data are needed to understand the effectiveness of the Demonstration in improving DME suppliers' and Part A providers' understanding of claims denial during Level 2 of the appeals process and facilitating more accurate claim submission over time. Primary data are necessary to determine, from the perspective of participating DME suppliers and Part A providers, the quality of the formal telephone discussions, satisfaction with the formal telephone discussion process, and the effect of the formal telephone discussions on submitting accurate claims. These data will inform an evaluation of the demonstration's effectiveness in achieving more accurate claims submissions, and thus reducing the number of claims CMS must process each year.

All information collected through the evaluation of the Formal Telephone Demonstration and Reopenings Process will be used by CMS through the QDEC (IMPAQ International and its partner, Palmetto GBA) to conduct analyses of satisfaction with the formal telephone discussions, and determine whether further engagement with the QIC improves understanding of the reasons for claim denials.

CMS will use the results of the evaluation to make informed policy decisions regarding the effectiveness of this demonstration and whether or not the demonstration should become a permanent part of the appeals process. Ultimately, if the information shows that DME suppliers and Part A providers were able to submit more accurate claims on the first pass, and a reduced number of claims are put through the appeals process, the Federal government could realize cost savings. *Form Number:* CMS–10633 (OMB control number: 0938–1348); *Frequency:* Yearly; *Affected Public:* Private Sector, Business or other for-profits; *Number of Respondents:* 5,288; *Total Annual Responses:* 5,288; *Total Annual Hours:* 950. (For policy questions regarding this collection contact Lynnsie G. Kelley at 410–786–1155.)

3. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Medicare Program: Conditions for Payment of Power Mobility Devices,

including Power Wheelchairs and Power-Operated Vehicles; *Use:* We are renewing our request for approval for the collection requirements associated with the final rule, CMS–3017–F (71 FR 17021), which published on April 5, 2006, and required a face-to-face examination of the beneficiary by the physician or treating practitioner, a written prescription, and receipt of pertinent parts of the medical record by the supplier within 45 days after the face-to-face examination that the durable medical equipment (DME) suppliers maintain in their records and make available to CMS and its agents upon request. *Form Number:* CMS–10116 (OMB control number: 0938–0971); *Frequency:* Yearly; *Affected Public:* Business or other for-profits; *Number of Respondents:* 55,700; *Number of Responses:* 55,700; *Total Annual Hours:* 11,140. (For policy questions regarding this collection contact Rachel Katonak at 410–786–2118).

4. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* State Medicaid Eligibility Quality Control Sample Selection Lists; *Use:* The Medicaid Eligibility Quality Control (MEQC) program provides states a unique opportunity to improve the quality and accuracy of their Medicaid and Children's Health Insurance Program (CHIP) eligibility determinations. The MEQC program is intended to complement the Payment Error Rate Measurement (PERM) program by ensuring state operations make accurate and timely eligibility determinations so that Medicaid and CHIP services are appropriately provided to eligible individuals. Current regulations require that states review equal numbers of active cases and negative case actions (*i.e.,* denials and terminations) through random sampling. Active case reviews are conducted to determine whether or not the sampled cases meet all current criteria and requirements for Medicaid or CHIP eligibility. Negative case reviews are conducted to determine if Medicaid and CHIP denials and terminations were appropriate and undertaken in accordance with due process. State Title XIX and Title XXI agencies are required to submit MEQC case level and CAP reports based on pilot findings in accordance with 42 CFR 431.816 and 431.820, respectively. The primary users of this information are state Medicaid (and where applicable CHIP) agencies and the Centers for Medicare & Medicaid Services. *Form Number:* CMS–319 (OMB control number: 0938–0147); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 34; *Total Annual Responses:* 34; *Total Annual Hours:* 1,900. For policy questions regarding this collection contact Camiel Rowe 410–786–0069.

5. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Quality Improvement Strategy Implementation Plan, Progress Report Form and Modification Summary Supplement. *Use:* Section 1311(c)(1)(E) of the Patient Protection and Affordable Care Act requires qualified health plans (QHPs) offered through an Exchange must implement a quality improvement strategy (QIS) as described in section 1311(g)(1). Section 1311(g)(3) of the Affordable Care Act specifies the guidelines under Section 1311(g)(2) shall require the periodic reporting to the applicable Exchange the activities that a qualified health plan has conducted to implement a strategy which is described as a payment structure providing increased reimbursement or other incentives for improving health outcomes of plan enrollees, implementing activities to prevent hospital readmissions, improving patient safety and reducing medical errors, promoting wellness and health, and/or implementing activities to reduce health and health care disparities. CMS has created a separation of the QIS form into a separate Implementation Plan, Progress Report and Modification Summary which is intended to decrease overall burden on issuers. With these separate forms, issuers would no longer need to complete and resubmit an Implementation Plan every year (which is currently the process). Issuers would only submit the Implementation Plan form in the first year of a QIS, and then issuers would submit the Progress Report form in each subsequent year (with the Modification Summary Supplement as necessary). This adjustment will eliminate the need for issuers to enter and submit unchanged data, and allow them to focus their time on reporting new progress achieved for the QIS.

The QIS form will allow: (1) The Department of Health & Human Services (HHS) to evaluate the compliance and adequacy of QHP issuers' quality improvement efforts, as required by Section 1311(c) of the Affordable Care Act, and (2) HHS will use the issuers' validated information to evaluate the issuers' quality improvement strategies for compliance with the requirements of Section 1311(g) of the Affordable Care Act. *Form Number:* CMS–10540 (OMB Control Number: 0938–1286); *Frequency:* Annually; *Affected Public:* Public sector (Individuals and Households), Private sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 250 respondents; *Total Annual Responses:* 250 responses; *Total Annual Hours:* 11,000. For policy questions regarding this collection contact Nidhi Singh Shah at 301–492–5110.

Dated: September 21, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–21092 Filed 9–23–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–43, CMS–40B, CMS–R–285, and CMS–10175]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by November 23, 2020.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–43 Application for Health Insurance Benefits Under Medicare for Individual with Chronic Renal Disease and Supporting Regulations in 42 CFR

CMS–40B Application for Enrollment in Medicare the Medical Insurance Program

CMS–R–285 Request for Retirement Benefit Information

CMS–10175 Certification Statement for Electronic File Interchange Organizations that Submit NPI Data to the National Plan and Provider Enumeration System

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Application for Health Insurance Benefits Under Medicare for Individual with Chronic Renal Disease and Supporting Regulations in 42 CFR; *Use:* Individuals with End-Stage Renal Disease (ESRD) have the opportunity to apply for Medicare benefits and obtain premium-free Part A if they meet certain criteria outlined in statute. Sections 226A of the Act authorizes entitlement for Medicare Hospital Insurance (Part A) if the individual with ESRD files an application for benefits and meets the requisite contributions through one's own employment or the employment of a related individual to meet the statutory definition of a ''currently insured'' individual outlined in section 214 of the Act. Further, for individuals who meet the requirements for premium-free Part A entitlement, Medicare coverage starts based on the dates in which the individual started dialysis treatment or had a kidney transplant. These statutory provisions are codified at 42 CFR 406.7(c)(3) and 407.13.

The CMS–43 form is used (in conjunction with the CMS–2728, OMB control number 0938–0046) to establish entitlement to Medicare Part A and enrollment in Medicare Part B for individuals with ESRD. Form CMS–43 is only used for initial applications for Medicare by individuals diagnosed with ESRD. Form CMS–2728 provides the medical documentation that the individual has ESRD, and it accompanies Form CMS–43.

Form CMS–43 is completed by the person applying for Medicare or by an SSA representative using information provided by the Medicare enrollee during an in-person interview. The majority of the forms are completed by an SSA representative on behalf of the individual applying for Medicare benefits. The form is owned by CMS, but not completed by CMS staff. *Form Number:* CMS–43 (OMB control number: 0938–0080); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 20,382; *Total Annual Responses:* 20,382; *Total Annual Hours:* 8,560. (For policy questions regarding this collection contact Carla Patterson at 410–786–1000.)

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Application for Enrollment in Medicare the Medical Insurance Program; *Use:* Section 1836 of the Act, and regulations at 42 CFR 407.10, provide the eligibility requirements for enrollment in Part B. Section 407.11 lists the CMS–40B as the application to be used by individuals who wish to apply for Part B if they already have initial entitlement to premium-free Part A. Under the regulations, individuals may also enroll in Medicare Part B by signing a statement requesting Part B, if eligible for enrollment at that time. Individuals use the standardized Form CMS–40B to request enrollment.

The CMS–40B provides the necessary information to determine eligibility and to process the beneficiary's request for enrollment for Medicare Part B coverage. This form is only used for enrollment by beneficiaries who already have Part A, but not Part B. Form CMS–40B is completed by the person with Medicare or occasionally by an SSA representative using information provided by the Medicare enrollee during an in-person interview. The form is owned by CMS, but not completed by CMS staff. SSA processes Medicare enrollments on behalf of CMS. *Form Number:* CMS–40B (OMB control number: 0938–1230); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 400,000; *Total Annual Responses:* 400,000; *Total Annual Hours:* 100,000. (For policy questions regarding this collection contact Carla Patterson at 410–786–1000.)

3. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Request for Retirement Benefit Information; *Use:* Section 1818(d)(5) of the Social Security Act (the Act) provides that certain former State and local government employees (and their current or former spouses) may have the Part A premium reduced to zero.

Form CMS–R–285, ''Request for Retirement Benefit Information,'' is used to obtain information regarding whether

a beneficiary currently purchasing Medicare premium Part A coverage, is receiving retirement payments based on State or local government employment, how long the claimant worked for the State or local government employer, and whether the former employer or pension plan is subsidizing the individual's Part A premium.

Form CMS–R–285 provides the necessary information regarding the prior state or local government employment to process the individual's request for premium Part A reduction based on their employment by a state or local government.

The form is completed by the state or local government employer on behalf of the individual seeking the Medicare premium reduction. The SSA—CMS' agent for processing Medicare enrollments and premium amount determinations will use this information to help determine whether a beneficiary meets the requirements for reduction of the Part A premium. The form is owned by CMS but not completed by CMS staff. *Form Number:* CMS–R–285 (OMB control number: 0938–0769); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 500; *Total Annual Responses:* 500; *Total Annual Hours:* 125. (For policy questions regarding this collection contact Carla Patterson at 410–786–1000.)

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Certification Statement for Electronic File Interchange Organizations (EFIOs) that submit National Provider Identifier (NPI) data to the National Plan and Provider Enumeration System (NPPES); *Use:* The EFI process allows organizations to submit NPI application information on large numbers of providers in a single file. Once it has obtained and formatted the necessary provider data, the EFIO can electronically submit the file to NPPES for processing. As each file can contain up to approximately 25,000 records, or provider applications, the EFI process greatly reduces the paperwork and overall administrative burden associated with enumerating providers. It is essential to collect this information from the EFIO to ensure that the EFIO understands its legal responsibilities as an EFIO and attests that it has the authority to act on behalf of the providers for whom it is submitting data. In short, the certification statement, which must be signed by an authorized official of the EFIO, serves as a safeguard against EFIOs attempting to obtain NPIs for illicit or inappropriate purposes. *Form Number:* CMS–10175 (OMB control number 0938–0984); *Frequency:* Once, Annually; *Affected Public:* Private Sector, State, Business, and Not-for Profits; *Number of Respondents:* 32; *Number of Responses:* 32; *Total Annual Hours:* 8. For questions regarding this collection contact DaVona Boyd at 410–786–7483.

Dated: September 21, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–21095 Filed 9–23–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0810]

Food and Drug Administration Equivalence Determination Regarding Implementation by Spain and the Netherlands of the European Union System of Food Safety Control Measures for Raw Bivalve Molluscan Shellfish With Additional Controls

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing a final determination that the adoption and implementation by Spain and the Netherlands of the European Union's (EU's) system of food safety control measures for raw bivalve molluscan shellfish (''shellfish''), along with their application of additional measures specifically adopted for this purpose, *i.e.,* for export to the United States, provides at least the same level of sanitary protection as comparable food safety measures in the United States and is therefore equivalent. This final equivalence determination will permit the importation of raw shellfish harvested from certain production areas in Spain and the Netherlands from establishments that have been listed by FDA on the Interstate Certified Shellfish Shippers List (ICSSL).

DATES: The determination becomes final on September 24, 2020.

FOR FURTHER INFORMATION CONTACT: Melissa Abbott, Center for Food Safety and Applied Nutrition (HFS–325), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1401; or Robert Tuverson, Center for Food Safety and Applied Nutrition (HFS–550), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1586.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

FDA is responsible for protecting public health by ensuring, among other things, the safety of our nation's food supply, including imported foods. This includes raw bivalve molluscan shellfish (oysters, clams, mussels, roe-on scallops, and whole scallops, referred to as ''shellfish'' throughout this notice) imported into the United States. In the **Federal Register** of March 9, 2018 (83 FR 10487), we published a notice that announced and explained the basis for our proposed equivalence determination that the EU system of food safety control measures for shellfish, along with the application of additional measures specifically adopted for this purpose, *i.e.,* for export to the United States, as adopted and implemented in Spain and the Netherlands, provides at least a level of sanitary protection as comparable food safety measures in the United States. This notice announces that, after considering comments we received on the proposed equivalence determination, we are finalizing the equivalence determination as proposed, except that we are narrowing the scope of this final equivalence determination so that it only encompasses two EU Member States, Spain and the Netherlands. FDA will use this determination as a basis to evaluate additional EU Member States that adopt and implement these measures.

In the future, we will evaluate and recognize as equivalent, as appropriate, other EU Member States in separate determinations. In addition, we further clarify and explain our basis for the final equivalence determination in response to the comments. We note that, in the March 9, 2018, notice, we used both ''production area'' and ''growing area'' in referring to beds or sites that support or could support the propagation of bivalve molluscan shellfish. For purposes of this notice, we continue to use the same terminology.

B. Basis for Equivalence Determination

Under section 432 of the Uruguay Round Agreements Act (URAA), Public Law 103–465, U.S. Agencies may not find foreign sanitary and phytosanitary measures (SPS measures) equivalent to comparable SPS measures in the United States unless the Agency determines that the foreign measures provide at least the same level of sanitary or phytosanitary protection as the

comparable SPS measures established under Federal law (19 U.S.C. 2578a(a)). The URAA also provides that FDA publish a notice in the **Federal Register** and consider public comment before finalizing an equivalence determination when the determination is based on domestic SPS measures that FDA is not required to issue as a rule under the Federal Food, Drug, and Cosmetic Act or other statute we administer (19 U.S.C. 2578a(c)). In accordance with these procedures specified in the URAA, we are finalizing this equivalence determination.

As explained in the March 9, 2018, notice, our equivalence assessment focused on whether the EU's food safety control measures for shellfish, along with the application of additional measures specifically required for export to the United States, which have been adopted and implemented by Spain and the Netherlands, provide at least the same level of sanitary protection as comparable food safety measures in the United States applied through the National Shellfish Sanitation Program (NSSP) (83 FR 10487 at 10488). The NSSP is a Federal-State cooperative program that provides a broad framework of shellfish sanitation standards through its ''Guide for the Control of Molluscan Shellfish'' (NSSP Guide) (Ref. 1). The NSSP Guide functions as a model ordinance incorporated into State law by participating States but is not itself a Federal regulation. The NSSP Guide incorporates Federal regulations specific to fish and fishery products, which are found at part 123 (21 CFR part 123) and § 1240.60 (21 CFR 1240.60). We explained in the March 9, 2018, notice that the NSSP, which governs how U.S. growing areas are managed and classified for shellfish harvest, is implemented and enforced by U.S. States, and contains within it all relevant Federal requirements concerning, among other things, current good manufacturing practices, hazard analysis and Hazard Analysis Critical Control Point (HACCP) plans, recordkeeping, sanitation control procedures, and the restriction of interstate transport of shellfish in an insanitary manner (83 FR 10487 at 10488). Because the NSSP incorporates relevant Federal food safety measures, we determined that the NSSP standards are the appropriate SPS measures to use in determining whether the EU's food safety control measures for shellfish, along with the application of additional measures specifically adopted for export to the United States, which have been adopted and implemented by Spain and the Netherlands, are equivalent to comparable U.S. food safety control measures.

We also explained in the March 9, 2018, notice the process by which we conducted our equivalence assessment (83 FR 10487 at 10489). In the EU, the European Commission (EC) establishes food safety measures that the EU Member States adopt and implement. Our proposed determination was predicated on an indepth evaluation of the EC and certain Member States' regulatory approach, including a comprehensive document review, technical consultations, expert analysis, and onsite evaluations in Spain and the Netherlands to verify their adoption and implementation of relevant EU measures (id.).

In the course of our assessment, FDA's technical experts identified sanitary measures in the EU system that differed from those in the U.S. regulatory approach and determined that further evaluation was needed. As explained in our March 9, 2018, notice, our technical experts completed indepth quantitative and qualitative analyses and determined that in most areas, despite differing regulatory approaches of certain sanitary measures, such measures provided at least the same level of sanitary protection as comparable food safety measures in the United States. However, FDA's technical experts identified some gaps in the EU's system of control measures that provided less sanitary protection than is provided by U.S. measures. To address these gaps, the EC amended and re-issued two Guides to include additional controls that EU Member States must adopt and implement in Class A growing areas to achieve equivalence with the U.S. system of food safety measures: The ''Community Guide to the Principles of Good Practice for the Microbiological Classification and Monitoring of Bivalve Mollusc Production and Relaying Areas with Regard to Regulation 854/2004'' (Community Guide) (Ref. 2); and the ''Microbiological Monitoring of Bivalve Mollusc Harvesting Areas Guide to Good Practice: Technical Application'' (Technical Application Guide) (Ref. 3). The Community Guide specifically prescribes additional controls that EU Member States exporting shellfish to the United States will have to adopt and implement, while the Technical Application Guide sets specific sampling methodologies that must be followed as part of implementation. For purposes of FDA's equivalence evaluation, the EC-identified Class A production areas within Spain and the Netherlands where the EU food safety control measures and the additional controls in the Community Guide and the Technical Application Guide (Guides) are being applied. (Class ''A'' is an EU shellfish production area from which live bivalve molluscs may be harvested for direct human consumption.) (Ref. 5)

We note that since the publication of our proposed equivalence determination the EU has implemented two new regulations for official food and feed controls. These new regulations reorganize and incorporate several existing laws into a comprehensive regulation for the safe handling of food and feed. However, the EU's regulatory amendments do not change our determination of equivalence. Specifically, Regulation (EU) 2017/625, applicable as of December 14, 2019, repeals and replaces Regulations (EC) No 854/2004 and (EC) No 882/2004, which FDA previously identified and assessed as part of our proposed shellfish equivalence determination (Ref. 4). Relatedly, the EU also adopted Regulation (EU) 2019/627, which harmonizes procedures to verify compliance with the rules set forth in Regulation (EU) 2017/625 and related EU legislation for the safe handling of products of animal origin. Regulation (EU) 2019/627, applicable as of December 14, 2019, repeals and replaces procedures formerly contained within Regulation (EC) No 854/2004 (Ref. 5). Importantly, FDA has reviewed Regulations (EU) 2017/625 and (EU) 2019/627 and has confirmed that there is no impact on FDA's technical findings that support this final shellfish equivalence determination because the new regulations include the relevant controls from Regulations (EC) No 854/2004 and (EC) No 882/2004 that were the basis of FDA's technical evaluation for the proposed equivalence determination. Since the relevant controls of Regulation (EU) 2017/625 and (EU) 2019/627 are now being applied as of December 14, 2019, this final equivalence determination cites to these new regulations instead of Regulations (EC) No 854/2004 and (EC) No 882/2004, among other applicable requirements that have not changed, when describing EU food safety control measures for shellfish.

Based on our extensive review of relevant EU measures, the adoption and implementation by Spain and the Netherlands of those measures with additional controls contained in the Guides, and onsite evaluations in Spain and the Netherlands, we conclude that EU food safety control measures for raw bivalve shellfish, along with the Guides, when successfully adopted and

implemented, provide at least the same level of sanitary protection as comparable food safety measures in the United States, as contained in the NSSP; currently these controls have been adopted and implemented in certain production areas in Spain and the Netherlands. Therefore, we are finalizing our equivalence determination for EC-identified Class A production areas in Spain and the Netherlands.

After considering comments received on the proposed equivalence determination, as discussed in section C, the scope of this final equivalence determination only encompasses two EU Member States, Spain and the Netherlands. We will evaluate and recognize as equivalent, as appropriate, other EU Member States in the future in separate determinations. In addition, the scope of the final equivalence determination applies to raw bivalve molluscan shellfish harvested from EC-identified Class A production areas in the EU where additional controls specified in the Guides have been adopted and implemented, and then verified by competent authorities, which currently applies only to raw bivalve shellfish harvested from EC-identified Class A production areas in Spain and the Netherlands. To ensure that equivalence is maintained, FDA intends to engage in technical consultations with relevant competent authorities, conduct surveillance of imported product, and perform audits of EU Member States, as appropriate.

As a result of this determination, only raw bivalve shellfish harvested from EC-identified Class A production areas in Spain and the Netherlands are eligible to be exported to the United States at this time. Shippers of shellfish harvested from these areas must be listed on the ICSSL before they are permitted to export product to the United States (Refs. 6 and 7).

Additionally, certain sanitary measures are not covered by the scope of our equivalence determination. For example, measures related to food and color additives, processing aids, flavors, pesticide and chemical residues, animal drug residues, physical contaminants, and labeling (including nutrition labeling) are not part of this equivalence determination pertaining to raw bivalve molluscan shellfish because the equivalence evaluation did not include these measures and because these measures are excluded from the Agreement between the United States of America and the European Community on Sanitary Measures to Protect Public and Animal Health in Trade in Live Animals and Animal Products (Ref. 8). For measures not covered by the scope of our equivalence determination, raw bivalve shellfish exported from EC-identified Class A production areas in Spain and the Netherlands to the United States, must comply with applicable U.S. requirements.

C. Consideration of Comments Received

In the March 9, 2018, notice, we gave interested parties an opportunity to submit comments and any supporting information by May 23, 2018. We received approximately 25 comments. Most comments generally supported the proposed equivalence determination and did not take specific issue with the technical basis for our conclusion that the EU system of food safety control measures for shellfish, along with the application of additional measures specifically adopted for this purpose, *i.e.,* for export to the United States, as adopted and implemented in Spain and the Netherlands, provides at least a level of sanitary protection as comparable food safety measures in the United States. Several comments questioned the procedural steps by which FDA reached the proposed equivalence determination, the respective roles of the EC and competent authorities in Spain and the Netherlands, and the process FDA will follow when considering additional EU Member States in the future. Some comments asked about whether processed shellfish are included in the present determination.

Other comments pertained to the EC's equivalence determination of the U.S. system of food safety control measures for shellfish, the process the EC will follow for assessing additional U.S. States, the classification of growing areas eligible for export, and other matters associated with the export of shellfish from the United States to the EU. These comments are outside the scope of this equivalence determination.

One comment questioned whether importing live bivalve molluscan shellfish from the EU would present an animal disease risk for native U.S. shellfish wild stocks. Animal disease risks are beyond the scope of this equivalence determination, which is based on an assessment of safety for human consumption. Importers of raw molluscan shellfish must also comply with any applicable U.S. requirements that fall outside the scope of this final equivalence determination, including any regulatory requirements governing the importation of animal products that are implemented by other U.S. Agencies.

D. Clarifications

In response to comments to the March 9, 2018, notice regarding our proposed equivalence determination, we make the following clarifications. On the respective roles and authority of the EC and competent authorities in the individual EU Member States (including Spain and the Netherlands) in the equivalence determination process, we note that the EC is responsible for establishing harmonized food safety measures that the EU Member States adopt and implement. The EC audits EU Member States to ensure that they have adopted and are implementing harmonized measures, and competent authorities in the EU Member States provide oversight of food business operators to enforce compliance with the measures. The scope of this equivalence determination applies to EC measures for raw bivalve molluscan shellfish in EC-identified Class A production areas and implementation of additional controls in the Guides, as adopted and implemented by Spain and the Netherlands. We did not include processed shellfish in this equivalence determination because we currently permit the importation of processed shellfish that comply with U.S. seafood HACCP regulations (part 123 and § 1240.60) from all EU Member States. This determination does not extend to the implementation of EU food safety control measures for shellfish by other EU Member States. We have revised the title of this notice and the scope of our final equivalence determination to clarify this point. In summary, we have determined that the adoption and implementation by Spain and the Netherlands of the EU's system of food safety control measures for shellfish, along with their application of additional control measures provided in the Guides, is equivalent to the comparable U.S. measures because the adoption and implementation by Spain and the Netherlands of the EU measures and additional controls achieves at least the same level of sanitary protection as comparable food safety measures in the United States.

On the matter of recognizing additional EU Member States in the future, we stated in the March 9, 2018, notice that we would update the ICSSL with the names of the establishments in recognized EU Member States intending to export to the United States (83 FR 10487 at 10492). In order for FDA to recognize additional EU Member States as equivalent, the competent authority in the EU Member State would need to demonstrate that it has adopted and implemented EU shellfish safety control

measures, along with the additional control measures provided in the Guides. The process for seeking such recognition is identified in the Administrative Arrangement between the United States Food and Drug Administration and the Directorate-General for Health and Food Safety of the European Commission Regarding Trade in Bivalve Molluscan Shellfish (Ref. 9). In the future, FDA will publish in the **Federal Register** any proposal to recognize additional EU Member States as equivalent and accept comments on the proposal before finalizing the Agency's determination.

Regarding the maintenance of equivalence, both FDA and the EC will carry out periodic onsite evaluations or audits to ensure that equivalence is maintained. In addition, the EC will notify FDA of any plan to adopt, modify or repeal a food safety control measure applicable to molluscan shellfish so that FDA can determine whether the new, modified or repealed measure affects its equivalence determination (Ref. 9).

After considering the comments, we are finalizing the equivalence determination for Spain and the Netherlands.

II. Equivalence Determination

We are announcing that we recognize the adoption and implementation by Spain and the Netherlands of the EU system of food safety control measures for raw bivalve molluscan shellfish, along with their application of additional control measures described in the Guides, as equivalent because the adoption and implementation of these measures by Spain and the Netherlands provide at least the same level of sanitary protection as comparable food safety measures in the United States (19 U.S.C. 2578a(a)).

Because FDA recognizes these control measures have been successfully adopted and implemented by Spain and the Netherlands, this final equivalence determination allows FDA, the competent authorities in Spain and the Netherlands, and the EC to implement procedures for resuming trade in accordance with the final equivalence determination. For the export of raw bivalve shellfish from Spain and the Netherlands to the United States, these procedures include the subsequent listing of eligible establishments in Spain and the Netherlands on the ICSSL once the EC has been notified of our final equivalence determination.

III. References

The following references are on display at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish. Food and Drug Administration and Interstate Shellfish Sanitation Conference. 2007 through 2017 revisions (web page last updated October 2018). Accessed online at *https://www.fda.gov/food/guidanceregulation/federalstatefoodprograms/ucm2006754.htm.*
2. ''Community Guide to the Principles of Good Practice for the Microbiological Classification and Monitoring of Bivalve Mollusc Production and Relaying Areas with Regard to Regulation 854/2004.'' European Commission. June 2012, updated January 2014 and January 2017. Accessed online at *https://ec.europa.eu/food/sites/food/files/safety/docs/biosafety_fh_guidance_community_guide_bivalve_mollusc_monitoring_en.pdf.*
3. ''Microbiological Monitoring of Bivalve Mollusc Harvesting Areas Guide to Good Practice: Technical Application (Technical Application Guide).'' EU Working Group on the Microbiological Monitoring of Bivalve Mollusc Harvesting Areas. Issue 4, August 2010, updated June 2014 (Issue 5) and January 2017 (Issue 6). Accessed online at *https://www.cefas.co.uk/media/jyzhl1si/good-practice-guide-issue-6.pdf.*
4. Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 repeals Regulations (EC) No 854/2004 and (EC) No 882/2004. Accessed online at *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0625&from=EN.*
5. Commission Implementing Regulation (EU) 2019/627 of 15 March 2019, lays down uniform practical arrangements for the performance of official controls on products of animal origin intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council and amending Commission Regulation (EC) No 2074/2005 as regards official controls. Accessed online at *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0627&from=EN.*
6. National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish. Food and Drug Administration and Interstate Shellfish Sanitation Conference. 2007 through 2017 revisions (web page last updated October 2018). See Section II, Chapter 1 @.02, page 13 and Section IV, Chapter III, .03, page 363. Accessed online at *https://www.fda.gov/food/guidanceregulation/federalstatefoodprograms/ucm2006754.htm.*
7. Meeting Summary and Attachment from the U.S.-EU Bivalve Molluscan Shellfish Equivalence Project. November 19 to 20, 2015. FDA Hillandale Building, Silver Spring, MD.
8. Agreement between the United States of America and the European Community on Sanitary Measures to Protect Public and Animal Health in Trade in Live Animals and Animal Products dated July 20, 1999.
9. Administrative Arrangement between the United States Food and Drug Administration and the Directorate-General for Health and Food Safety of the European Commission Regarding Trade in Bivalve Molluscan Shellfish.

Dated: September 16, 2020.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2020–20755 Filed 9–23–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[CMS–3378–N]

Secretarial Review and Publication of the 2019 Annual Report to Congress and the Secretary Submitted by the Consensus-Based Entity Regarding Performance Measurement

AGENCY: Office of the Secretary of Health and Human Services, HHS.

ACTION: Notice.

SUMMARY: This notice acknowledges the Secretary of the Department of Health and Human Services' (the Secretary) receipt and review of the National Quality Forum 2019 Annual Activities Report to Congress and the Secretary submitted by the consensus-based entity under a contract with the Secretary as mandated by the Social Security Act (the Act). The Secretary has reviewed and is publishing the report in the **Federal Register** together with the Secretary's comments on the report not later than 6 months after receiving the report in accordance with the Act. This notice fulfills the statutory requirements.

FOR FURTHER INFORMATION CONTACT: Michelle Geppi, (410) 786–4844.

SUPPLEMENTARY INFORMATION:

I. Background

The United States Department of Health and Human Services (HHS) has long recognized that a high functioning health care system that provides higher quality care requires accurate, valid, and reliable measurement of quality and efficiency. The Medicare Improvements for Patients and Providers Act of 2008

(MIPPA) (Pub. L. 110–275) added section 1890 of the Social Security Act (the Act), which requires the Secretary of HHS (the Secretary) to contract with a consensus based entity (CBE) to perform multiple duties to help improve performance measurement. Section 3014 of the Patient Protection and Affordable Care Act (the Affordable Care Act) (Pub. L. 111–148) expanded the duties of the CBE to help in the identification of gaps in available measures and to improve the selection of measures used in health care programs.

In January 2009, a competitive contract was awarded by HHS to the National Quality Forum (NQF) to fulfill requirements of section 1890 of the Act. A second, multi-year contract was awarded again to NQF after an open competition in 2012. A third, multi-contract was awarded again to NQF after an open competition in 2017. Section 1890(b) of the Act requires the following:

Priority Setting Process: Formulation of a National Strategy and Priorities for Health Care Performance Measurement. The CBE must synthesize evidence and convene key stakeholders to make recommendations on an integrated national strategy and priorities for health care performance measurement in all applicable settings. In doing so, the CBE must give priority to measures that: (1) Address the health care provided to patients with prevalent, high-cost chronic diseases; (2) have the greatest potential for improving quality, efficiency, and patient-centered health care; and (3) may be implemented rapidly due to existing evidence, standards of care, or other reasons. Additionally, the CBE must take into account measures that: (1) May assist consumers and patients in making informed health care decisions; (2) address health disparities across groups and areas; and (3) address the continuum of care furnished by multiple providers or practitioners across multiple settings.

Endorsement of Measures: The CBE must provide for the endorsement of standardized health care performance measures. This process must consider whether measures are evidence-based, reliable, valid, verifiable, relevant to enhanced health outcomes, actionable at the caregiver level, feasible to collect and report, responsive to variations in patient characteristics such as health status, language capabilities, race or ethnicity, and income level and are consistent across types of health care providers, including hospitals and physicians.

Maintenance of CBE Endorsed Measures: The CBE is required to establish and implement a process to ensure that endorsed measures are updated (or retired if obsolete) as new evidence is developed.

Convening Multi-Stakeholder Groups: The CBE must convene multi-stakeholder groups to provide input on: (1) The selection of certain categories of quality and efficiency measures, from among such measures that have been endorsed by the entity and from among such measures that have not been considered for endorsement by such entity but are used or proposed to be used by the Secretary for the collection or reporting of quality and efficiency measures; and (2) national priorities for improvement in population health and in the delivery of health care services for consideration under the national strategy. The CBE provides input on measures for use in certain specific Medicare programs, for use in programs that report performance information to the public, and for use in health care programs that are not included under the Act. The multi-stakeholder groups provide input on quality and efficiency measures for various federal health care quality reporting and quality improvement programs including those that address certain Medicare services provided through hospices, ambulatory surgical centers, hospital inpatient and outpatient facilities, physician offices, cancer hospitals, end stage renal disease (ESRD) facilities, inpatient rehabilitation facilities, long-term care hospitals, psychiatric hospitals, and home health care programs.

Transmission of Multi-Stakeholder Input. Not later than February 1 of each year, the CBE must transmit to the Secretary the input of multi-stakeholder groups.

Annual Report to Congress and the Secretary. Not later than March 1 of each year, the CBE is required to submit to Congress and the Secretary an annual report. The report is to describe:

- The implementation of quality and efficiency measurement initiatives and the coordination of such initiatives with quality and efficiency initiatives implemented by other payers;
- Recommendations on an integrated national strategy and priorities for health care performance measurement;
- Performance of the CBE's duties required under its contract with the Secretary;
- Gaps in endorsed quality and efficiency measures, including measures that are within priority areas identified by the Secretary under the national strategy established under section 399HH of the Public Health Service Act (National Quality Strategy), and where quality and efficiency measures are unavailable or inadequate to identify or address such gaps;
- Areas in which evidence is insufficient to support endorsement of quality and efficiency measures in priority areas identified by the Secretary under the National Quality Strategy, and where targeted research may address such gaps; and
- The convening of multi-stakeholder groups to provide input on: (1) The selection of quality and efficiency measures from among such measures that have been endorsed by the CBE and such measures that have not been considered for endorsement by the CBE but are used or proposed to be used by the Secretary for the collection or reporting of quality and efficiency measures; and (2) national priorities for improvement in population health and the delivery of health care services for consideration under the National Quality Strategy.

Section 50206(c)(1) of the Bipartisan Budget Act of 2018 (Pub. L. 115–123) amended section 1890(b)(5)(A) of the Act to require the CBE's annual report to Congress to include the following: (1) An itemization of financial information for the previous fiscal year ending September 30, including annual revenues of the entity, annual expenses of the entity, and a breakdown of the amount awarded per contracted task order and the specific projects funded in each task order assigned to the entity; and (2) any updates or modifications to internal policies and procedures of the entity as they relate to the duties of the CBE including specifically identifying any modifications to the disclosure of interests and conflicts of interests for committees, work groups, task forces, and advisory panels of the entity, and information on external stakeholder participation in the duties of the entity.

The statutory requirements for the CBE to annually report to Congress and the Secretary of HHS also specify that the Secretary must review and publish the CBE's annual report in the **Federal Register**, together with any comments of the Secretary on the report, not later than 6 months after receipt.

This **Federal Register** notice complies with the statutory requirement for Secretarial review and publication of the CBE's annual report. NQF submitted a report on its 2019 activities to Congress and the Secretary on March 2, 2020. The Secretary's Comments on this report are presented in section II. of this notice, and the National Quality Forum 2019 Activities Report to Congress and the Secretary of the Department of Health and Human Services is provided,

as submitted to HHS, in the addendum to this **Federal Register** notice in section III.

II. Secretarial Comments on the National Quality Forum 2019 Activities: Report to Congress and the Secretary of the Department of Health and Human Services

Once again, we thank the National Quality Forum (NQF) and the many stakeholders who participate in NQF projects for helping to advance the science and utility of health care quality measurement. As part of its annual recurring work to maintain a strong portfolio of endorsed measures for use across varied providers, settings of care, and health conditions, NQF reports that in 2019, it updated its measure portfolio by reviewing and endorsing or re-endorsing 110 measures and removing 41 measures.[1] Endorsed measures address a wide range of health care topics relevant to HHS programs, including: Person- and family-centered care; care coordination; palliative and end-of-life care; cardiovascular care; behavioral health; pulmonary/critical care; perinatal care; cancer treatment; patient safety; and cost and resource use.

In addition to endorsing measures and maintenance of endorsed measures, NQF also worked to remove measures from the portfolio of endorsed measures for their 14 projects related to the topics discussed in the previous paragraph for a variety of reasons, such as: Measures no longer meeting endorsement criteria; harmonization between similar measures; replacement of outdated measures with improved measures; and lack of continued need for measures where providers consistently perform at the highest level.[2] This continuous refinement of the measures portfolio through the measures maintenance process ensures that quality measures remain aligned with current field practices and health care goals. Measure set refinements also align with HHS initiatives, such as the Meaningful Measures Initiative at the Centers for Medicare & Medicaid Services (CMS). CMS is working to identify the highest priorities for quality measurement and improvement and promote patient-centered, outcome based measures that are meaningful to patients and clinicians.

NQF uses its unique role as the CBE to undertake a partnership with CMS to support the Core Quality Measures Collaborative (CQMC). Convened by America's Health Insurance Plans (AHIP), the CQMC is a public-private coalition, with representation by medical associations, specialty societies, public and private payers, patient and consumer groups, purchasers, and quality collaboratives. The CQMC aims to identify high-value, high-impact quality measures that promote better outcomes. The CQMC supports nationwide quality measure alignment between Medicare and private payers and in turn, advances the ongoing work to establish a health quality roadmap to improve reporting across programs and health systems, as referenced in the recent Executive Order on Improving Price and Quality Transparency in American Healthcare to Put Patients First.[3] To date, CQMC has convened workgroups and developed eight (8) core measure sets to be used in high impact areas, including those for the topics of primary care/accountable care organizations/person-centered medical homes, cardiology, gastroenterology, HIV/Hepatitis C, medical oncology, obstetrics/gynecology, orthopedics, and pediatrics.

Recognizing the importance of public-private collaboration, the CQMC's work enhances measure alignment and reduces provider burden. CMS awarded NQF a 3-year contract in September 2018 to support the CQMC's work to update and expand the core sets. In 2019, NQF convened all of the eight CQMC workgroups to update the core sets and discuss maintenance of the core sets. In addition, NQF updated and finalized the principles for selecting measures for existing and new core sets, based on the input of the workgroups. During the same period, NQF also developed the approaches for prioritizing the topics or areas for potential new core sets. Through its partnership with NQF, CMS has contributed to the CQMC by making sure that the core sets drive innovation, reflect evidence-based care, and are meaningful to all stakeholders. The work of the CQMC to develop core measure sets addresses widely recognized and long-standing challenges of quality measure reporting and helps to align quality measurement across all payers, reducing burden, simplifying reporting, and resulting in a consistent measurement process. This in turn can result in reporting on a broader number of patients, higher reliability of the measures, and improved and more accurate public reporting.

Facilitating measure alignment across payers and reducing provider burden is just some of many areas in which NQF partners with HHS to enhance and protect the health and well-being of all Americans. Meaningful quality measurement is essential to the success of value-based purchasing, as evidenced in many of the targeted projects that NQF is being asked to undertake. HHS greatly appreciates the ability to bring many and diverse stakeholders to the table to unleash innovation for quality measurement as a key component to value-based transformation. We appreciate the strong partnership with the NQF in this ongoing endeavor.

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Addendum

In this Addendum, we are setting forth ''*The 2019 Annual Report to Congress and the Secretary: NQF Report on 2019 Activities to Congress and the Secretary of the Department of Health and Human Services.*''

Dated: September 18, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

BILLING CODE 4120–01–P

[1] National Quality Forum (NQF) (February 28, 2020) NQF 2019 Activities: Report to Congress and the Secretary of the Department of Health and Human Services. Final Report, p. 15 (*https://www.qualityforum.org/Publications/2020/02/2019_Annual_Report_to_Congress-2147382169.aspx,* accessed 3/20/2020).

[2] NQF, February 28, 2020, *op. cit.* p. 8.

[3] The White House Executive Order, June 24, 2019: *https://www.whitehouse.gov/presidential-actions/executive-order-improving-price-quality-transparency-american-healthcare-put-patients-first/.*

NATIONAL QUALITY FORUM
Driving measurable health improvements together

NQF 2019 Activities: Report to Congress and the Secretary of the Department of Health and Human Services

Final Report, February 28, 2020

This report was funded by the U.S. Department of Health and Human Services under contract number HHSM-500-2017-00060I Task Order HHSM-500-T0002.

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I. Executive Summary

The National Quality Forum (NQF) works with members of the healthcare community to drive measurable health improvements together. NQF is a not-for-profit, membership-based organization that gives all healthcare stakeholders a voice in advancing quality measures and improvement strategies that lead to better outcomes and greater value. Driven by science, collaboration, and proven outcomes, NQF helps move multiple perspectives into action.

Balancing different groups' perspectives in an open and honest dialogue is core to its work. NQF brings together doctors, health plans, hospitals and patients and caregivers to unite diverse stakeholders on important issues of common need. NQF uniquely and purposefully integrates patients and caregivers to offer a level playing field for all stakeholders to have a voice in defining and improving health care quality.

Quality Performance Measures and Measure Endorsement

NQF has recommended the best-in-class quality measures for use in federal and private improvement programs for two decades. Highly vetted and trusted NQF endorsed measures operate in key, statutorily mandated Medicare programs such as the Quality Payment Program, Hospital Value-Based Purchasing Program and other reporting initiatives in various care settings. Federal improvement programs that use NQF-endorsed quality measures have reduced patient harm in hospitals by 21 percent, saving 125,000 lives and $28 billion in costs. The 3.1 million fewer harms to patients achieved from 2010-2015 include a 91 percent decrease in central line infections and a 16 percent decrease in surgical site infections. Hospital readmission rates for Medicare patients have decreased by 8 percent since 2012.

Aligning the prioritization of such work with the Centers for Medicare & Medicaid Services' (CMS) Meaningful Measures is critical to the overall goals of reducing healthcare costs and improving quality for all. In future years, NQF will continue to align with the Meaningful Measures Initiative to assess core issues that are most vital to high quality care and better patient outcomes and to endorse measures in key areas such as patient safety, population and public health, and patient-centeredness. NQF's endorsement of science based, proven and effective measures allows for continued reduction in healthcare costs and improvement of quality; ensures that Americans have safe, effective and high-value healthcare; and fills important gaps in measurement.

Burden Reduction and Measure Alignment

Measure alignment across the public and private sector reduces burden for providers and clinicians and allows for quality comparisons across providers and programs. Through the Measure Applications Partnership (MAP) and the Core Quality Measures Collaborative, NQF helps private and public payment programs focus on those measures that will have the most impact.

The MAP convenes stakeholders for an intensive annual review of the quality measures being considered by the Department of Health and Human Services for almost 20 federal health programs. It recommends measures that empower patients to be active healthcare consumers and support their decision making, are not overly burdensome on providers, and can support the transition to a system that pays based on value of care. Importantly, it provides a coordinated look across federal programs to identify performance measures being considered, as a way to improve alignment across the healthcare system.

NQF has used its unique convening power to bring together the Core Quality Measures Collaborative (CQMC), a broad-based coalition of health care leaders including CMS, health insurance providers, medical associations, consumer groups, purchasers, and other quality collaboratives. The CQMC is committed to promoting quality measure alignment across the public and private healthcare sectors and has developed several core measure sets for use in multiple clinical areas. The next phase of this project will focus on strategies to increase core set adoption across public and private payers to better promote alignment.

Value Based Care

NQF actively works with CMS to advance the transition to value, ensure that the right quality measures are leveraged to promote high quality care and outcomes through value-based care arrangements while simultaneously looking for ways to streamline measures to reduce quality reporting burden. One of those key areas is rural health. Low case-volume of patients is often at the root of quality measurement challenges for rural health providers and it presents a significant problem for many rural providers, particularly when they want to compare their performance to that of other providers or assess change in quality over time.

NQF convened a multi-stakeholder rural health care committee on promising statistical methods that could address the low case-volume challenge. The report offers key recommendations that public and private stakeholders can act on to promote use of reliable, valid, and relevant measures in rural areas. NQF has also embarked on a new multi-year project that will identify high-priority measures that are important and relevant to rural providers for quality improvement efforts for future testing of the approaches recommended by the multistakeholder committee.

Addressing National Health Priorities

NQF is committed to addressing national health priorities and collaborating with important stakeholders to drive better outcomes. Critical health priorities are often areas where significant gaps in quality measurement exist. NQF provides specific actionable approaches to improve the current state of measurement and health outcomes in high priority areas such as opioid use and maternal mortality.

The U.S. is the only industrialized nation with rising maternal mortality rates and significant racial disparities in pregnancy-related deaths persist, creating an urgency for public health and healthcare delivery systems. Through a multi-year project, NQF is beginning to address morbidity and mortality through the development of actionable approaches that would improve maternal health outcomes. This includes an environmental scan to assess the current state of maternal morbidity and mortality measurement, developing frameworks and the including identification of measurement gaps and innovative quality measurement strategies to enhance care.

Despite a national crisis, only 8 opioid measures have been endorsed by NQF. There are currently several more measures under consideration or under comment however there is much more work to be done in this area. NQF recently released a report with recommendations on the priority measurement gaps that need to be filled in order to reduce opioid use disorders (OUD) and existing and conceptual measures that should be deployed in federal reporting programs.

Taken together, NQF's quality work continues to be foundational to efforts to achieve a cost-efficient, high-quality, value-based healthcare system that ensures the best care for Americans and the best use

of the nation's healthcare dollars. The deliverables NQF produced under contract with HHS in 2019 are referenced throughout this report, and a full list is included in Appendix A. For more information on the contents of this report as required in statutory language, please reference Appendix I.

II. NQF Funding and Operations

In 2018, the Bipartisan Budget Act amended the requirements of this annual report to include, in addition to the previous requirements set forth, new contract, financial, and operational information related to the CBE. *Section 1890(b)(5)(A) of the Social Security Act is amended by adding the following financial and operations information in the Annual Report to Congress and the Secretary —*

- *an itemization of financial information for the fiscal year ending September 30 of the preceding year, including:*
  - *Annual revenues of the entity (including any government funding, private sector contributions, grants, membership revenues, and investment revenue)*
  - *Annual expenses of the entity (including grants paid, benefits paid, salaries and other compensation, fundraising expenses, and overhead costs); and*
  - *a breakdown of the amount awarded per contracted task order and the specific projects funded in each task order assigned to the entity*
- *Any updates or modifications of internal policies and procedures of the entity as they relate to the duties of the entity under this section, including (i) specifically identifying any modifications to the disclosure of interest and conflicts of interests for committees, work groups, task forces, and advisory panels of the entity; and (ii) information on external stakeholder participation in the duties of the entity under this section (including complete rosters for all committees, work groups, task forces, and advisory panels funded through government contracts, descriptions of relevant interests and any conflicts of interests for members of all committees, work groups, task forces and advisory panels, and total percentage by health care sector of all convened committees, work groups, task forces, and advisory panels.*

As part of Section 50206 of the Bipartisan Budget Act of 2018, Congress reauthorized funds for a CBE through fiscal year (FY) 2019. To that end, HHS awarded a contract to NQF to serve as the CBE under this Act. NQF continues to be an independent, not-for-profit, membership-based organization that brings varied healthcare stakeholders together to put forth quality measurement and improvement strategies that reduce costs and help patients receive better care.

NQF's revenues for FY 2019 were $24,839,854 million, including federal funds authorized under SSA 1890(d), private-sector contributions, membership revenue, and investment revenue. NQF's expenses for FY 2019 were $19,595,632. These expenses include grants and benefits paid, salaries and other compensations, fundraising expenses, and overhead costs.

A complete breakdown of the amount awarded per contract is available in Appendix A. NQF has made no updates or modifications to disclosure of interest and conflict of interest policies. Rosters of committees and workgroups funded under the CBE contract are available in Appendix B.

III. Recommendations on the National Quality Strategy and Priorities

Section 1890(b)(1) of the Social Security Act (the Act) mandates that the consensus-based entity (entity) shall "synthesize evidence and convene key stakeholders to make recommendations . . . on an integrated national strategy and priorities for health care performance measurement in all applicable settings. In making such recommendations, the entity shall ensure that priority is given to measures: (i) that address the health care provided to patients with prevalent, high-cost chronic diseases; (ii) with the greatest potential for improving the quality, efficiency, and patient-centeredness of health care; and (iii) that may

be implemented rapidly due to existing evidence, standards of care, or other reasons." In addition, the entity is to "take into account measures that: (i) may assist consumers and patients in making informed health care decisions; (ii) address health disparities across groups and areas; and (iii) address the continuum of care a patient receives, including services furnished by multiple health care providers or practitioners and across multiple settings."[2]

At the request of HHS, the NQF-convened National Priorities Partnership (NPP) provided input that helped shape the initial version of the NQS, released by HHS in 2011. The NQS set out a comprehensive roadmap for the country that focuses on achieving better, more affordable care. It also emphasized the need for healthcare stakeholders across the country, both public and private, to play a role in making the initiative a success.

Annually, NQF continues to endorse measures through our core endorsement process that link to these priorities by convening diverse stakeholder groups to reach consensus on key strategies for performance measurement and quality improvement. Further, NQF began work focused on key issues that address the changing measurement landscape, including, but not limited to, changes in clinical practice guidelines, data sources, or risk adjustment across both the public and private sectors. In late 2018, NQF convened the Core Quality Measures Collaborative (CQMC), a multistakeholder collaborative to ensure that the right quality measures are being used across payers, aligning with the NQS' emphasis on public-private collaboration. In addition, NQF began work in 2019 on an urgent national priority area—to address challenges in opioid and OUD quality measurement. More details about NQF's endorsement work is in Section IV. Quality and Efficiency Measurement Initiatives (Performance Measurement). More information about NQF's priority initiatives on public-private payer alignment and OUDs follows below.

Priority Initiative: Align Private and Public Quality Measurement

A majority of Americans receive care through a value-based care arrangement, one that ties payment to the quality of care. Both public- and private-sector payers use VBP to ensure care is high quality and cost efficient. Ensuring the right quality measures are used across payers is essential to delivering results that will lead to a better healthcare system and reduce clinician burden.

One response was America's Health Insurance Plans (AHIP) convening a collaborative including CMS, NQF, health plans, physician specialty societies, employers, and consumers. The voluntary collaborative sought to add focus to quality improvement efforts; reduce the reporting burden for providers; and offer consumers actionable information to help them make decisions about where to receive their care. More specifically, the collaborative has three main aims:

1. Identify high value, high-impact, evidence-based measures that promote better patient outcomes, and provide useful information for improvement, decision making, and outcomes-based payment.
2. Align measures across public and private health insurance providers to achieve congruence in the measures being used for quality improvement, transparency, and payment purposes.
3. Reduce the burden of measurement by eliminating low-value metrics, redundancies, and inconsistencies in measure specifications and reporting requirements across public and private health insurance providers.

The collaborative developed and released eight core sets of quality measures in 2016 on key areas including:

- Accountable Care Organizations (ACOs), Patient-Centered Medical Homes (PCMH), and Primary Care
- Cardiology
- Gastroenterology
- HIV and Hepatitis C
- Medical Oncology
- Obstetrics and Gynecology
- Orthopedics
- Pediatrics

In 2018, CMS and AHIP—in partnership with NQF—reconvened and formalized the CQMC to continue its alignment efforts and improve healthcare quality for every American. First, the CQMC established a structure for creating, maintaining, and finalizing core measure sets. This process included refining the principles for core set measure selection and developing approaches to future core set prioritization. Next, NQF convened the CQMC to update the existing eight core sets. CQMC workgroups, made up of subsets of CQMC members with expertise in the respective topic areas, reviewed new measures that could be added to the core sets to address high-priority areas. The workgroups also removed measures that no longer showed an opportunity for improvement, did not align with clinical guidelines, or have implementation challenges. The workgroups also discussed measurement gaps and adoption successes and challenges.

In 2019, NQF convened all CQMC workgroups to discuss the maintenance of the core sets. The HIV/Hepatitis C and Gastroenterology workgroups finalized their maintenance discussion and voted on measures to be added or removed from their respective existing core sets. Voting results for the two workgroups were presented to the Steering Committee and are waiting to be presented to the full collaborative for final approval in early 2020. Voting results for the Cardiology, Orthopedics, and Pediatrics core sets were finalized and await presentation to the Steering Committee by early 2020. The Medical Oncology, ACO, and Obstetrics and Gynecology workgroups are yet to finalize their maintenance discussion. The remaining three workgroups will finalize their maintenance discussions in early 2020 and will complete voting by spring 2020.

In the coming year, NQF will continue to provide guidance and technical support to the CQMC on updating core measure sets, expanding into new clinical areas and providing guidance to stakeholders seeking to use the core set measures. Planned work includes finalizing the eight updated core sets and creating new core sets for behavioral health and neurology. NQF will also work collaboratively with CQMC members to develop strategies for facilitating implementation across care settings and promoting measure alignment.

Moving forward, NQF will also convene a workgroup to create an implementation guide. This resource will provide guidance on resolving technical issues related to adoption and increasing stakeholder knowledge of the core sets. The CQMC will also use the updated prioritization criteria to consider additional areas of work. NQF will conduct an analysis of gaps and measure specification variation in the core measure sets. These activities will increase use and widen the adoption of the core sets, thereby reducing the burden of measurement for payers and clinicians.

See the collaborative's website for more information at http://www.qualityforum.org/cqmc/.

Priority Initiative: Opioid and Opioid Use Disorder

Opioid-related overdose deaths and morbidity have increased in epidemic proportions over the last 10 years. In 2019, the Morbidity and Mortality Weekly Report confirmed that in 2017 there were over 47,000 U.S. deaths attributable to opioid use, both prescription and illicit.[3] These numbers eclipse the total mortality related to other crises including peak automobile accidents, the Vietnam war, HIV/AIDS, and gun violence in this country.[4] Moreover, a large proportion of those deaths are tied to heroin that is laced with illegally manufactured fentanyl,[5–7] a substance available in patch form to treat chronic pain.

This salient trend demonstrates an epidemic that is partly tied to unintended effects of regular medical care. More specifically, it has been well-documented that the recent rise in opioid use and dependence largely relates to trends over the past 20 years to expand the therapeutic use of opioids like Oxycontin to treat acute and chronic pain.[8–10] In fact, opioid prescriptions have become so prevalent that currently the U.S. legally distributes more opioids per capita than any other nation, many times over.

Quality measures related to opioid use are a key component to holding care providers, payers, and policymakers accountable as direct purveyors or indirect sponsors of the best possible care regarding pain management and substance use dependence treatment and prevention.[11]

The response to the opioid overdose epidemic included congressional action in the form of legislation to permit federal agencies to enhance their efforts to address pain management and OUDs—the 2018 Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act Section 6093, signed by President Trump in October 2018. That law expanded funding mechanisms for substance use disorder (SUD), and further required examination of the coverage, payment, and treatment issues in Medicare and Medicaid regarding OUDs and pain management. The SUPPORT Act also called for the establishment of a "technical expert panel for the purpose of reviewing quality measures relating to opioids and opioid use disorders including care, prevention, diagnosis, health outcomes and treatment furnished to individuals with opioid use disorders." Under the authority of this law, HHS contracted with NQF to establish a multistakeholder technical expert panel (TEP) to consider OUD-related quality measures within an environmental scan. This included an inventory of existing measures, measure concepts (i.e., measures that have not been fully specified and tested), and apparent gaps.

In 2019, NQF convened a 28-member TEP and began a multiphased approach to address prominent challenges regarding quality measurement science as it relates to OUDs. As called for in the SUPPORT Act, the TEP was directed to do the following:

1. Review quality measures that relate to OUDs, including those that are fully developed or are under development;
2. Identify gaps in areas that relate to OUDs, and identify measure development priorities for such measure gaps; and
3. Make recommendations to HHS on quality measures with respect to OUDs for purposes of improving care, prevention, diagnosis, health outcomes, and treatment, including recommendations for revisions of such measures, need for development of new measures, and recommendations for including such measures in the Merit-Based Incentive Payment System (MIPS), APMs, the Shared Savings Program (SSP), the Hospital Inpatient Quality Reporting (IQR) program and the Hospital VBP program.

To inform the TEP's work, NQF first conducted an environmental scan of the current landscape of quality and performance measures and measure concepts that could be used to assess opioid use, OUD, and overdose. The environmental scan resulted in identification of a total of 207 measures and 71 measure concepts categorized into four domains—Pain Management, Treatment of OUD, Harm Reduction, and Social Issues. Measures and measure concepts were then further divided into smaller groupings within each domain to organize the measures and facilitate the identification of measure gaps.

The next phase of this project included developing recommendations that specifically identified the prioritized gaps in measure concepts for OUDs. It also provided guidance on OUD measurement for federal programs. The TEP identified five priority gaps/concepts that have multiple dimensions and multiple level-of-analysis targets, which are summarized here:

- Measures of opioid tapering, and more general measures related to the treatment of acute and chronic pain, are essential to addressing the opioid crisis.
- The inclusion of some measures for special populations such as pregnant women, newborns, racial subgroups, and detained persons is important.
- Long-term follow-up of clients being treated for OUD across time and providers is important to assess even though there are data challenges.
- Pain management, OUD treatment, SUD treatment, and treatment of physical and mental health comorbidities are all important.

The guidance on opioid and OUD measurement for federal programs included recommendations on the measures that should be included in these programs, whether revisions of measures should be considered or if there is a need for development of new measures. The applicable federal programs and payment models for these recommendations are MIPS; APMs; SSP; IQR; and the hospital VBP program. In consideration of each program, the TEP reviewed the measures and measure concepts applying them to each of the five federal programs.

A full report of the review process, TEP discussion, and recommendations is available to the public for comment and was finalized in February 2020.

IV. Quality and Efficiency Measurement Initiatives (Performance Measurement)

Section 1890(b)(2) and (3) of the Social Security Act requires the consensus-based entity (CBE) to endorse standardized healthcare performance measures. The endorsement process must consider whether measures are evidence-based, reliable, valid, verifiable, relevant to enhanced health outcomes, actionable at the caregiver level, feasible for collecting and reporting, responsive to variations in patient characteristics, and consistent across types of healthcare providers. In addition, the CBE must establish and implement a process to ensure that measures endorsed are updated (or retired if obsolete) as new evidence is developed.

NQF works closely with many different stakeholders across the healthcare spectrum, including providers, patients, healthcare systems, hospitals, insurers, employers, and many more. Diverse stakeholder involvement and perspectives facilitate an equitable review and endorsement of healthcare performance measures. NQF-endorsed measures are used in a variety of ways. Providers use them to help understand whether the care they provide to their patients is optimal and appropriate. Federal and state governments use performance measures to identify where to focus quality improvement efforts and evaluate performance. Healthcare performance measures further enhance healthcare value by

ensuring consistent, high quality data are available, which ultimately allows for comparisons across providers, programs, and states. Currently, NQF has a portfolio of 520 endorsed measures used across the healthcare system. Subsets of this portfolio apply to particular settings and levels of analysis.

Cross-Cutting Projects to Improve the Measurement Process

In 2019, NQF undertook two projects to expand the science of performance measurement: the Social Risk Trial and the Rural Health Technical Expert Panel. These projects aimed to provide greater insights into measure methodology and future guidance for NQF's work to endorse performance measures. NQF explored ways to address attribution models; that is, the methodology through which a patient and their healthcare outcomes are assigned to a provider. NQF also examined the ongoing issue of how to account for the influence that a person's socioeconomic status or other social risk factors can have on their healthcare outcomes—and the challenges faced by rural providers to meet the reporting requirements in various CMS quality programs.

Social Risk Trial

Outcome measures—like those related to mortality, readmissions, or complications—have been playing an increasingly important role in VBP programs for public and private payers. More often than not, healthcare outcomes are not solely the results of the quality of care received but can be influenced by factors outside a provider's control, such as a patient's age, gender, comorbid conditions, severity of illness, or socioeconomic factors. Based on the input of a TEP, NQF published a report in 2014 recommending that performance measures should account for these underlying differences in patients' health risk, clinical or socioeconomic, if there is a conceptual basis for doing so to ensure measures make fair conclusions about provider quality.

Risk-adjusting outcome measures to account for differences in patient health status and clinical factors (e.g., comorbidities, severity of illness) that are present at the start of care is widely accepted. However, it is also well-documented that a person's social risk factors (i.e., socioeconomic and demographic factors) can also affect health outcomes. In the past, NQF's policy forbid risk adjustment for social risk factors, due to concern about the possibility of masking disparities or creating lower standards of care for people with social risk factors.

Based on the 2014 report mentioned earlier, NQF implemented the first Social Risk Trial, a two-year effort between 2015 and 2017. During this period, NQF relaxed the policy against social risk adjustment in reviewing outcome measures submitted for endorsement or re-endorsement. Soon after the trial, NQF released a final report in August 2017, reaffirming the recommendation in its 2014 report that performance measures should be risk adjusted for social risk factors if there is a conceptual basis for doing so. Also, stakeholders called for continuous efforts to examine some of the technical issues that remained inconclusive at the end of the first trial. In response to stakeholders' concerns, HHS has funded NQF to implement a second Social Risk Trial, a three-year effort that began in May 2018 and will be completed by May 2021.

As part of this work, NQF has continued working with the Disparities Standing Committee and builds on the lessons of the initial NQF-funded Social Risk Trial initiative. In 2019, the Disparities Committee met to review the risk-adjusted measures for the spring and fall 2019 cycle submissions, review the risk models in use, and interpret results. The table below provides an overview of the measures submitted and initial analysis.

Total Number of Measures Reviewed	127
Number of outcome measures (including intermediate outcome and patient-reported outcome-based performance measures (PRO-PM))	48 of 127
Number of measures that used some form of risk adjustment	38 of 127
Number of measures that provided a conceptual rationale for potential impact of social risk factors	32 of 127

The measure developers established the conceptual rationale to support the potential impact of social risk factors through literature reviews, internal data analysis, or expert group consensus. Some of the social risk factors considered include race/ethnicity, payer, Agency for Healthcare Research and Quality (AHRQ) Socioeconomic Status (SES) Index, education, employment status, ZIP code, rural/urban, relationship status, income, and language. Reasons cited for not adjusting included negligible impact of SES adjustment, potential to mask poor performance and disparities in care, and relatively constant distribution of patients with risk factors.

Since 2017, there have been 276 measures submitted; 108 of those used some form of risk adjustment, and 100 measures had a conceptual model outlining the impact of social risk. Many of the measures submitted were process measures (44 percent), but the overall portfolio of measures included other measure types such as composite, efficiency, intermediate outcome, outcome, PRO-PM, resource use, and structural measures.

In 2020, NQF will continue to explore the impact of social risk factors on the results of measures and the appropriateness of including social risk factors in the risk-adjustment models of measures submitted for endorsement review (if there is a conceptual basis and empirical evidence to support doing so). The ongoing work of the Social Risk Trial period will advance the science of risk adjustment and provide expert guidance to address the challenges and opportunities related to including social risk factors in risk-adjustment models. The final report for this project will be completed in May 2021.

Rural Health Technical Expert Panel

Compared to the urban and suburban regions in the U.S., rural communities have higher proportions of elderly residents, higher rates of poverty, greater burden of chronic diseases (e.g., diabetes, hypertension, and chronic obstructive pulmonary disease), and limited access to the healthcare delivery system. While 60 percent of all trauma deaths in the U.S. occur in rural areas, only 24 percent of rural residents have access to a trauma center, compared to 85 percent for all U.S. urban and suburban residents, underscoring the severity of insufficient access to care.

Rural healthcare providers face many challenges in reporting quality measurement data and implementing care improvement efforts to address the needs of their populations. Low case-volume presents a significant measurement challenge for many rural providers to report measures, making it difficult for them to compare their performance to that of other providers (both rural and non-rural), identify topics for improvement, or assess change in quality over time. Rural areas are, by definition, sparsely populated, and this can affect the number of patients eligible for inclusion in healthcare performance measures, particularly condition- or procedure-specific measures. The low -volume challenge for rural providers is further aggravated by geographical remoteness and lack of transportation options for rural residents.

In 2018, as an extension of NQF's work in convening the MAP Rural Health Workgroup, CMS tasked NQF with eliciting expert input on promising statistical approaches that could address the low case-volume challenge as it pertains to healthcare performance measurement of rural providers. NQF began this new work by convening a five-member TEP. As part of the effort, the TEP reviewed previously identified approaches to the low case-volume challenge and offered new recommendations as appropriate. In fulfilling its charge, the TEP considered exemptions for reporting requirements for rural providers in various CMS quality programs, as well as the heterogeneity of the residents and healthcare providers in rural areas.

As part of their work, TEP members considered the following ways of defining low case-volume for the purposes of the report and its recommendations:

- Too few individuals meet the measure denominator
- Too few individuals meet the measure numerator
- As defined by specific program reporting requirements (i.e., reporting thresholds)

The TEP ultimately agreed to consider low-case volume primarily as having too few individuals that meet the measure denominator criteria. Members noted that some measures, by design, will have very low numerator counts (e.g., measures of patient safety "never events"), and that consideration of the magnitude of the numerator, relative to that of the denominator, may be of more interest than focusing on the numerator. Regarding use of specific program reporting requirements to define low case-volume, TEP members noted that thresholds for reporting often are implemented due to concerns about privacy, which are different from concerns regarding low case-volume and its resulting effects on score-level reliability. Thus, the TEP decided to consider the various program-specific thresholds on a case-by-case basis, if necessary, rather than use them to define low case-volume for the report.

The TEP also discussed whether to consider complete lack of service provision (e.g., a hospital does not perform deliveries) as a part of their deliberations. Members agreed that this is a missing-data problem within the context of composite measures and program design, rather than a low-case-volume problem. Therefore, they decided that this situation was out of scope for the report.

The TEP's four key recommendations to address the low-case-volume challenge are to: 1) "borrow strength" for low-case-volume rural providers to the extent possible by systematically incorporating additional data as needed (e.g., from past performance, from other providers, from other measures, etc.); 2) recognize the need for robust statistical expertise and computational power to implement the recommended modeling approach of borrowing strength; 3) report exceedance probabilities (exceedance probabilities, like confidence intervals, reflect the uncertainty of measure results); 4) and anticipate the potential for unintended consequences of measurement. TEP members also suggested several additional ideas for future work that could further address the low-case-volume challenge for rural providers, including both research and policy activities:

- Apply the recommendation of borrowing strength to the extent possible in a simulation study.
- Implement a "challenge grant" by providing either real or simulated data of rural providers with low case-volume—again, where the true quality of the providers is known—and ask volunteer researchers to apply various methods to address the problem.
- Explore which structural characteristics might be appropriate in defining shrinkage targets for performance measurement of rural providers.

- Bring together experts from other disciplines (such as education), who also must contend with the small-denominator problem, in order to share best practices for measurement and reporting.
- Explore nonparametric alternatives when developing measures for rural providers.
- Determine whether, and if so, how, to consider the small-numerator problem, particularly from the rural perspective. The small-numerator problem, which was considered out of scope by the TEP for this project, occurs when few individuals meet the measure numerator.
- Explore the policy rationale for various approaches to measurement in rural areas, particularly considering quality improvement and access rather than competition.
- Explore the implications of lack of service delivery (e.g., obstetrical services, mental health services) in rural areas on performance measurement, particularly in the context of actual or theoretical pay-for-performance program structures.
- Revisit the core set of rural-relevant measures identified in 2018 by the MAP Rural Health Workgroup on an ongoing basis to ensure that rural residents and providers find these measures meaningful.
- Continue to explore ways to ensure that rural providers can meaningfully participate in quality programs, both public and private.

The final report from the Rural Health Technical Expert Panel was published in April 2019.

Current State of the NQF Measure Portfolio

In 2019, NQF's measure portfolio contained 520 measures across a variety of clinical and cross-cutting topic areas. Forty-five percent of the measures in NQF's portfolio are outcome measures. NQF's multistakeholder committees—comprising stakeholders from across the healthcare landscape including consumers, providers, patients, payers, and other experts—review both previously endorsed and new measures submitted using NQF's rigorous measure evaluation criteria. All measures submitted for NQF endorsement are evaluated against the following criteria:

- Importance to Measure and Report
- Reliability and Validity—Scientific Acceptability of Measure Properties
- Feasibility
- Usability and Use
- Comparison to Related or Competing Measures

NQF encourages measure developers to submit measures that can drive meaningful improvements in care and fill known measure gaps that align with healthcare improvement priorities. NQF brings together multistakeholder committees to evaluate measures for endorsement twice a year, with submission opportunities in the spring and fall of each year. This frequent review process allows measure developers to receive a timely review of their measures, in addition to reducing committee downtime between review cycles. More information is available in Measure Evaluation Criteria and Guidance for Evaluating Measures for Endorsement.

NQF's portfolio of endorsed measures undergoes evaluation for maintenance of endorsement approximately every three years. The maintenance process ensures that NQF-endorsed measures represent current clinical evidence, continue to have a meaningful opportunity to improve, and have been implemented without negative unintended consequences. In a maintenance review, NQF multistakeholder committees review previously endorsed measures to ensure that they still meet NQF

criteria for endorsement. This maintenance review may result in removing endorsement for measures that no longer meet rigorous criteria, facilitating measure harmonization among competing or similar measures, or retiring measures that no longer provide significant opportunities for improvement.

Measure Endorsement and Maintenance Accomplishments

In 2017, NQF redesigned the endorsement process, creating an opportunity for measure developers to submit measures for endorsement consideration twice each year (spring and fall). As a result, in 2019, NQF convened 14 multistakeholder topic-specific standing committees for 28 quality measure endorsement projects (two projects per committee) to review submitted measures. This report highlights the outcomes of the three measure submission and review cycles that had activity in 2019: the completion of the review of measures submitted in the prior year (November 2018/fall 2018) and measure review cycles started in the calendar year addressed by this report (April 2019/spring 2019 and November 2019/fall 2019).

Also, as a result of the 2017 redesign, NQF convened the 40-member Scientific Methods Panel (SMP) to assist with the methodological review of complex measures prior to committee review of measures. Complex measures may include outcome measures, instrument-based measures (e.g., PRO-PMs), cost/resource use measures, efficiency measures, and composite measures) across all 14 topic areas. The SMP's review focuses on the measure's Scientific Acceptability (specifically, the "must-pass" subcriteria of reliability and validity), using NQF's standard measure evaluation criteria for new and maintenance measures. The Panel's feedback is critical input for standing committee endorsement recommendations. To that end, the Panel evaluated 72 complex measures in 2019.

Next, NQF's 14 multistakeholder standing committees reviewed and evaluated the measures. While some measure endorsement projects received measures for review each cycle, others did not. When standing committees did not receive measures, they instead convened to discuss overarching issues related to measurement in their topic area; these projects included Cancer and Prevention and Population Health. Through projects completed in 2019 with standing committees receiving measures, NQF endorsed 110 measures and removed 41 measures from its portfolio. Appendix B lists the types of measures reviewed in 2019 and the results of the review. Below are summaries of endorsement projects completed in 2019, as well as projects that began but were not completed before the end of the year.

All-Cause Admissions and Readmissions

A hospital readmission can be defined as patient admission to a hospital within 30 days after being discharged from an earlier hospital stay.[12] Hospital admissions and readmissions rates are influenced by various factors (e.g., socioeconomic status) and often are unavoidable and necessary.[13] To drive improvement in admissions and readmissions rates, performance measures have continued to be a key element of VBP programs to incentivize collaboration in the healthcare delivery system.

NQF's current portfolio includes 51 endorsed admissions and readmissions measures, including all-cause and condition-specific admissions and readmissions measures addressing numerous settings. Many of these measures are used in private and federal quality reporting and VBP programs, including CMS' Hospital Readmissions Reduction Program (HRRP) as part of ongoing efforts to reduce avoidable admissions and readmissions.

During the fall 2018 review cycle, the All-Cause Admissions and Readmissions Standing Committee evaluated seven measures. Four were endorsed, and the remaining three were not endorsed due to concerns about the measures' validity. The fall 2018 cycle concluded in August 2019, and the final report was published in August 2019. During the spring 2019 review cycle, five measures were evaluated, none of which was endorsed. One new measure was withdrawn from consideration. Another new measure was split and assessed at two levels of analysis, with one not endorsed and one deferred to the fall 2019 review cycle. Two more measures deferred from the fall 2018 cycle were not endorsed.

One measure will be reviewed during the fall 2019 cycle.

Behavioral Health and Substance Use

Behavioral health—including psychiatric illness (mental illness) and SUDs–is an important construct that reflects the interwoven complexities of human behavior and its neurological underpinnings.[14] As of 2018, approximately 57 million adolescent and adult Americans suffer from substantive behavioral health disorder, and the need for treatment remains very high, with only about 18 percent of those with SUD and 43 percent for those with any MI being able to access treatment.

NQF's current portfolio includes 49 endorsed behavioral health measures pertaining to the treatment of depression, psychosis, attentional disorders, and SUDs.

During the fall 2018 cycle, the Behavioral Health and Substance Use Standing Committee evaluated four measures against NQF's measure evaluation criteria. Two were new measures, and two were undergoing maintenance review. Of the four, three measures were endorsed, and one measure did not pass the NQF Evidence criterion and was not recommended for endorsement due to concern about the sensitivity and specificity of both the numerator and denominator. During the spring 2019 cycle, the committee reviewed two new measures, and four measures undergoing maintenance review were evaluated. All six measures were endorsed.

Four measures will be reviewed as part of the fall 2019 cycle.

Cancer

Cancer care is complex and provided in multiple settings—hospitals, outpatient clinics, ambulatory infusion centers, radiation oncology treatment centers, radiology departments, palliative and hospice care facilities—by multiple providers including surgeons, oncologists, nurses, pain management specialists, and social workers. Due to the need for multiple care transitions that may at times require numerous care settings and providers, care coordination is vital, and quality measures that address the value and efficiency of care for patients and their families are needed.

NQF's current portfolio includes 27 endorsed measures that address prevalent forms of cancer; specifically, breast cancer, colon cancer, hematology, lung and thoracic cancer, and prostate cancer.

During the fall 2018 cycle, the Cancer Standing Committee evaluated two new measures and one measure undergoing maintenance review against NQF's standard evaluation criteria. The Standing Committee recommended two measures for endorsement. One did not pass the NQF evaluation criterion due to the small sample size and complexity of the measure, and therefore was not recommended. The Consensus Standards Approval Committee (CSAC) deferred the endorsement decision of one measure back to the Standing Committee for reassessment in a future cycle. However,

during spring 2019, there were no measures submitted for review. Instead, the Committee had a strategic web meeting to preview the two new measures and eight undergoing maintenance review.

Nine measures are being reviewed as part of the fall 2019 cycle.

Cardiovascular

Cardiovascular disease (CVD) is a significant burden in the U.S., leading to approximately one in four deaths per year.[15] CVD is the leading cause of death for men and women in the U.S..[16] Considering the effect of cardiovascular disease, measures that assess clinical care performance and patient outcomes are critical to reducing the negative impacts of CVD.

NQF's current portfolio includes 54 endorsed measures addressing primary prevention and screening or the treatment and care of disease such as coronary artery disease (CAD), heart failure (HF), ischemic vascular disease (IVD), acute myocardial infarction (AMI), and hypertension. Other endorsed measures assess specific treatments, diagnostic studies, or interventions such as cardiac catheterization, percutaneous catheterization intervention (PCI), implantable cardioverter-defibrillators (ICDs), cardiac imaging, and cardiac rehabilitation.

During the fall 2018 cycle, the Cardiovascular Standing Committee evaluated four measures: one new measure, and three measures undergoing maintenance review. All four measures were endorsed. In the spring 2019 cycle, the Standing Committee evaluated six measures undergoing maintenance review against NQF's standard evaluation criteria. All six measures were endorsed.

Seven measures are being reviewed as part of the fall 2019 cycle.

Cost and Efficiency

In 2017, the U.S.' national health expenditures grew to 17.9 percent of GDP, reaching $3.5 trillion.[17] The prevalence of chronic disease and life expectancy continue to worsen in the U.S. compared with other developed countries, despite extensive investment.[18] Identifying opportunities to improve an upward trend, and understanding cost relative to quality of care and outcomes are vital for determining whether spending is proportionate to the healthcare goals we seek to achieve.[19,20]

NQF's current portfolio includes 14 endorsed measures that address the value of healthcare services through total cost of care and spending for treatment of specific conditions for hospitals and providers. NQF's Cost and Efficiency Project primarily focuses on evaluating costs and resource use measures and supports NQF's efforts to provide guidance to the performance measurement enterprise on using cost measures to understand efficiency and value.

In the fall 2018 cycle, the Cost and Efficiency Standing Committee evaluated and endorsed one new measure. During the spring 2019 cycle, the Committee evaluated and endorsed 15 measures.

No measures are being reviewed as part of the fall 2019 cycle.

Geriatrics and Palliative Care

As of 2018, there were an estimated 50.9 million individuals (15.6 percent of the U.S. population) categorized within the 65-and-older population, a figure that is expected to increase to 94.7 million by 2060.[21] This population is affected by a variety of disabilities, limited function and, for those noninstitutionalized, have two or more chronic conditions.[21,22] Improving both access to and quality of

palliative and end-of-life care becomes more important with the increasing number of aging Americans with chronic illnesses, disabilities, and functional limitations.[23]

NQF's current portfolio includes 35 endorsed measures addressing experience with care, care planning, pain management, dyspnea management, care preferences, and quality of care at the end of life.

During the fall 2018 review cycle, the Geriatric and Palliative Care Standing Committee evaluated five measures undergoing maintenance review against NQF's measure evaluation criteria. All five were endorsed. During the spring 2019 cycle, the committee reviewed and endorsed two new measures.

Two measures are being reviewed as part of the fall 2019 cycle.

Neurology

Neurological conditions and injuries affect millions of Americans each year, including patients, families, and caregivers, with costs increasing each year. According to a study published in the April 2017 issue of Annals of Neurology, the most common neurological diseases cost the United States $789 billion in 2014, and this figure is projected to grow as the elderly population doubles between 2011 and 2050.[24] Evaluation of performance measures will help guide quality improvements in care and treatment of neurological conditions.

NQF's current portfolio includes 18 measures addressing stroke, dementia, and epilepsy. The portfolio contains 16 measures for stroke, which include six measures that are NQF-endorsed with reserve status, and two for dementia.

In the fall 2018 cycle, there were no measures submitted for evaluation; however, the Neurology Committee did have a strategic discussion about the portfolio of measures. During the spring 2019 cycle, one maintenance eMeasure was evaluated, but the committee could not reach consensus due to lack of graded evidence, so the eMeasure was not endorsed.

Three measures are being reviewed as part of the fall 2019 cycle.

Patient Experience and Function

As the healthcare paradigm evolves from one that identifies persons as passive recipients of care to one that empowers individuals to participate actively in their care, effective engaged care must adapt readily to individual and family circumstances, as well as differing cultures, languages, disabilities, health literacy levels, and socioeconomic backgrounds.[25] The implementation of patient-centered measures is one of the most important approaches to ensuring that the healthcare Americans receive reflects the goals, preferences, and values of care recipients.

NQF's current portfolio includes 53 measures addressing concepts such as functional status, communication, shared decision making, care coordination, patient experience, and long-term services and supports.

During the fall 2018 review cycle, the Patient Experience and Function Committee evaluated five new measures. All five measures were endorsed. During the spring 2019 cycle, 15 measures were reviewed, and all were endorsed.

Two measures are being reviewed as part of the fall 2019 cycle.

Patient Safety

Medical errors are estimated to cause hundreds of thousands of preventable deaths each year in the U.S..[26] Patient safety measurement and quality improvement efforts represent one of the most successful applications of quality measurement. These efforts have helped drive substantial reductions in patient safety-related events, particularly in hospitals. Despite improvements, opportunities exist to reduce harm and promote more effective and equitable care across settings.

NQF's current portfolio includes 62 measures on topics such as medication safety, healthcare-associated infections, mortality, falls, pressure ulcers, and workforce and radiation safety.

The fall 2018 review cycle included six new and maintenance measures focused on medication monitoring and review, surgical site and hospital-acquired infections, and nurses' practice environment. All six measures were endorsed. During the spring 2019 cycle, the Patient Safety Committee evaluated 11 measures, of which, nine measures were endorsed, one was withdrawn by the measure developer following the committee's evaluation, and one was not recommended for endorsement because it did not pass the performance gap subcriterion. During these cycles, the Patient Safety Committee also explored harmonization of medication review and reconciliation measures, an area with considerable variation of specifications. NQF summarized and analyzed key similarities and differences of these measures. Conversations among the Committee members and developers resulted in recommendations highlighting key opportunities for alignment and the need for standardized definitions.

Four measures are being reviewed as part of the fall 2019 cycle.

Perinatal and Women's Health

Perinatal healthcare accounts for the largest expenditure in U.S. healthcare, yet the U.S. continues to rank last in maternal outcomes.[27] Healthcare disparities play a large role, as there are vast differences in care among different racial and ethnic groups regarding reproductive and perinatal healthcare and outcomes.[28] This is a major concern for women, mothers, babies, and the providers who care for them, and accordingly, it is important for quality measurement.[29,30]

NQF's current portfolio includes 18 endorsed measures on reproductive health, pregnancy, labor and delivery, postpartum care for newborns, and childbirth-related issues for women.

NQF did not receive measures for the fall 2018 cycle. Instead, the Perinatal and Women's Health Committee held strategic web meetings to discuss various high-level concepts of perinatal health including predictors of hospital satisfaction in childbirth, person-centered maternity care, challenges in perinatal and women's health measure development, and measure gaps in women's health within the NQF portfolio. During the spring 2019 cycle, the Committee reviewed one new measure, which was ultimately not endorsed as it did not pass the Scientific Methods Panel review. Therefore, the Committee had a strategic web meeting to discuss measurement for maternal morbidity and mortality and gaps in women's health measures (nonperinatal and reproductive health measures).

Two measures are being reviewed as part of the fall 2019 cycle.

Prevention and Population Health

Efforts to improve the health and well-being of individuals and populations have expanded from traditional medical care to intervention-based health prevention, such as smoking cessation programs and social determinants of health (SDOH).[31] Both medical care and SDOH influence health outcomes;

therefore, performance measurement is necessary to assess whether healthcare stakeholders are using strategies to increase prevention and improve population health.

NQF's current portfolio includes 36 endorsed measures that address immunization, pediatric dentistry, weight and body mass index, community-level indicators of health and disease, and primary prevention and/or screening.

During the fall 2018 review cycle, the Prevention and Population Health Committee evaluated three measures undergoing maintenance review. All three were endorsed. During the spring cycle 2019, NQF did not receive any measures. Instead, the committee had a strategic discussion on defining value-based care for population health measurement.

Three measures are being reviewed as part of the fall 2019 cycle.

Primary Care and Chronic Illness

Chronic disease affects one in 10 Americans and continues to be the leading cause of morbidity and mortality among.[32] Annual costs for chronic diseases such as glaucoma, rheumatoid arthritis, and hepatitis C are at $5.8 billion, $19.3 billion, and $6.5 billion, respectively.[33–35] Primary care and chronic illness management are crucial to prevent other health concerns, and therefore must be considered in healthcare services to reduce disease burden and healthcare costs.

NQF's current portfolio includes 47 measures addressing areas on nonsurgical eye or ear, nose, and throat conditions, diabetes care, osteoporosis, HIV, hepatitis, rheumatoid arthritis, gout, asthma, chronic obstructive pulmonary disease (COPD), and acute bronchitis.

During the fall 2018 review cycle, the Primary Care and Chronic Illness Committee evaluated two measures against NQF's evaluation criteria. One is a new measure, and one is undergoing maintenance review. Both measures were endorsed. During the spring 2019 review cycle, the Committee evaluated 10 measures (five new measures and five undergoing maintenance review). Following Committee evaluation, six measures were endorsed, consensus was not reached on two measures, and two measures were not recommended for endorsement, as they both did not pass the validity criterion.

Six measures are being reviewed as part of the fall 2019 cycle.

Renal

Renal disease is a leading cause of death and morbidity in the U.S. An estimated 30 million American adults (15 percent of the population) have chronic kidney disease (CKD), which is associated with premature mortality, decreased quality of life, and increased healthcare costs. Left untreated, CKD can result in end-stage renal disease (ESRD), which afflicts over 700,000 people in the U.S. and is the only chronic disease covered by Medicare for people under the age of 65.[36,37]

NQF's current portfolio includes 20 endorsed measures addressing dialysis monitoring, hemodialysis, peritoneal dialysis, as well as patient safety.

No measures were submitted for review during the fall 2018 review cycle. During the spring 2019 review cycle, the Renal Committee evaluated five measures undergoing maintenance review that focused on adult peritoneal dialysis quality or pediatric dialysis quality. All five measures were endorsed.

One measure is being reviewed as part of the fall 2019 cycle; the maintenance reviews of several other measures were deferred to a subsequent cycle at the developer's request.

Surgery

In 2014, there were 17.2 million hospital visits that included at least one surgery, with over half occurring in a hospital-owned ambulatory surgical center.[38] Ambulatory surgeries have increased over time as a result of less invasive surgical techniques, patient conveniences (e.g., less time spent undergoing a procedure), and lower costs.[39,40] There are risks associated with ambulatory surgeries, and with the continued growth in the outpatient surgery market, assessing the quality of the services provided holds great importance.

NQF's current portfolio includes 65 endorsed surgery measures, one of its largest portfolios. These measures address cardiac, vascular, orthopedic, urologic, and gynecologic surgeries, and include measures for adult and child surgeries as well as surgeries for congenital anomalies. The portfolio also includes measures of perioperative safety, care coordination, and a range of other clinical or procedural subtopics.

During the fall 2018 review cycle, the Surgery Committee evaluated 15 measures undergoing maintenance. All 15 were endorsed. During the spring 2019 review cycle, the committee evaluated 11 measures. Of those, six measures were endorsed.

Two measures are being reviewed as part of the fall 2019 cycle.

V. Stakeholder Recommendations on Quality and Efficiency Measures and National Priorities

Section 1890(b)(5)(A)(vi) of the Social Security Act requires the CBE to include in this report a description of annual activities related to multistakeholder group input on the selection of quality and efficiency measures from among: (i) such measures that have been endorsed by the entity; and (ii)... [that] are used or proposed to be used by the Secretary for the collection or reporting of quality and efficiency measures. Additionally, it requires that this report describe matters related to multistakeholder input on national priorities for improvement in population health and in delivery of health care services for consideration under the National Quality Strategy.

Measure Applications Partnership

Under section 1890A of the Act, HHS is required to establish a pre-rulemaking process under which a consensus-based entity (currently NQF) would convene multistakeholder groups to provide input to the Secretary on the selection of quality and efficiency measures for use in certain federal programs. The list of quality and efficiency measures HHS is considering for selection is to be publicly published no later than December 1 of each year. No later than February 1 of each year, the consensus-based entity is to report the input of the multistakeholder groups, which will be considered by HHS in the selection of quality and efficiency measures.

NQF convenes the Measure Applications Partnership (MAP) to provide guidance on the use of performance measures in federal healthcare quality programs. MAP makes these recommendations through its pre-rulemaking process that enables a multistakeholder dialogue to assess measurement priorities for these programs. MAP includes representation from both the public and private sectors, and includes patients, clinicians, providers, purchasers, and payers. MAP reviews measures that CMS is considering implementing and provides guidance on their acceptability and value to stakeholders. MAP was first convened in 2011 and completed its ninth year of review in 2019.

MAP comprises three setting-specific workgroups (Hospital, Clinician, and Post-Acute/Long-Term Care), one population-specific workgroup (Rural Health), and a Coordinating Committee that provides strategic guidance and oversight to the workgroups and recommendations. MAP members represent users of performance measures and over 135 healthcare leaders from 90 organizations. MAP conducts its pre-rulemaking work in an open and transparent process. More specifically, the list of Measures Under Consideration (MUC) is posted publicly, MAP's deliberations are open to the public, and the process allows for the submission of both oral and written public comments to inform the deliberations.

MAP aims to provide input to CMS that ensures the measures used in federal programs are meaningful to all stakeholders. MAP focuses on recommending measures that: 1) empower patients to be active healthcare consumers and support their decision making; 2) are not overly burdensome on providers; and 3) can support the transition to a system that pays on value of care. MAP strives to recommend measures that will improve quality for all Americans and ensure that the transition to VBP and APMs improves care and access while reducing costs for all.

MAP 2019 Pre-Rulemaking Recommendations

MAP published the findings of its 2018-2019 pre-rulemaking deliberations in a series of reports delivered in February and March 2019. MAP made recommendations on 39 measures under consideration for 10 CMS quality reporting and value-based payment programs covering ambulatory, acute, and post-acute/long-term care settings. A summary of this work is provided below. Additionally, MAP began its 2019-2020 pre-rulemaking deliberations in November 2019 to provide input on 17 measures under consideration for nine CMS programs. Reports on this work are expected in February and March 2020.

MAP's pre-rulemaking recommendations reflect its Measure Selection Criteria and how well MAP believes a measure under consideration fits the needs of the specified program. The MAP Measure Selection Criteria are designed to demonstrate the characteristics of an ideal set of performance measures. MAP emphasizes the need for evidence-based, scientifically sound measures while minimizing the burden of measurement by promoting alignment and ensuring measures are feasible. MAP also promotes person-centered measurement, alignment across the public and private sectors, and the reduction of healthcare disparities.

MAP Rural Health Workgroup

In the fall of 2019, NQF reconvened the MAP Rural Health Workgroup to provide input into the CMS annual pre-rulemaking process, as recommended in the 2015 NQF report on rural health. The Workgroup comprises experts in rural health, frontline healthcare providers who serve in rural and frontier areas—including tribal areas, and patients from these areas. The role of the workgroup is to provide rural perspectives on measure selection for CMS program use, including noting measures that are challenges for rural providers to collect data on or report about, and any unintended consequences for rural providers and residents. The workgroup reviewed and discussed the MUCs for various CMS quality programs. NQF provided a written summary of the workgroup's feedback to the Hospital, Clinician, and PAC/LTC Workgroups to aid in their review of the measures. A liaison from the Rural Workgroup attended each of the setting-specific workgroup meetings to provide additional input and represent the rural perspective.

MAP Clinician Workgroup

The MAP Clinician Workgroup reviewed 26 MUCs from the 2018 list for two programs addressing clinician or accountable care organization (ACO) measurement, making the following recommendations organized by program.

Merit-Based Incentive Payment System - MIPS was established by section 101(c) of MACRA. MIPS is a pay-for-performance program for eligible clinicians. MIPS applies positive, neutral, and negative payment adjustments based on performance in four categories: quality, cost, promoting interoperability, and improvement activities. MIPS is one of two tracks in the Quality Payment Program (QPP).

MAP reviewed 21 measures for MIPS and made the following recommendations:

- Conditional Support. MAP conditionally supported 17 measures pending receipt of NQF endorsement, including 11 measures that promote affordability of care by assessing healthcare costs or appropriate use.
- No Support with Potential Mitigation. MAP did not support with potential for mitigation three measures under consideration.
- No Support. There was one measure considered that MAP did not support for rulemaking.

In addition to the measure recommendations, MAP noted the need to reduce healthcare costs but cautioned that measures must be accurate and actionable. MAP noted that CMS and the NQF Cost and Efficiency Standing Committee should continue to evaluate the risk-adjustment model and attribution models for appropriateness and ensure that cost measures truly address factors within a clinician's control. MAP also emphasized the importance of completing measure testing at the clinician level of analysis prior to implementation in the MIPS program.

Measures for MIPS on the 2018 MUC list were under consideration for potential implementation in the 2020 measure set affecting the 2022 payment year and future years.

Medicare Shared Savings Program (SSP) - Section 3022 of the Affordable Care Act (ACA) created the Medicare Shared Savings Program. The Shared Savings Program creates an opportunity for providers and suppliers to create an ACO. An ACO is responsible for the cost and quality of the care for an assigned population of Medicare fee-for-service beneficiaries. For ACOs entering the program in 2018 or 2019, there were multiple participation options: (Track 1) one-sided risk model (ACOs do not assume risk for shared losses); (Track 1+ Model) two-sided risk model (ACOs assume limited losses [less than other tracks]); (Track 2) two-sided risk model (sharing of savings and losses, with the possibility of receiving a greater portion of any savings than track 1 ACOs); and (Track 3/ENHANCED track) two-sided risk model (sharing of savings and losses with greater risk than Track 2, but opportunity to share in the greatest portion of savings if successful). SSP aims to promote accountability for a patient population, care coordination, and the use of high quality and efficient services.

In its 2018-2019 pre-rulemaking work, MAP considered five measures for SSP and made the following recommendations:

- Conditional Support. MAP conditionally supported three measures, two of which address opioid overuse. MAP noted the importance of these measures given the current public health opioid crisis. MAP also conditionally supported *Adult Immunization Status* (also considered for MIPS)

pending NQF endorsement. This measure has been proposed by CMS for addition to the SSP measure set.

- No Support. MAP did not support adding two measures for use in SSP: *Initial Opioid Prescription Compliant with CDC Recommendations* and *Use of Opioids from Multiple Providers and at High Dosage in Persons without Cancer.* MAP did not consider the first measure to be adequately specified for the ACO level, and MAP considered the second to be duplicative of the opioid measures already recommended.

Key Themes from the Pre-Rulemaking Review Process - One overarching theme of MAP's pre-rulemaking recommendations for measures in the MIPS and the SSP emphasized appropriate attribution and level of analysis for the measures considered. MAP recognized the need to appropriately assign patients and their outcomes to the appropriate accountable unit (e.g., a clinician, a group of clinicians, an ACO) for performance measures that are incorporated into payment programs. MAP members noted that measures that give actionable information are more likely to be acceptable to clinicians.

MACRA requires that cost measures implemented in MIPS include consideration of clinically coherent groups; specifically, patient condition groups or care episode groups. Through its pre-rulemaking work, MAP emphasized the importance of aligning cost and quality measures to truly understand efficiency while protecting against potential negative unintended consequences of cost measures, such as the stinting of care or the provision of lower quality care. MAP provided several recommendations to safeguard quality of care while measuring the cost of the care provided. These follow below:

- First, MAP recommended that measures that serve as a balance to cost-of-care measures be incorporated into the program when feasible. These balancing measures could include clinical quality measures, efficiency measures, access measures, and appropriate use measures.
- In addition to focusing on the quality of the care provided, MAP stated that CMS should continually monitor for signs of inequities of care. MAP specifically noted a concern for stinting on care, which would disproportionately impact higher-risk patients.
- Relatedly, MAP recommended clinical and social risk-adjustment models to incentivize providers who demonstrate expertise when dealing with increased risk.
- Lastly, MAP commented on the need to link clinician behaviors to cost.

MAP members appreciated that CMS used TEPs to determine which components of cost an assessed clinician or group can control. MAP reinforced the need for this process to be transparent and understandable to clinicians who are being evaluated.

MAP Hospital Workgroup

The MAP Hospital Workgroup reviewed four MUCs from the 2018 list for two hospital and other setting-specific programs, making the following recommendations.

Hospital Inpatient Quality Reporting (IQR) Program - The Hospital Inpatient Quality Reporting (IQR) Program is a pay-for-reporting program that requires hospitals paid under the Inpatient Prospective Payment System (IPPS) to report on various measures, including process, structure, outcome, and patient perspective on care, efficiency, and costs-of-care measures. The applicable percentage increase for hospitals that do not participate or meet program requirements are reduced by one-quarter. The program has two goals: 1) to provide an incentive for hospitals to report quality information about their services; and 2) to provide consumers information about hospital quality so they can make informed choices about their care.

MAP reviewed three measures under consideration for the IQR Program and offered conditional support for all three pending NQF review and endorsement.

MAP did not review any measures for the Medicare and Medicaid EHR Promoting Interoperability Program for Eligible Hospitals and Critical Assess Hospitals for endorsement.

PPS-Exempt Cancer Hospital Quality Reporting Program - The Prospective Payment System (PPS)-Exempt Cancer Hospital Quality Reporting (PCHQR) Program is a voluntary quality reporting program for PPS-exempt cancer hospitals.

In its 2018-2019 pre-rulemaking deliberations, MAP reviewed one measure under consideration for the PCHQR program, *Surgical Treatment Complications for Localized Prostate Cancer*. MAP did not support the measure for rulemaking with potential for mitigation if problems with the measure specifications are unresolved.

Key Themes from the Pre-Rulemaking Review Process - The MAP Hospital Workgroup noted an increasing need to align the measures included in the various hospital and setting-specific programs. Providers are performing a growing number of surgeries and/or procedures across the various settings that traditionally occurred in the inpatient setting (i.e., hospital operating room). MAP recognized that patients and their families might face challenges in distinguishing between inpatient and outpatient services while making informed choices about their care. MAP also noted CMS' focus on minimizing the duplication of measures across programs while focusing on measures in high-priority areas. MAP noted the importance of providing patient-focused care that aligns with patient and family preferences, and recommended that future high-priority measures include patient- and family-focused care that aligns with the patient's overall condition, goals of care, and preferences.

MAP PAC/LTC Workgroup

MAP reviewed nine measures under consideration from the 2018 list for five setting-specific federal programs addressing post-acute care (PAC) and long-term care (LTC), making the following recommendations.

Skilled Nursing Facility Quality Reporting Program - The Skilled Nursing Facility Quality Reporting Program (SNF QRP) is a pay-for-reporting program that applies to free-standing SNFs, SNFs affiliated with acute care facilities, and all noncritical access hospital swing-bed rural hospitals. SNFs that do not submit the required data with respect to a fiscal year are subject to a 2 percent reduction in their annual payment rates for the fiscal year.

MAP reviewed and conditionally supported two measures under consideration for the SNF QRP, pending NQF endorsement: *Transfer of Health Information to Patient—Post-Acute Care* and *Transfer of Health Information to Provider—Post-Acute Care*. The workgroup noted that both measures could help improve the transfer of information about a patient's medication, an important aspect of care transitions. Better care transitions could improve patient outcomes, reduce complications, and lessen the risk of hospital admissions or readmissions. Additionally, the measures would meet the Improving Medicare Post-Acute Care Transformation (IMPACT) Act requirement that protects clients' choice and streamline service provision,[41] address PAC/LTC core concepts not currently included in the program measure set, and promote alignment across programs.

Inpatient Rehabilitation Facility Quality Reporting Program (IRF QRP) - The Inpatient Rehabilitation Facility Quality Reporting Program (IRF QRP) was established under section 3004 of the ACA. This program applies to all IRF settings that receive payment under the IRF PPS including IRF hospitals, IRF units that are co-located with affiliated acute care facilities, and IRF units affiliated with CAHs. Under this

program, IRF providers must submit quality reporting data from sources such as Medicare fee-for-service FFS Claims that pay providers separately for each service,[42] Centers for Disease Control and Prevention (CDC) National Healthcare Safety Network (NHSN) data submissions, and the IRF-Patient Assessment Instrument (PAI), or be subject to a 2 percent reduction in the applicable annual payment update.

MAP reviewed and conditionally supported the same two measures under consideration for the IRF QRP. Again, MAP noted that these measures address an IMPACT Act requirement for the IRF QRP and address an important patient safety issue. MAP recognized that IRFs may see more acute patients than other PAC/LTC settings, and suggested congruence with the definition of medication lists for acute care.

Long-Term Care Hospital Quality Reporting Program (LTCH QRP) - The Long-Term Care Hospital Quality Reporting Program (LTCH QRP) was established under section 3004 of the ACA. Under this program, LTCH providers must submit quality reporting data from sources such as Medicare FFS Claims, the CDC NHSN data submissions, and the LTCH Continuity Assessment Record and Evaluation Data Sets (LCDS), or be subject to a 2 percent reduction in the applicable annual payment update.

MAP reviewed and conditionally supported the same two measures discussed in the previous sections for the LTCH QRP.

Home Health Quality Reporting Program (HH QRP) - The Home Health Quality Reporting Program (HH QRP) was established in accordance with Section 1895 of the Social Security Act. Under this program, home health agencies (HHAs) must submit quality reporting data from sources such as Medicare FFS Claims, the Outcome and Assessment Information Set (OASIS), and the Home Health Care Consumer Assessment of Healthcare Providers and Systems survey (HH CAHPS®), or be subject to a 2 percent reduction in the annual PPS increase factor.

MAP reviewed and conditionally supported the same two measures discussed in the previous sections for this program as well.

Hospice Quality Reporting Program (HQRP) - The Hospice Quality Reporting Program (HQRP) was established under section 3004 of the ACA. The HQRP applies to all hospices, regardless of setting. Under this program, hospice providers must submit quality reporting data from sources such as the Hospice Item Set (HIS) data collection tool and the Hospice Consumer Assessment of Healthcare Providers and Systems survey (CAHPS Hospice survey), or be subject to a 2 percent reduction in the applicable annual payment update.

MAP reviewed one measure under consideration for the HQRP: *Transitions from Hospice Care, Followed by Death or Acute Care*. MAP did not support this measure for rulemaking as currently specified with a potential for mitigation. MAP recommended that the measure developer reconsider the exclusion criteria for the measure. Specifically, the developer should review the exclusion for Medicare Advantage patients, as this may be excluding too many patients. Additionally, the developer should consider adding an exclusion to allow for patient choice. MAP recognized the need to address a potentially serious quality problem for patients if they are inappropriately discharged from hospice. MAP noted that transitions of care at the end of a person's life can be associated with adverse health outcomes, lower patient and family satisfaction, and higher costs.

Key Themes from the Pre-Rulemaking Review Process - MAP noted that patients requiring post-acute and long-term care are clinically complex and may frequently transition across sites of care. As such, quality of care is an essential issue for PAC and LTC patients. Performance measures are vital to understanding healthcare quality, but measures must be meaningful and actionable if they are to drive true improvement.

MAP highlighted that patients who receive care from PAC and LTC providers frequently transition between sites of care. Patients may move among their home, the hospital, and PAC or LTC settings as their health and functional status change. Improving care coordination and the quality of care transitions is essential to improving post-acute and long-term care. MAP members appreciated that the measures allow for the current technology limitations in PAC/LTC settings by allowing for multiple modes of transmission of the required medication list.

MAP members recommended that CMS ensure that the measures appropriately address situations such as a patient leaving against medical advice or a transfer to an emergency department. MAP also noted that the measures should ensure a timely transfer of information so that patients and receiving providers can ensure that they have the medications and equipment needed for a safe and effective transition of care. MAP stressed the importance of ensuring that measures produce meaningful information for all stakeholders. Measures should focus on areas that are meaningful to patients as well as clinicians and providers. MAP emphasized a need for measures that are person-centered and address aspects of care that are most meaningful to patients and families. MAP members noted the need to engage patients and families into quality improvement efforts.

2019 Measurement Guidance for Medicaid Scorecard

Medicaid and CHIP cover 73 million lives, or roughly 23 percent of the U.S. population. Nearly 51 percent of individuals enrolled in Medicaid are children, and approximately two-thirds of women enrolled in Medicaid are in their child-bearing years. Both programs are responsible for delivering healthcare to a significant proportion of Americans, and especially to those who are among the most economically and medically vulnerable, like children from low-income households, low-income elderly, and persons with marked disability. Many federal efforts and programs promote quality of care and health for the Medicaid population. In June 2018, CMS released its first version of the Medicaid and CHIP (MAC) Scorecard. The Scorecard is designed to increase the public's access to performance data for the MAC programs including health outcomes of enrollees. The Scorecard has three pillars, each consisting of a set of measures selected to reflect the performance of the units that support the MAC programs: state health system performance, state administrative accountability, and federal administrative accountability.

NQF convened the multistakeholder MAC Scorecard Committee, charged with providing input on the prepopulated Scorecard version 1.0 for the state health system performance pillar. Specifically, the Committee was tasked with determining which measures should be recommended for addition to—and removal from—the current version of the Scorecard. In an effort to facilitate adoption and implementation of the Scorecard, the state health system pillar draws on measures from the Medicaid Adult and Child Core Sets. This pillar is designed to examine how states serve MAC beneficiaries throughout different measurement domains including, but not limited to, Communicating and Coordinating Care, Reducing Harm Caused in Care Delivery, and Making Care Affordable.

The Committee first evaluated the current measures in the state health system performance pillar of the Scorecard to identify high need and gap areas such as behavioral health. Subsequently, the Committee assessed measures in the 2018 Adult and Child Core Sets to identify potential measures to recommend for addition to or potential removal from the Scorecard in future iterations. During measure discussions, Committee members considered many factors, including whether measures address the diverse health needs of the Medicaid population and the most vulnerable among them, drive improvements in healthcare quality, and reduce or minimize reporting burden. Committee members considered measures for addition that directly address the usefulness of measure implementation and reporting. Given the recency of the Scorecard's creation, the Committee also considered the application of measures in the Scorecard and the consequences or implications of accountability. Ultimately, the Committee recommended one measure for removal, *Use of Multiple Concurrent Antipsychotics: Ages 1-17,* and the addition of four measures listed in order of priority.

Rank	NQF Number and Measure Title
1	1448 Developmental Screening in the First Three Years of Life
2	1768 Plan All-Cause Readmissions
3	0038 Childhood Immunization Status
	1879 Adherence to Antipsychotic Medications for Individuals with Schizophrenia (SAA-AD)

These measures would strengthen the measure set by promoting measurement of high-priority quality issues and addressing childhood immunization, preventive care for children, and behavioral health. At the request of CMS, additions were limited to the Core Sets only.

The MAC Scorecard Committee also discussed the future direction of the Scorecard and provided guidance on future measure set curation, as well as best practices to promote reporting. The Committee emphasized the importance of harnessing performance measurement results to drive health system change and improvements in care delivery. In order to promote measure reporting, the Committee suggested that states implement payment incentives or leverage value-based payment models in the Scorecard's early stages of development. Given the new and iterative nature of the Scorecard, the Committee encouraged the Center for Medicaid and CHIP Services (CMCS) to structure the Scorecard's evolution in two phases focused on refinement and feedback. In the short term, the Committee emphasized the importance of refinement to optimize the Scorecard measure set. For the long term, the Committee recommended that CMCS solicit and leverage continuous feedback and performance data from states to prioritize use of measures that have the greatest utility.

The final report, *Strengthening the Medicaid and CHIP (MAC) Scorecard,* was published in August 2019.

VI. Gaps in Endorsed Quality and Efficiency Measures

Under section 1890(b)(5)(A)(iv) of the Act, the entity is required to describe in the annual report gaps in endorsed quality and efficiency measures, including measures within priority areas identified by HHS under the agency's National Quality Strategy, and where quality and efficiency measures are unavailable or inadequate to identify or address such gaps.

Gaps Identified in 2019 Completed Projects

During their deliberations, NQF's endorsement standing committees discussed and identified gaps that exist in current project measure portfolios. A list of the gaps identified by these committees in 2019 can be found in Appendix G.

Measure Applications Partnership: Identifying and Filling Measure Gaps

In addition to its role of recommending measures for potential inclusion into federal programs, MAP also provides guidance on identified measurement gaps at the individual federal program level. In its 2018-2019 pre-rulemaking deliberations, MAP specifically addressed the high-priority domains CMS identified in each of the federal programs for future measure consideration. A list of gaps identified by CMS program can be found in Appendix H.

VII. Gaps in Evidence and Targeted Research Needs

Under section 1890(b)(5)(A)(v) of the Act, the entity is required to describe areas in which evidence is insufficient to support endorsement of quality and efficiency measures in priority areas identified by the Secretary under the National Quality Strategy and where targeted research may address such gaps.

NQF undertook several projects in 2019 to create needed strategic approaches, or frameworks, to measure quality in areas critical to improving health and healthcare for the nation but for which quality measures are too few, underdeveloped, or nonexistent.

A measurement framework is a conceptual model for organizing ideas that are important to measure for a topic area and for describing how measurement should take place (i.e., whose performance should be measured, care settings where measurement is needed, when measurement should occur, or which individuals should be included in measurement). Frameworks provide a structure for organizing currently available measures, areas where gaps exist, and prioritization for future measure development.

NQF's foundational frameworks identify and address measurement gaps in important healthcare areas, underpin future efforts to improve quality through metrics, and ensure safer, patient-centered, cost-effective care that reflects current science and evidence.

NQF began projects to create strategic measurement frameworks for assessing population-based trauma outcomes, healthcare system readiness, chief complaint-based quality for emergency care, common formats for patient safety, person-centered planning and practice, measure feedback loop, patient-reported outcomes, EHR data quality, diagnostic error, and maternal morbidity and mortality.

Population-Based Trauma Outcomes

Intentional and nonintentional injuries resulting in trauma are the third-leading cause of death in the U.S..[43] Traumatic injuries—that is, the set of all physical injuries of sudden onset and severity that require immediate medical attention—result in 39 million emergency visits and 12.3 million hospital admissions every year. Such injuries were associated with $670 billion in medical expenses in 2013.[44,45] Fortunately, major progress has been made in trauma care. Yet, even with the improvements, trauma injury has a significant impact on public health, and performance of trauma systems requires increased attention. However, there are few measures in existence or implemented to improve trauma care quality.[43] Performance measures allow for assessment of trauma care and increased focus on improvement efforts with respect to quality of care. Performance measures may also help in addressing

key outcomes within trauma care, such as quality of life, mental health status, rehabilitation, and loss of life.

In 2018, NQF began work on population-based trauma outcomes by convening a committee to identify domains within emergency physical trauma as experienced at the individual patient level. Psychological trauma was not extensively addressed by the committee but was acknowledged as an important long-term corollary to physically traumatic events. A conceptual framework was then developed for population-based trauma outcomes and the subsequent systematic identification and prioritization of measure gaps. In 2019, the conceptual measurement framework for this project was finalized. It identified four domains (access to trauma services, cost and resource use, trauma clinical care, and prevention of trauma) and 15 subdomains for population-based trauma outcomes. Below is a table of the domains and subdomains for this project.

Domain	Subdomain
Access to trauma services	System capacity, availability of services, timeliness of services, and resource matching
Cost and resource use	Individual, trauma center, system, and societal
Trauma clinical care	Acute care, post-acute care, longitudinal care
Prevention of trauma	Intentional, unintentional, general, undetermined

The framework was presented to the Consensus Standards Approval Committee as an information update in February 2019, and a final report was completed in May 2019.

Healthcare Systems Readiness

Improving healthcare and public health systems and capacities for health security threats—such as bioterrorism, disease outbreaks, and inclement weather—has been a focus in recent years. Yet, despite substantial progress, complex challenges persist, and preparedness efforts may not suffice. For example, many parts of the U.S. remain unprepared for emergencies despite the development of cross-sector programs to improve the nation's preparedness during national and regional emergencies.[46,47] Furthermore, not only is there a need for healthcare systems to be ready for all types of events ("preparedness"), there is also a need for them to prepare for, mitigate against, rapidly identify, evaluate, react to, and recover from a wide spectrum of emergency conditions related to a disaster or emergency ("readiness").

The current landscape of healthcare system readiness measurement includes critical and relevant metrics for public health and disease surveillance programs. There is, however, a lack of quality and accountability metrics specific to health system readiness to incentivize private-public partnerships within the healthcare sector to ensure the delivery of high quality care during times of system stress with the goal of improving person-centered care, value, and cost efficiency. The focus of this project was on measurement of the more comprehensive concept of readiness and including not only how a

healthcare system may prepare prior to an event, but also how it actually performs both during an event and after it ends.

To address these challenges, in 2018, NQF convened a multistakeholder committee to provide input and guide the creation of a framework. The development of the framework originated from the concept that readiness exists at the intersection of the four phases of emergency management: mitigation, preparedness, response, and recovery. The concept of readiness is a holistic concept that applies to all entities that deliver care (i.e., the healthcare system) within a particular community that is, or may be, affected by a disaster or emergency. With this view of readiness in mind, the committee developed a set of guiding principles to define the key criteria when considering the measure concepts to guide their development into performance measures. Guiding principles were then further divided into the subcategories of "the what," "the where," and "the how" to provide a primer of factors that users should consider when applying this framework. An overarching subcategory of "why" was also created.

Principle	Description
What	Person-centered Capacity and capability-focused Available and accessible Maintenance of health
Where	Care beyond hospitals Scalability & geographical considerations Healthcare system size considerations
How	Communication among entities Preparing for the known and unknown Maintenance of readiness Ongoing measurement
Why	Need for measure concepts and performance measures

Below is a table of the domains and subdomains for this project:

Domains	Subdomains
Staff (also applies to volunteers [both paid and unpaid], where appropriate)	Staff safety, staff capability, staff sufficiency, staff training, staff support
Stuff	Pharmaceutical products, durable medical equipment, consumable medical equipment and supplies, nonmedical supplies
Structure	Existing facility infrastructure, temporary facility infrastructure, hazard-specific structures
Systems	Emergency management program, incident management, communications, healthcare system coordination, surge capacity, business continuity, population health management

Using these domains and subdomains, NQF worked with the Readiness Committee to examine and develop measure concepts based on information gathered from the literature and knowledge of each of the Committee members. They noted some challenges with moving from measure concepts to quality measures as requiring a concerted collaboration between healthcare entities, measure developers, and the federal government. The Committee emphasized the adoption of metrics related to readiness that could be deployed across various types of healthcare entities and measure whether entities are actually ready to meet the needs of patients during a disaster or emergency. To that end, the Committee offered

several next steps focused on investment in the development of high-priority measures: developing a feasibility scale for healthcare entities to identify and determine capacities and capabilities for readiness efforts; better defined responsibilities across healthcare entities; and alignment between public and private stakeholders. The final report for this project was published in June 2019.

Chief Complaint-Based Quality for Emergency Care

Emergency departments (EDs) have always played an important role in the delivery of acute, unscheduled care in the U.S., with nearly 145 million visits and more than one-quarter of all acute care visits.[48] The majority of ED care focuses on diagnosing and treating a patient's chief complaint rather than addressing a definitive diagnosis. A patient's chief complaint—patient-reported symptoms collected at the start of the visit—describes the most significant symptoms or signs of illness (e.g., chest pain, headache, fever, abdominal pain, etc.) that caused the person to seek healthcare.

Chief complaint data have various uses that facilitate and inform patient-centered care, decision support, disease surveillance, and quality measurement. However, the lack of standardization of information about chief complaints creates challenges for use cases that require aggregation of similar patients for quality measures or detecting disease outbreaks. Efforts to resolve the challenges with standardization of chief complaint data have been discussed for more than two decades. However, recent advancements in information technology (IT) and informatics may present solutions to several of the barriers—areas that have limited standardization. Researchers and informaticists have developed several approaches and tools that can standardize chief complaints including classification systems, nomenclatures, ontologies, and IT-based tools. However, there is still no current guidance or consensus on how to navigate these approaches, understand their strengths and weaknesses, and select the best approaches and tools for a specific use case.

In addition, there is a lack of standard nomenclature to define how chief complaints are organized, categorized, and assigned. Further, a reliance on diagnosis-based administrative claims for quality measurement creates barriers to establishing valid and reliable patient feedback on the reason the patient came to the ED for care. Currently, there is no national guidance to overcome these barriers to using chief complaints in quality measurement for patients presenting to the ED.

In fall 2018, NQF convened a multistakeholder Expert Panel to identify performance measures; measure concepts; and gaps in available performance measures, nomenclatures, and data sources related to chief complaints. Additionally, the Expert Panel provided suggestions for standardizing: 1) chief complaint-based nomenclature; and 2) existing assessments of the strengths and weaknesses of current data sources (e.g., existing clinical content standards, processed free text, EHRs) for developing either new eMeasures in this space, or new measures that incorporate patient perspectives.

Ultimately, the Committee identified a total of 50 measures and 11 measure concepts based on symptom-based discharge diagnoses across 16 chief complaints or conditions, which included back pain, chest pain, head injury, abdominal pain, altered mental status, chest pain/shortness of breath, syncope, vaginal bleeding, substance use, neck pain, low back pain, sore throat, head trauma, seizure, suicidal ideation, and dizziness. This environmental scan provided a foundation for the development of the measurement framework.

The Chief Complaint Measurement Framework provided a conceptual model for how chief complaint data can be used to measure quality in acute care settings like the ED. While it is not the focus of the

framework, the use of these data for public health surveillance is also represented. This framework relies on the implementation of a systematic approach for standardizing and aggregating chief complaint data and a key set of terms, which include defining: 1) chief complaint; 2) reason for visit; presenting problem; and 4) clinical syndrome. Establishing these terms and definitions helped shape the ability to understand the relationship between the chief complaint, a standardized representation of the chief complaint (i.e., presenting problem), and a clinical syndrome.

The measurement framework comprises 11 domains:

- Patient-Reported Outcomes[a]
- Effective Care/Appropriateness of Diagnostic Process
- Cost of Care
- Diagnostic (Accuracy) Quality and Safety
- Care Coordination
- Shared Decision Making
- Safety
- Timeliness
- Patient Experience
- Utilization
- Patient Outcomes

The Committee also suggested strategies for promoting the implementation of the recommendations to enable widespread, standardized, and systematic collection of chief complaint data in the current emergency department and EHR landscape. Recommendations centered on four key areas: 1) establishing a standard chief complaint vocabulary; 2) aggregating chief complaint data in the absence of a standard vocabulary; 3) engaging important stakeholders to advance chief complaint-based measurement; and 4) data quality and implementing chief complaint-based measures.

The final report for this project was published in June 2019.

Common Formats for Patient Safety

The Common Formats for Patient Safety is a project that began in 2013 and is supported by AHRQ to obtain comments from stakeholders about the Common Formats authorized by the Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act)[b] authorizes AHRQ to designate Patient Safety Organizations (PSOs) that work with providers. The term "Common Formats" refers to improving patient safety and healthcare quality. In order to support PSOs in reporting data in a standard way, AHRQ created "Common Formats"—or the common definitions and reporting formats—that standardize the method for healthcare providers and PSOs to collect and exchange information for any patient safety event. The objectives of the Common Formats projects are to standardize patient safety event data collection, permit aggregation of collected data for pattern analysis, and learn about trends in patient safety concerns. AHRQ first released Common Formats in 2008 to support event reporting in hospitals

[a] Patient-Reported Outcomes are defined as the status of a patient's health condition that comes directly from the patient without interpretation. Patient Outcomes are defined as an outcome of the patient as a result of care in the ED (or similar setting).

[b] Patient Safety and Quality Improvement Act of 2005 Statue and Rule. https://www.hhs.gov/hipaa/for-professionals/patient-safety/statute-and-rule/index.html. Published June 10, 2017. Last accessed January 2020.

and has since developed Common Formats for event reporting within nursing homes and community pharmacies, as well as Common Formats for hospital surveillance. The Common Formats for specific care settings include hospitals, nursing homes, community pharmacies and hospital surveillance. The Common Formats for event reporting apply to all patient safety concerns, including incidents, near misses or close calls, and unsafe conditions programs.

NQF, on behalf of AHRQ, coordinates a process annually to obtain comments from stakeholders about the Common Formats. In 2019, NQF continued to collect comments on all elements (including, but not limited to, device or medical/surgical supply, falls, medication or other substance, perinatal, surgery, and pressure injury) of the Common Formats, including the most recent release, Hospital Common Formats Version 0.3 Beta. The public has an opportunity to comment on all elements of the Common Formats modules using commenting tools developed and maintained by NQF.

An NQF Expert Panel reviewed the public comments and provided AHRQ feedback with the goal of improving the Common Formats modules and the standardization of information.

Person-Centered Planning and Practice

Recent transformations in the healthcare and human services delivery systems have focused on performance measures across payers and providers to improve outcomes, experience of care, and population health, with the explicit goal of increasing a person's "ownership" of their health and healthcare services within their chosen community. However, there is neither a national quality measure set for person-centered planning (PCP) nor a set of evidence-based strategies upon which to develop measures of PCP. About 21 million Americans are expected to be living with multiple chronic conditions by 2040, and many will require long-term services and supports (LTSS) in community and institutional settings.[49]

In an effort to address LTSS needs that are predicated on individuals' needs, preferences, goals, and desires, NQF convened a committee of experts in 2019 with lived and professional experience in LTSS and with acute/primary/chronic care systems. The goal is to create a sustainable LTSS system where older adults and people with disabilities have choice, control, and access to a full array of quality services that assure optimal outcomes including independence, good health, and quality of life.

The aim of the committee was to provide a consensus-based view of multiple areas of PCP by addressing three concerns related to designing practice standards and competencies for PCP. Through a consensus-building process, stakeholders representing a variety of diverse perspectives met throughout the project to refine the current definition of PCP; develop a set of core competencies for performing PCP facilitation; make recommendations to HHS on systems characteristics that support PCP; conduct a scan that includes historical development of PCP in LTSS systems; develop a conceptual framework for PCP measurement; and create a research agenda for future PCP research.

The first interim report representing the committee's efforts to date was made available for comment in November 2019. In this report, the committee addressed three key concerns related to designing practice standards and competencies for PCP. First, the committee proffered a functional, person-first definition of PCP. Second, the committee outlined a core set of competencies for persons facilitating the planning process, including details of foundational skills, relational and communication skills, philosophy, resource knowledge, and the policy and regulatory context of PCP. Lastly, the committee

considered the systems characteristics that support PCP such as system-level processes, infrastructure, data, and resources, along with guidance on how to maintain system-level person-centeredness.

A future final report with committee feedback will be completed in July 2020. It will address the history of PCP, a framework for quality measurement within PCP, and a research agenda to advance and promote PCP in long-term services and supports, which includes home and community-based services and institutional settings, such as nursing homes, and the interface with the acute/primary/chronic care systems.

Measure Feedback Loop

Collecting data on how quality measures are implemented and used in the field is critical for continuing to improve the quality measurement landscape. A measure feedback loop refers to the process by which information about measure performance from those who implement measures is relayed back to measure developers and multistakeholder standing committees who can then act on it. This information is vital to identifying opportunities for improvements to measure specifications, implementation guidance, and other aspects of the measure that may improve usability.

While NQF receives some information from measure developers and measure stewards about the implementation and use of measures, this process could be strengthened and standardized. The Measure Feedback Loop project aims to determine a workable process to elicit feedback from healthcare stakeholders on the experience of reporting measures used in Medicare quality reporting and value-based payment programs, including unintended consequences on providers, payers, consumers, caregivers, and other measure users. The project aims to enhance understanding of how measures actually perform in the real world, and about the risks and issues related to implementing measures in the field.

In fall 2018, NQF began a new project to explore how to gather more information on the use of measures and how they affect patient care and organizations or providers that implement them. To accomplish this task, NQF convened a multistakeholder committee, conducted an environmental scan on measure performance data, collected existing consensus development process (CDP) use and usability information, and outlined options for piloting a measure feedback loop at NQF.

The environmental scan published in April 2019 identified four key aspects of a measure feedback loop: 1) feedback categories including examples; 2) key stakeholders from which measure feedback can be collected; 3) channels for exchanging feedback within NQF and CMS quality measurement processes and 4) tools for collecting and soliciting feedback.

The use and usability report, completed in June 2019, explored how CDP standing committees currently apply the usability and use criteria, current practices for collecting feedback, challenges associated with each of these practices, recommendations for improving them, and new potential approaches for collecting feedback. Ultimately, the recommendations centered on six key areas: 1) modifying the Usability and Use criteria and NQF measure submission form; 2) improving accessibility of commenting tools and opportunities to submit comments; 3) facilitating communication of feedback throughout the loop; 4) targeting outreach to key stakeholders; 5) classifying feedback into key domains; and 6) developing guidance for measure developers.

The pilot options report, published in November 2019, recommended a number of strategies that have the potential to improve the ways in which NQF solicits, collects, facilitates, and shares feedback among healthcare stakeholders. In this report, NQF grouped the strategies and rated them against potential costs and benefits to facilitate prioritization of the strategies. With Committee guidance, NQF identified strategies that are low benefit, but high cost and so should not be prioritized, and other strategies that have high potential benefit whose implementation should be explored in future work. In 2020, NQF will develop an implementation plan report that details the recommended strategies and tactics, along with a proposed timeline for pilot-testing these approaches at NQF.

Patient-Reported Outcomes

Patient-reported outcomes (PROs) are increasingly used for various healthcare-related activities including care provision, performance measurement, and clinical, health services, and comparative effectiveness research.[50,51] They can be particularly valuable in improving the quality of care that is provided to patients and families, because PROs allow those actually receiving care to provide information on issues of import to them (e.g., symptoms, functional status, side effects, engagement in decision making, goals of care, etc.).[52–57] Despite the desire to use PROs in healthcare, there is also recognition that there are many challenges inherent in their use—particularly related to selecting and collecting PRO data.

In 2012, HHS provided funding to NQF[c] to convene a multistakeholder Expert Panel to conduct work that has since laid the groundwork for future PRO-PM development, testing, endorsement, and implementation. Specifically, the Panel provided guidance for selecting PROMs for use in performance measurement and articulated a pathway to move from PROs to NQF-endorsed PRO-PMs. As part of this work, the Panel also provided clarity to the field by defining "patient"—to include all persons, including patients, families, caregivers, and consumers more broadly—and defining and differentiating between PROs, defined and differentiated patient-reported outcomes (PROs), patient-reported outcome measures (PROMs), and patient-reported outcome-based performance measures (PRO-PMs). The Panel also provided guidance for selecting PROMs for use in performance measurement and articulated a pathway to move from PROs to NQF-endorsed PRO-PMs. As noted in the final report that was published in December 2012 for that project, the word "patient" includes all persons, including patients, families, caregivers, and consumers more broadly.

The desire to use PROs in healthcare accompanies recognition of many challenges inherent in their use. For example, clinicians may be interested in using PRO data to guide the provision of care but need guidance in selecting which PROs and PROMs to use to drive meaningful clinical interactions as well as for other downstream uses such as performance measurement. Challenges pertaining to the implementation of PROs center on achieving buy-in from various stakeholders given the realities of the data collection burden (e.g., workflow concerns by clinicians and their staff, time and privacy issues for patients, if/how to incorporate data into EHRs, etc.), and ensuring that PRO data are of high quality. However, the collection of high quality PRO data depends, in part, on data sources (e.g., self-report vs. proxy), modes of administration (e.g., self- vs. interviewer-administered), and the method of administration (e.g., paper and pencil, telephone-assisted, electronic capture via tablets, etc.).[51] Other considerations influence the quality of PRO data as well, such as selection bias due to medical or social

[c] National Quality Forum. Patient-Reported Outcomes in Performance Measurement. https://www.qualityforum.org/Publications/2012/12/Patient-Reported_Outcomes_in_Performance_Measurement.aspx. Last accessed February 2020.

factors of the person providing the data, the extent of missing data, nonresponse bias, and overall response rates.

In 2019, NQF convened a multistakeholder TEP to make recommendations for best practices to: 1) address challenges in PRO selection and data collection; 2) ensure PRO data quality; and 3) apply the recommended best practices on PRO selection and implementation to use cases related to burns/trauma, heart failure, and joint replacement. Application of these recommendations to the selected use cases allowed the TEP to pilot-test them for both acute and chronic conditions that often necessitate provision of care across settings and providers.

NQF began by conducting an environmental scan to identify the challenges and promising approaches for: 1) selecting both PROs and PROMs; and 2) collecting high quality PRO data. The scan also identified both PRO-PMs and PROMs, the TEP making the distinction of PROs reflecting concepts (e.g., fatigue) that are reported by patients, whereas PROMs are the instruments used to elicit information from patients about those concepts. NQF identified a total of 81 PROMs relevant to burns, trauma, joint replacement, and heart failure, and generic PROMs that can be used for patients with these conditions. Overall, more of the identified PROMs addressed health-related quality of life, functional status, and symptoms/symptom burden. The 2019 TEP used the guiding principles for selecting PROMs identified by the 2012 Panel to select PROMs for the scan: psychometric soundness, person-centeredness, meaningfulness, amenable to change, and implementable. The final report of the environmental scan was published in December 2019.

The TEP will use the results of the environmental scan to spur discussion and identification of consensus recommendations for addressing challenges in the PRO selection and data collection and ensuring PRO data quality. The TEP also will use the results of the scan when applying these recommendations to use cases related to burns/ trauma, heart failure, and joint replacement.

Electronic Health Record Data Quality

EHRs have become important data sources for measure development, because these data are captured in structured fields during patient care and are in wide use: 86 percent of office-based physicians use EHRs, as do 96 percent of acute care hospitals.[58] The use of EHR data is expected to reduce provider burden associated with collecting and reporting data for public reporting and value-based purchasing.[59,60] Furthermore, federal programs such as the Promoting Interoperability Programs (also known as "meaningful use") promoted EHR use with the goal of improving care coordination and population health outcomes, as well as healthcare quality. While the increased use of EHRs holds promise for enhancing quality measurement, data quality varies considerably.

Electronic clinical quality measures (eCQMs), which are specified to use EHRs as a source of data, were designed to enable automated reporting of measures using structured data. Combining eCQMs with structured EHR data has the potential to provide timely and accurate information pertinent to clinical decision support and facilitate monitoring of service utilization and health outcomes.[61] Currently, NQF has endorsed nearly 520 healthcare performance measures, with only 34 of these being eCQMs.

Previous work by NQF has identified the ability of EHR systems to connect and exchange data as an important aspect of quality healthcare that is not currently fully realized. However, eCQMs and EHR data are not enough to enable automated quality measurement. eCQMs require that every single data element used within an eCQM measure specification be collected as a discrete structured data element.

EHR data are primarily designed to support patient care and billing, not necessarily to capture data for secondary uses such as quality measurement.[62] Furthermore, while EHR use has led to an increase in the volume of structured data, EHR data are often not at the right level of completeness or granularity needed for effective use with eCQMs.[63]

In 2019, NQF began a project to identify best practices addressing EHR data quality issues impacting the use of EHR data in eCQMs and explore the challenges of assessing the quality of EHR data so that it can better support quality measurement, including automated measurement using eCQM specifications. Specifically, this project will identify the causes, nature, and extent of EHR data quality issues, discuss and assess the impact that poor EHR data quality has on scientific acceptability, use and usability, and feasibility, and make recommendations to HHS for best practices in assessing and improving EHR data quality to improve the reliability and validity, use and usability, and feasibility of quality measure (including eCQMs) and increase the scientific acceptability and likelihood of NQF endorsement.

To achieve this, NQF recruited a 21-member multistakeholder TEP to guide and provide input on the work. Additionally, NQF started an environmental scan to review the current landscape for assessing and maximizing structured EHR data quality, explore approaches currently used to mitigate data quality challenges, and identify data needed to support continued development and testing of eCQMs.

This scan will serve as a foundation for a final report that will be delivered to CMS in December 2020, and will encompass the TEP's discussions and recommendations for best practices in assessing and improving EHR data quality to improve the reliability and validity, use and usability, and feasibility of quality measures, including eCQMs, and likelihood for NQF endorsement.

Reducing Diagnostic Error

A 2015 report of the National Academies of Sciences, Engineering, and Medicine (NASEM), *Improving Diagnosis in Health Care*, defines diagnostic errors as the failure to establish or communicate an accurate and timely assessment of the patient's health problem. The report suggests these types of diagnostic errors contribute to nearly 10 percent of deaths each year and up to 17 percent of adverse hospital events.[64] The NASEM Committee on Diagnostic Error in Health Care suggested that most people will experience at least one diagnostic error in their lifetime.

The delivery of high quality healthcare is predicated upon an accurate and timely diagnosis. Diagnostic errors persist through all care settings and can result in physical, psychological, or financial repercussions for the patient. The NASEM Committee noted that there is a lack of effective measurement in this area, observing that "for a variety of reasons, diagnostic errors have been more challenging to measure than other quality or safety concepts."[65]

In follow-up to the NASEM report, NQF, with funding from HHS,[d] convened a multistakeholder expert committee in 2016 to develop a conceptual framework for measuring diagnostic quality and safety, to identify gaps in measurement of diagnostic quality and safety, and to identify priorities for future measure development. As part of this project, which resulted in the 2017 report Improving Diagnostic Quality and Safety, NQF engaged stakeholders from across the healthcare spectrum to explore the complex intersection of issues related to diagnosis and reducing diagnostic harm.[66]

[d] CDC. Reproductive Health. https://www.cdc.gov/reproductivehealth/index.html. Published December 6, 2019. Last accessed January 2020.

In 2019, NQF convened a new multistakeholder expert committee to revisit and build on the work of the former Diagnostic Quality and Safety Committee. The new expert committee reviewed the 2017 measurement framework and environmental scan in light of the new literature published to support the activities of improving diagnostic quality and safety. Specifically, this Committee reviewed one domain (Diagnostic Process and Outcomes) of the 2017 measurement framework and updated or modified the subdomains. In addition, the Committee identified any high-priority measures, measure concepts, current performance measures, and areas for future measure development that have emerged since the initial development of the measurement framework. In October 2019, the environmental scan was published and yielded no updates to the Diagnostic Process and Outcomes domain, but the scan did identify several articles supporting the composition of the subdomains, and their continued relevance to reducing error. There were also no updates made to the domain of High-Priority Areas for Future Measure Development. The scan did identify 19 new fully developed measures to add to the measure inventory, as well as 17 new measure concepts applicable to the process and outcomes domain of the framework. The measures were primarily concerned with the Diagnostic Efficiency and Diagnostic Accuracy subdomains of the Diagnostic Process and Outcomes domain; other measures were identified in the Information Gathering and Documentation subdomain.

Building on the environmental scan, the work of the Committee will continue in 2020 with development of practical guidance in the application of the *Diagnostic Process and Outcomes* component of the original framework, including identifying four specific use cases to demonstrate how the framework can be operationalized in practice. The final report will include recommendations for the application of the conceptual framework to reduce diagnostic errors and improve safety in a variety of systems and settings, with applications to multiple populations.

Maternal Morbidity and Mortality

Maternal morbidity and mortality have been identified as primary indicators for women's health and quality of health globally. Maternal morbidity refers to unexpected short- or long-term outcomes that result from pregnancy or childbirth. These outcomes can include blood transfusions, hysterectomy, respiratory problems, mental health conditions, or other health conditions that require additional medical care, such as hospitalization and long-term rehabilitation, and that can affect a woman's quality of life.[67] Maternal mortality, which includes deaths that occur up to one year after the pregnancy ends, may be caused by a pregnancy complication; a chain of medical events started by the pregnancy; the worsening of an unrelated condition because of the pregnancy, delivery type or obstetrical complications; or other factors.[67]

The Healthy People 2020[e] target goal for U.S. maternal mortality is 11.4 maternal deaths (per 100,000 live births) with a current U.S. rate of 17.2 maternal deaths (per 100,000 live births).[68] The U.S. is the only industrialized nation with a rising maternal mortality rate, with more than 700 women dying annually from pregnancy-related causes. These rates vary by region, state, and across racial and ethnic lines, where significant disparities highlight exacerbating differences among non-Hispanic black women (42.8 percent) and American Indian/Alaska Native (32.5 percent) women. Leading causes of maternal mortality are attributed to increased rates of cardiovascular disease, hemorrhage, and infection.[69]

[e] CDC. Pregnancy-Related Deaths. https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregnancy-relatedmortality.htm. Published February 26, 2019. Last accessed January 2020

Recent studies indicate that severe maternal morbidity affects more than 60,000 women annually in the U.S., with rising trends over the last two decades.[67,70,71] Severe morbidity poses a tremendous risk to the health and well-being of women, and although the causes of the rising rates are unclear, it is evident that racial disparities are pervasive. Therefore, it is vital to understand the causes of both maternal morbidity and mortality to improve maternal health outcomes for all populations.

In fall 2019, NQF began a two-year project to assess the current state of maternal morbidity and mortality measurement and to provide recommendations for short- and long-term approaches to improve this measurement and apply it to improve maternal health outcomes. This assessment will result in two separate measurement frameworks—one for maternal morbidity and one for maternal mortality. To achieve this, NQF recruited a 30-person multistakeholder committee to guide and provide input on the environmental scan, frameworks, and measure concepts of maternal morbidity and mortality. NQF began work on an environmental scan to review, analyze, and synthesize information related to maternal morbidity and mortality. The project work will continue in 2020 with the finalization of the environmental scan, and development of two frameworks and measure concepts.

VIII. Conclusion

Over the past 20 years, NQF's continuous efforts to improve health and healthcare through measurement have been closely linked with the national priorities of making care safer, strengthening person and family engagement, promoting effective communication, promoting effective prevention and treatment of chronic disease, working with communities to promote best practices of healthy living, and making care affordable in partnership with public and private healthcare stakeholders across the country.

This year, NQF sought to promote coordination across public and private payers. The increased reliance on performance measures has led to expansion in the number of measures being used and an increase in burden on providers collecting the data, confusion among consumers and purchasers seeing conflicting measure results, and operational difficulties among payers. The Core Quality Measures Collaborative (CQMC), a broad-based coalition of healthcare leaders, was constituted to promote the use of a core set of measures while minimizing the burden on clinicians and providers. This collaborative aims to support the collection of better information about what happens after a measure is implemented. This will ensure that NQF-endorsed measures are driving meaningful improvements and not causing negative unintended consequences.

Public and private payers continue to look to VBP and APMs as methods to reduce the growth of healthcare costs and to incentivize high quality care. However, such payment models require evidence-based and scientifically sound performance measures to assess the value of care provided rather than the volume of services rendered. Moreover, these measures must be implemented in a way that minimizes provider burden while advancing national healthcare improvement priorities.

NQF's work in evolving the science of performance measurement has also expanded over the years, and recent projects, such as CQMC, which focuses on identifying the right quality measures for use across payers, align with the NQS' emphasis on public-private collaboration. The Opioid Expert Panel addressed the challenges in OUD quality measurement.

NQF continued to bring together experts through multistakeholder committees to identify high value, meaningful, and evidence-based performance measures. NQF's work to review and endorse

performance measures provides stakeholders with valuable information to improve care delivery and transform the healthcare system. NQF-endorsed measures enable clinicians, hospitals, and other providers to understand if they are providing high quality care and determine where improvement efforts may need to be focused. NQF maintains a portfolio of evidence-based measures that address a wide range of clinical and cross-cutting topic areas. In 2019, NQF endorsed 110 measures and removed endorsement for 41 measures across 28 endorsement projects addressing 14 topic areas. NQF remains committed to ensuring the endorsement process is innovative and efficient with a seven-month review cycle twice every year and extended public commenting periods for greater transparency.

MAP convenes organizations across the private and public sectors to recommend measures for use in federal programs and provide strategic guidance on future directions for these programs. MAP comprises stakeholders from across the healthcare system including patients, clinicians, providers, purchasers, and payers. Through its nine years of pre-rulemaking reviews, MAP has aimed to lower costs while improving quality, promoting the use of meaningful measures, reducing the burden of measurement by promoting alignment and avoiding unnecessary data collection, and empowering patients to become active consumers by ensuring they have the information necessary to support their healthcare decisions. MAP's work that concluded in 2019 included a review of unique performance measures under consideration for use in 18 HHS quality reporting and value-based payment programs covering clinician, hospital, and post-acute/long-term care settings. Additionally, MAP began new work in November 2019 to provide input on 19 measures under consideration for 10 HHS programs.

During their 2019 deliberations, many NQF standing committees discussed measure portfolios and identified measure gaps, where cross-cutting or high value measures are too few or may not yet exist to drive improvement. NQF's standing committees surfaced important measurement gaps in areas such as behavioral health, substance use, and perinatal and women's health. MAP also identified measure gaps to assess care and improvement in federal healthcare programs.

In 2020, NQF looks forward to addressing additional issues and collective efforts to address measurement science challenges and furthering the portfolio of high value measures that public and private payers, providers, and patients rely on to improve health and healthcare.

IX. References

1 Throughout this report, the relevant statutory language appears in italicized text.

2 Contract with a Consensus-Based Entity Regarding Performance Measurement. 42 U.S.C. 1395aaa(b)(1) (2014).

3 Scholl L, Seth P, Kariisa M, et al. Drug and opioid-involved overdose deaths – United States, 2013-2017. *MMWR Morb Mortal Wkly Rep.* 2018;67(5152):1419-1427.

4 Saloner B, Barry CL. Ending the opioid epidemic requires a historic investment in medication-assisted treatment. *Journal of Policy Analysis and Management.* 2018;37(2):431-438.

5 Barry CL. Fentanyl and the evolving opioid epidemic: what strategies should policy makers consider? *Psychiatr Serv.* 2018;69(1):100-103.

6 Pitt AL, Humphreys K, Brandeau ML. Modeling health benefits and harms of public policy responses to the US opioid epidemic. *Am J Public Health.* 2018;108(10):1394-1400.

7 Saloner B, McGinty EE, Beletsky L, et al. A public health strategy for the opioid crisis. *Public Health Rep.* 2018;133(1_suppl):24S-34S.

8 Abrams MR. Renovations needed: the FDA's floor/ceiling framework, preemption, and the opioid epidemic. *Mich Law Rev.* 2018;117(1):143-171.

9 Congressional Digest. *Opioid Crisis: Combating the Opioid Epidemic, Recommendations of the President's Commission*, 2018. http://congressionaldigest.com/issue/opioid-crisis/combating-the-opioid-epidemic/. Last accessed January 2020.

10 Ho JA, Rovzar AO. Preventing neonatal abstinence syndrome within the opioid epidemic: a uniform facilitative policy. *Harvard Journal on Legislation.* 2017;54:301-333.

11 *Medication-Assisted Treatment for Opioid Use Disorder: Proceedings of a Workshop—in Brief.* Washington DC: National Academies Press; 2018. http://www.ncbi.nlm.nih.gov/books/NBK534504/. Last accessed January 2020.

12 Boccuti C, Casillas G. Aiming for fewer hospital U-turns: the Medicare hospital readmission reduction program. *The Henry J Kaiser Family Foundation.* March 2017. https://www.kff.org/medicare/issue-brief/aiming-for-fewer-hospital-u-turns-the-medicare-hospital-readmission-reduction-program/. Last accessed January 2020.

13 MedPAC. *Mandated Report: The Effects of the Hospital Readmissions Reduction Program.* Washington, DC; 2018. http://www.medpac.gov/docs/default-source/reports/jun18_medpacreporttocongress_sec.pdf.

14 Substance Abuse and Mental Health Services Administration. *Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health.* Rockville, MD; 2019. https://www.samhsa.gov/data/.

15 CDC. Heart Disease Facts. Heart Disease. https://www.cdc.gov/heartdisease/facts.htm. Published December 2, 2019. Last accessed January 2020.

16 Centers for Disease Control and Prevention. CDC Wonder: About Multiple Cause of Death, 1999-2018. https://wonder.cdc.gov/mcd-icd10.html. Last accessed February 2020.

17 Centers for Medicare and Medicaid Services (CMS). National Health Expenditure Data website (Historical). National Health Expenditure Data. https://www.cms.gov/Research-

Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical. Last accessed November 2019.

18 Squires D, Anderson C. U.S. health care from a global perspective: spending, use of services, prices, and health in 13 countries. *Issue Brief (Commonw Fund)*. 2015;15:1-15.

19 Institute of Medicine. *Best Care at Lower Cost: The Path to Continuously Learning Health Care in America*. National Academies Press; 2013.

20 Shrank WH, Rogstad TL, Parekh N. Waste in the US health care system: estimated costs and potential for savings. *JAMA*. 2019;322(15):1501-1509.

21 The Administration for Community Living. *2018 Profile of Older Americans*. Administration for Community Living, U.S. Department of Health and Human Services; 2018. https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/2018OlderAmericansProfile.pdf. Last accessed December 2019.

22 Ward BW, Schiller JS. Prevalence of multiple chronic conditions among US adults: estimates from the National Health Interview Survey, 2010. *Prev Chronic Dis*. 2013;10. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3652717/. Last accessed November 2019.

23 Institute of Medicine (IOM). *Dying in America: Improving Quality and Honoring Individual Preferences Near the End of Life*. http://www.nationalacademies.org/hmd/Reports/2014/Dying-In-America-Improving-Quality-and-Honoring-Individual-Preferences-Near-the-End-of-Life.aspx. Last accessed November 2019.

24 Gooch CL, Pracht E, Borenstein AR. The burden of neurological disease in the United States: a summary report and call to action. *Ann Neurol*. 2017;81(4):479-484.

25 Agency for Health Research and Quality (AHRQ). Priorities of the National Quality Strategy website. https://www.ahrq.gov/research/findings/nhqrdr/nhqdr15/priorities.html. Last accessed November 2019.

26 James JT. A new, evidence-based estimate of patient harms associated with hospital care. *Journal of Patient Safety*. 2013;9(3):122.

27 CDC. CDC Births and Natality. https://www.cdc.gov/nchs/fastats/births.htm. Published October 29, 2019. Last accessed November 2019.

28 CDC. Pregnancy Mortality Surveillance System website. https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm. Published October 10, 2019. Last accessed November 2019.

29 Main DE, Collaborative medical director of the CMQC. Nearly dying in childbirth: why preventable complications are growing in U.S. NPR.org. https://www.npr.org/2017/12/22/572298802/nearly-dying-in-childbirth-why-preventable-complications-are-growing-in-u-s. Last accessed November 2019.

30 Dehlendorf C, Rodriguez MI, Levy K, et al. Disparities in family planning. *Am J Obstet Gynecol*. 2010;202(3):214-220.

31 Kindig D, Stoddart G. What is population health? *Am J Public Health*. 2003;93(3):380-383.

32 CDC. National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). Centers for Disease Control and Prevention. https://www.cdc.gov/chronicdisease/index.htm. Published November 20, 2019. Last accessed November 2019.

33 Razavi H, ElKhoury AC, Elbasha E, et al. Chronic hepatitis C virus (HCV) disease burden and cost in the United States. *Hepatology*. 2013;57(6):2164-2170.

34 Birnbaum H, Pike C, Kaufman R, et al. Societal cost of rheumatoid arthritis patients in the US. *Curr Med Res Opin*. 2010;26(1):77-90.

35 Prevent Blindness. Glaucoma Costs Reach $5.8 Billion Annually. https://www.preventblindness.org/glaucoma-costs-reach-5-point-8-billion-annually. Last accessed November 2019.

36 U.S. Renal Data System (USRDS). *USRDS 2018 Annual Data Report: Atlas of Chronic Kidney Disease and End-Stage Renal Disease in the United States*. Bethesda, MD: National Institute of Diabetes and Digestive and Kidney Diseases; 2018. https://www.usrds.org/2018/view/v2_01.aspx. Last accessed November 2019.

37 U.S. Renal Data System (USRDS). *USRDS 2010 Annual Data Report: Atlas of Chronic Kidney Disease and End-Stage Renal Disease in the United States*. Bethesda, MD: National Institute of Diabetes and Digestive and Kidney Diseases; 2018. https://www.usrds.org/atlas10.aspx. Last accessed November 2019.

38 Steiner CA, Karaca Z, Moore BJ, et al. Surgeries in hospital-based ambulatory surgery and hospital inpatient settings, 2014: Statistical Brief #223. In: *Healthcare Cost and Utilization Project (HCUP) Statistical Briefs*. Rockville (MD): Agency for Healthcare Research and Quality (US); 2006. http://www.ncbi.nlm.nih.gov/books/NBK442035/. Last accessed November 2019.

39 Munnich EL, Parente ST. Procedures take less time at ambulatory surgery centers, keeping costs down and ability to meet demand up. *Health Affairs*. 2014;33(5):764-769.

40 Farrell D, Jensen E, Kocher B, et al. Accounting for the cost of US health care: a new look at why Americans spend more. McKinsey Global Institute. https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/accounting-for-the-cost-of-us-health-care. Last accessed November 2019.

41 CMS. IMPACT Act of 2014 Data Standardization & Cross Setting Measures. https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Post-Acute-Care-Quality-Initiatives/IMPACT-Act-of-2014/IMPACT-Act-of-2014-Data-Standardization-and-Cross-Setting-Measures. Last accessed February 2020.

42 Centers for Medicare and Medicaid Services (CMS). fee-for-service definition. medicareresources.org. https://www.medicareresources.org/glossary/fee-for-service/. Published April 23, 2018. Last accessed February 2020.

43 Committee on Military Trauma Care's Learning Health System and Its Translation to the Civilian Sector, Board on Health Sciences Policy, Board on the Health of Select Populations, et al. *A National Trauma Care System: Integrating Military and Civilian Trauma Systems to Achieve Zero Preventable Deaths After Injury*. (Berwick D, Downey A, Cornett E, eds.). Washington (DC): National Academies Press (US); 2016. http://www.ncbi.nlm.nih.gov/books/NBK390327/. Last accessed January 2020.

44 Centers for Disease Control and Prevention (CDC). Emergency Department Visits. https://www.cdc.gov/nchs/fastats/emergency-department.htm. Published September 4, 2019. Last accessed January 2020.

45 Florence C, Simon T, Haegerich T, et al. Estimated lifetime medical and work-loss costs of fatal injuries—United States, 2013. *MMWR Morb Mortal Wkly Rep.* 2015;64(38):1074-1077.

46 Centers for Medicare & Medicaid Services (CMS), HHS. Medicare and Medicaid Programs; Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers. Final rule. *Fed Regist.* 2016;81(180):63859-64044.

47 The Joint Commission. *Emergency Management in Health Care.* Third edition. Oak Brook, Illinois; 2016.

48 Thompson DA, Eitel D, Fernandes CMB, et al. Coded chief complaints-automated analysis of free-text complaints. *Acad Emerg Med.* 2006;13(7):774-782.

49 Johnson R, Toohey D, Wiener J. Meeting the long-term care needs of the baby boomers: how changing families will affect paid helpers and institutions. January 2007.

50 Basch E. New frontiers in patient-reported outcomes: adverse event reporting, comparative effectiveness, and quality assessment. *Annu Rev Med.* 2014;65:307-317.

51 Cella D, Hahn EA, Jensen SE, et al. Patient-reported outcomes in performance measurement. Research Triangle Park (NC): RTI Press; 2015. http://www.ncbi.nlm.nih.gov/books/NBK424378/. Last accessed January 2020.

52 Lavallee DC, Chenok KE, Love RM, et al. Incorporating patient-reported outcomes into health care to engage patients and enhance care. *Health Aff (Millwood).* 2016;35(4):575-582.

53 Greenhalgh J, Dalkin S, Gooding K, et al. *Functionality and feedback: a realist synthesis of the collation, interpretation and utilisation of patient-reported outcome measures data to improve patient care.* Southampton (UK): NIHR Journals Library; 2017. http://www.ncbi.nlm.nih.gov/books/NBK409450/. Last accessed January 2020.

54 Snyder C, Brundage M, Rivera YM, et al. A PRO-cision medicine methods toolkit to address the challenges of personalizing cancer care using patient-reported outcomes: introduction to the supplement. *Med Care.* 2019;57 Suppl 5 Suppl 1:S1-S7.

55 van Egdom LSE, Oemrawsingh A, Verweij LM, et al. Implementing patient-reported outcome measures in clinical breast cancer care: A systematic review. *Value Health.* 2019;22(10):1197-1226.

56 Basch E, Deal AM, Kris MG, et al. Symptom monitoring with patient-reported outcomes during routine cancer treatment: a randomized controlled trial. *J Clin Oncol.* 2016;34(6):557-565.

57 Baumhauer JF. Patient-reported outcomes – are they living up to their potential? *N Engl J Med.* 2017;377(1):6-9.

58 Health IT. Health IT Quick Stats. https://dashboard.healthit.gov/quickstats/quickstats.php. Last accessed January 2020.

59 Institute of Medicine (US) Committee on Data Standards for Patient Safety, Tang P. *Key Capabilities of an Electronic Health Record System: Letter Report.* Washington (DC): National Academies Press (US); 2003. http://www.ncbi.nlm.nih.gov/books/NBK221802/. Last accessed January 2020.

60 Eisenberg F, Lasome C, Advani A, et al. A study of the impact of meaningful use clinical quality measures. *American Hospital Association*. 2013.

61 Bailey LC, Mistry KB, Tinoco A, et al. Addressing electronic clinical information in the construction of quality measures. *Acad Pediatr*. 2014;14(5 Suppl):S82-89.

62 Bush RA, Kuelbs C, Ryu J, et al. Structured data entry in the electronic medical record: Perspectives of pediatric specialty physicians and surgeons. *J Med Syst*. 2017;41(5):75.

63 Abernethy AP, Gippetti J, Parulkar R, et al. Use of electronic health record data for quality reporting. *J Oncol Pract*. 2017;13(8):530-534.

64 Singh H, Meyer AN, Thomas EJ. The frequency of diagnostic errors in outpatient care: estimations from three large observational studies involving US adult populations. *BMJ Qual Saf*. 2014;23(9):727-731.

65 National Academies of Sciences E. *Improving Diagnosis in Health Care*; 2015. https://www.nap.edu/catalog/21794/improving-diagnosis-in-health-care. Last accessed January 2020.

66 National Quality Forum. *Improving Diagnostic Quality and Safety*; 2017. https://www.qualityforum.org/Publications/2017/09/Improving_Diagnostic_Quality_and_Safety_Final_Report.aspx. Last accessed October 2019.

67 CDC. Severe Maternal Morbidity in the United States. https://www.cdc.gov/reproductivehealth/maternalinfanthealth/severematernalmorbidity.html. Published January 17, 2019. Last accessed January 2020.

68 CDC. Pregnancy-Related Deaths. https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregnancy-relatedmortality.htm. Published February 26, 2019. Last accessed January 2020.

69 CDC. Reproductive Health. https://www.cdc.gov/reproductivehealth/index.html. Published December 6, 2019. Last accessed January 2020.

70 Howell EA. Reducing Disparities in Severe Maternal Morbidity and Mortality. *Clin Obstet Gynecol*. 2018;61(2):387-399.

71 Callaghan WM, Creanga AA, Kuklina EV. Severe maternal morbidity among delivery and postpartum hospitalizations in the United States. *Obstet Gynecol*. 2012;120(5):1029-1036.

Appendix A: 2019 Activities Performed Under Contract with HHS

1. Federally Funded Contracts Awarded in FY 2019

IDIQ Contract	Contract Number	Task Order Name	Period of Performance	Contract Amount for FY 2019
HHSM-500-2017-00060I	75FCMC18F0001	Social Risk Trial – This three-year project explores the impact of social risk factors on the results of measures and the appropriateness of including social risk factors in the risk-adjustment models of measures submitted for endorsement review.	May 15, 2019 – May 14, 2020 (Option Year 1)	$401,660
HHSM-500-2017-00060I	75FCMC18F0009	Core Quality Measures Collaborative (CQMC) – The CQMC is a multistakeholder collaborative with representation from various specialty organizations across the healthcare landscape working together to recommend core sets of measures by clinical area to assess the quality of American health care. The voluntary collaborative aims to add focus to quality improvement efforts, reduce the reporting burden for providers, and offer consumers actionable information to help them make decisions about where to receive their care.	September 14, 2019 – September 13, 2020 (Option Year 1)	$275, 884
HHSM-500-2017-00060I	75FCMC18F0010	Common Formats – A project supported by AHRQ to obtain comments from stakeholders about the Common Formats authorized by the Patient Safety and Quality Improvement Act of 2005. "Common Formats" refers to the common definitions and reporting formats that allow collection and submission of standardized information regarding patient safety concerns.	September 14, 2019 – September 13, 2020	$128,340
HHSM-500-2017-00060I	HHSM-500-T0001	Endorsement and Maintenance – NQF recommends the best-in-class quality measures for use in federal and private improvement programs. Measures can be submitted for endorsement twice a year in 14 topic areas including behavioral health and substance use, patient experience and function, and all-cause admissions and readmissions.	September 27, 2019 – September 26, 2020 (Option Year 2)	$9,679,359
HHSM-500-2017-00060I	HHSM-500-T0002	Annual Report to Congress – An annual report that summarizes projects funded under the contract with the Department of Health and Human and Services.	September 27, 2019 – September 26, 2020 (Option Year 2)	$123, 821

IDIQ Contract	Contract Number	Task Order Name	Period of Performance	Contract Amount for FY 2019
HHSM-500-2017-00060I	HHSM-500-T0003	Measure Applications Partnership (MAP). MAP reviews measures that CMS is considering implementing and provides guidance on their acceptability and value to stakeholders. MAP makes these recommendations through its pre-rulemaking process that enables a multistakeholder dialogue to assess measurement priorities for these programs.	March 27, 2019 – March 26, 2020 (Option Year 1)	$ 1,357,149
HHSM-500-2017-00060I	75FCMC19F0001	Person-Centered Planning and Practice (PCP) – PCP plays a key role in the provision of long-term services and supports. This project is establishing a foundation for performance measurement in person-centered planning, identifying measure gaps, and developing a framework to analyze and prioritize gaps for future measure development.	February 6, 2019 – August 2, 2020	$774, 998
HHSM-500-2017-00060I	75FCMC19F0002	Opioid Technical Expert Panel (TEP) – NQF convened a multistakeholder TEP pursuant to the 2018 Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act. The TEP's charge was to review quality measures that relate to opioids and opioid use disorders, identify gaps in areas that relate to opioids and opioid use disorders and priorities for measure development for such gaps, and make recommendations to HHS on quality measures with respect to opioids and opioid use disorders for purposes of improving care, prevention, diagnosis, health outcomes, and treatment.	February 7, 2019 – February 6, 2020	$542, 555
HHSM-500-2017-00060I	75FCMC19F0003	Patient Reported Outcomes (PRO)– NQF convened a multistakeholder TEP to identify best practices to address challenges in selecting and collecting PRO data, make recommendations for use of best practices to address challenges in PRO selection and data collection, and ensure data quality, and apply the recommended best practices on selection and implementation to use cases related to burns/trauma, heart failure, and joint replacement.	June 10, 2019 – June 9, 2020	$502, 288

IDIQ Contract	Contract Number	Task Order Name	Period of Performance	Contract Amount for FY 2019
HHSM-500-2017-00060I	75FCMC19F0004	Electronic Health Record (EHR) Data Quality Best Practices for Increased Scientific Acceptability – Electronic clinical quality measures (eCQMs) are designed to enable automated reporting of measures using EHR data. This 18-month project identifies the causes, nature, and extent of EHR data quality issues related to eCQMs, the impact that poor EHR data quality has on scientific acceptability, use and usability, and feasibility, and make recommendations for best practices in assessing and improving EHR data quality to improve the reliability and validity, use and usability, and feasibility of eCQMs.	July 1, 2019 – December 31, 2020	$554, 421
HHSM-500-2017-00060I	75FCMC19F0005	Reducing Diagnostic Error — – This project builds on the Diagnostic Quality and Safety Measurement Framework published in 2017. A multistakeholder expert committee identified any high-priority measures, measure concepts, current performance measures, and areas for future measure development that have emerged since the initial development of the measurement framework. The next phase will include recommendations on how the framework can be operationalized in practice.	July 15, 2019 – October 14, 2020	$524,854
HHSM-500-2017-00060I	75FCMC19F0007	Rural Health Technical Expert Panel (TEP) – The TEP reviewed previously identified approaches to the low-case-volume challenge and provided feedback and recommendations to address the low-case-volume challenge that many rural providers face.	September 6, 2019 – September 5, 2020	$398, 016
HHSM-500-2017-00060I	75FCMC19F0008	Maternal Morbidity and Mortality – This two-year project will assess the current state of maternal morbidity and mortality quality measurement and provide recommendations for short- and long-term approaches to improve this measurement and apply it to improve maternal health outcomes.	September 18, 2019 – September 14, 2021	$781, 321

TOTAL AWARD		$12,091,362

2. NQF Financial Information for FY 2019 *(unaudited)*

Contributions and Grants	$23,594,966
Program Service Revenue	$656,873
Investment Income	$374,604
Other Revenue	$213,411
TOTAL REVENUE	**$24,839,854**
Grants and Similar Amounts Paid	---
Benefits Paid to or for Members	---
Salaries, Other Compensation, Employee Benefits	11,981,017
Other Expenses[f]	$7,614,615
TOTAL EXPENSES	**$19,595,632**

[f] "Other Expenses" may include operating and overhead costs.

Appendix B: Multistakeholder Group Rosters: Committee, Workgroups, Task Forces, and Advisory Panels

As a consensus-based entity, NQF ensures there is comprehensive representation from the healthcare sector across all its convened committees, workgroups, task forces, and advisory panels.

Consensus Development Process Standing Committees

All-Cause Admissions and Readmissions Standing Committee

CO-CHAIRS

John Bulger, DO, MBA
Geisinger Health

Cristie Travis, MSHHA
Memphis Business Group on Health

MEMBERS

Katherine Auger, MD, MSc
Cincinnati Children's Hospital Medical Center

Frank Briggs, PharmD, MPH
West Virginia University Healthcare

Jo Ann Brooks, PhD, RN
Indiana University Health System

Mae Centeno, DNP, RN, CCRN, CCNS, ACNS-BC
Baylor Health Care System

Helen Chen, MD
Hebrew SeniorLife

Susan Craft, RN
Henry Ford Health System

William Wesley Fields, MD, FACEP
UC Irvine Medical Center; CEP America

Steven Fishbane, MD
North Shore-LIJ Health System for Network Dialysis Services

Paula Minton Foltz, RN, MSN
Patient Care Services

Laurent Glance, MD
University of Rochester School of Medicine; RAND

Anthony Grigonis, PhD
Select Medical

Bruce Hall, MD, PhD, MBA
Washington University in Saint Louis; BJC Healthcare

Leslie Kelly Hall
Healthwise

Paul Heidenreich, MD, MS, FACC, FAHA
Stanford University School of Medicine; VA Palo Alto Health Care System

Sherrie Kaplan, PhD
UC Irvine School of Medicine

Keith Lind, JD, MS, BSN
AARP Public Policy Institute

Karen Joynt Maddox, MD, MPH
Washington University School of Medicine; Washington University Brown School of Social Work

Paulette Niewczyk, PhD, MPH
Uniform Data System for Medical Rehabilitation

Carol Raphael, MPA
Manatt Health Solutions

Mathew Reidhead, MA
Missouri Hospital Association; Hospital Industry Data Institute

Pamela Roberts, PhD, MSHA, ORT/L, SCFES, FAOTA, CPHQ, FNAP, FACRM
Cedars-Sinai Medical Center

Derek Robinson, MD, MBA, FACEP, CHCQM
Health Care Service Corporation

Thomas Smith, MD, FAPA
Columbia University Medical Center

Behavioral Health and Substance Use Standing Committee

CO-CHAIRS

Peter Briss, MD, MPH
Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion

Harold Pincus, MD
New York-Presbyterian Hospital, The University Hospital of Columbia and Cornell

MEMBERS

Mady Chalk, PhD, MSW
The Chalk Group

David Einzig, MD
Children's Hospital And Clinics Of Minnesota

Julie Goldstein Grumet, PhD
Education Development Center/Suicide Prevention Resource Center/National Action Alliance for Suicide Prevention

Constance Horgan, ScD
The Heller School for Social Policy and Management, Brandeis University

Lisa Jensen, DNP, APRN
Office of Nursing Services, Veteran's Health Administration North

Dolores (Dodi) Kelleher, MS, DMH
D Kelleher Consulting

Kraig Knudsen, PhD
Ohio Department of Mental Health and Addiction Services

Michael R. Lardieri, LCSW
Northwell Health, Behavioral Health Services Line

Tami Mark, PhD, MBA
RTI International

Raquel Mazon Jeffers, MPH
MIA The Nicholson Foundation

Bernadette Melnyk, PhD, RN, CPNP/FAANP, FNAP, FAAN
The Ohio State University

Laurence Miller, MD
University of Arkansas for Medical Sciences

Brooke Parish, MD
Blue Cross Blue Shield of New Mexico

David Pating, MD
Kaiser Permanente San Francisco

Vanita Pindolia, PharmD, MBA
Henry Ford Health System

Lisa Shea, MD, DFAPA
Lifespan

Andrew Sperling, JD
National Alliance on Mental Illness

Jeffery Susman, MD
Northeast Ohio Medical University

Michael Trangle, MD
HealthPartners Medical Group

Bonnie Zima, MD, MPH
University of California, Los Angeles (UCLA) Semel Institute for Neuroscience and Human Behavior

Leslie S. Zun, MD, MBA
Sinai Health System

Cancer Standing Committee

CO-CHAIRS

Karen Fields, MD
Moffitt Cancer Center

Shelley Fuld Nasso, MPP, CEO
National Coalition for Cancer Survivorship

MEMBERS

Gregary Bocsi, DO, FCAP
University of Colorado Hospital Clinical Laboratory

Brent Braveman, Ph.D, OTR/L, FAOTA
University of Texas M.D. Anderson Cancer Center

Steven Chen, MD, MBA, FACS
OasisMD

Matthew Facktor, MD, FACS
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Heidi Floyd
Patient Advocate

Bradford Hirsch, MD
SIGNALPATH

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Oncology Nurse Practitioner

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Ali McBride, PharmD, MS, BCPS
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University of Cincinnati College of Nursing

Robert Rosenburg, MD, FACR
Radiology Associates of Albuquerque

David J. Sher, MD, MPH
UT Southwestern Medical Center

Danielle Ziernicki, PharmD
Dedham Group

Cardiovascular Standing Committee

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Centers for Disease Control and Prevention (CDC)

Thomas Kottke, MD, MSPH
Consulting Cardiologist, HealthPartners

MEMBERS

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WomenHeart: The National Coalition for Women with Heart Disease

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Appendix D: MAP Measure Selection Criteria

MAP uses its Measure Selection Criteria (MSC) to guide its review of measures under consideration. The MSC are intended to assist MAP with identifying characteristics that are associated with ideal measure sets used for public reporting and payment programs. The MSC are not absolute rules; rather, they are meant to provide general guidance on measure selection decisions and to complement program-specific statutory and regulatory requirements. The central focus should be on the selection of high quality measures that optimally address health system improvement priorities, fill critical measurement gaps, and increase alignment. Although competing priorities often need to be weighed against one another, the MSC can be used as a reference when evaluating the relative strengths and weaknesses of a program measure set, and how the addition of an individual measure would contribute to the set. The MSC have evolved over time to reflect the input of a wide variety of stakeholders.

To determine whether a measure should be considered for a specified program, MAP evaluates the measures under consideration against the MSC. Additionally, the MSC serve as the basis for the preliminary analysis algorithm. MAP members are expected to familiarize themselves with the criteria and use them to indicate their support for a measure under consideration.

1. NQF-endorsed measures are required for program measure sets, unless no relevant endorsed measures are available to achieve a critical program objective

Demonstrated by a program measure set that contains measures that meet the NQF endorsement criteria, including importance to measure and report, scientific acceptability of measure properties, feasibility, usability and use, and harmonization of competing and related measures

Subcriterion 1.1	*Measures that are not NQF-endorsed should be submitted for endorsement if selected to meet a specific program need*
Subcriterion 1.2	*Measures that have had endorsement removed or have been submitted for endorsement and were not endorsed should be removed from programs*
Subcriterion 1.3	*Measures that are in reserve status (i.e., topped out) should be considered for removal from programs*

2. Program measure set actively promotes key healthcare improvement priorities, such as those highlighted in CMS' "Meaningful Measures" Framework

Demonstrated by a program measure set that promotes improvement in key national healthcare priorities such as CMS' Meaningful Measures Framework.

Other potential considerations include addressing emerging public health concerns and ensuring that the set addresses key improvement priorities for all providers.

3. Program measure set is responsive to specific program goals and requirements

Demonstrated by a program measure set that is "fit for purpose" for the particular program

Subcriterion 3.1	*Program measure set includes measures that are applicable to and appropriately tested for the program's intended care setting(s), level(s) of analysis, and population(s)*
Subcriterion 3.2	*Measure sets for public reporting programs should be meaningful for*

consumers and purchasers

Subcriterion 3.3 *Measure sets for payment incentive programs should contain measures for which there is broad experience demonstrating usability and usefulness (Note: For some Medicare payment programs, statute requires that measures must first be implemented in a public reporting program for a designated period)*

Subcriterion 3.4 *Avoid selection of measures that are likely to create significant adverse consequences when used in a specific program*

Subcriterion 3.5 *Emphasize inclusion of endorsed measures that have eCQM specifications available*

4. Program measure set includes an appropriate mix of measure types

Demonstrated by a program measure set that includes an appropriate mix of process, outcome, experience of care, cost/resource use/appropriateness, composite, and structural measures necessary for the specific program

Subcriterion 4.1 *In general, preference should be given to measure types that address specific program needs*

Subcriterion 4.2 *Public reporting of program measure sets should emphasize outcomes that matter to patients, including patient- and caregiver-reported outcomes*

Subcriterion 4.3 *Payment program measure sets should include outcome measures linked to cost measures to capture value*

5. Program measure set enables measurement of person- and family-centered care and services

Demonstrated by a program measure set that addresses access, choice, self-determination, and community integration

Subcriterion 5.1 *Measure set addresses patient/family/caregiver experience, including aspects of communication and care coordination*

Subcriterion 5.2 *Measure set addresses shared decision making, such as for care and service planning and establishing advance directives*

Subcriterion 5.3 *Measure set enables assessment of the person's care and services across providers, settings, and time*

6. Program measure set includes considerations for healthcare disparities and cultural competency

Demonstrated by a program measure set that promotes equitable access and treatment by considering healthcare disparities. Factors include addressing race, ethnicity, socioeconomic status, language, gender, sexual orientation, age, or geographical considerations (e.g., urban vs. rural). Program measure set also can address populations at risk for healthcare disparities (e.g., people with behavioral/mental illness).

Subcriterion 6.1 *Program measure set includes measures that directly assess healthcare disparities (e.g., interpreter services)*

Subcriterion 6.2 *Program measure set includes measures that are sensitive to disparities measurement (e.g., beta blocker treatment after a heart attack), and that*

facilitate stratification of results to better understand differences among vulnerable populations

7. Program measure set promotes parsimony and alignment

Demonstrated by a program measure set that supports efficient use of resources for data collection and reporting, and supports alignment across programs. The program measure set should balance the degree of effort associated with measurement and its opportunity to improve quality.

Subcriterion 7.1	*Program measure set demonstrates efficiency (i.e., minimum number of measures, and the least burdensome measures that achieve program goals)*
Subcriterion 7.2	*Program measure set places strong emphasis on measures that can be used across multiple programs or applications*

Appendix E: MAP Structure, Members, Criteria for Service, and Rosters

MAP operates through a two-tiered structure. Guided by the priorities and goals of HHS' National Quality Strategy, the MAP Coordinating Committee provides direction and direct input to HHS. MAP's workgroups advise the Coordinating Committee on measures needed for specific care settings, care providers, and patient populations. Time-limited task forces consider more focused topics, such as developing "families of measures"—related measures that cross settings and populations—and provide further information to the MAP Coordinating Committee and workgroups. Each multistakeholder group includes individuals with content expertise and organizations particularly affected by the work.

MAP's members are selected based on NQF Board-adopted selection criteria, through an annual nominations process and an open public commenting period. Balance among stakeholder groups is paramount. Due to the complexity of MAP's tasks, individual subject matter experts are included in the groups. Federal government ex officio members are nonvoting because federal officials cannot advise themselves. MAP members serve staggered three-year terms.

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Ron Walters, MD, MBA, MHA

Federal Government Liaisons (non-voting)

Agency for Healthcare Research and Quality

Centers for Disease Control and Prevention

Centers for Medicare and Medicaid Services

Office of the National Coordinator for Health Information Technology

MAP Rural Health Workgroup Members

Committee Co-Chairs (voting)

Aaron Garman, MD
Coal Country Community Health Center

Ira Moscovice, PhD
University of Minnesota School of Public Health

Organizational Members (voting)

Alliant Health Solutions

American Academy Of Family Physicians

American Academy Of Physician Assistants

American College Of Emergency Physicians

American Hospital Association

American Society Of Health-System Pharmacists

Cardinal Innovations

Geisinger Health

Intermountain Healthcare

Michigan Center For Rural Health

Minnesota Community Measurement

National Association Of Rural Health Clinics

National Rural Health Association

National Rural Letter Carriers' Association

Rupri Center For Rural Health Policy Analysis

Rural Wisconsin Health Cooperative

Truven Health Analytics LLC/IBM Watson Health Company

Individual Subject Matter Experts (voting)

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John Gale, MS

Curtis Lowery, MD

Melinda Murphy, RN, MS

Jessica Schumacher, PhD

Ana Verzone, MS, APRN, FNP, CNM

Holly Wolff, MHA

Federal Government Liaisons (non-voting)

Federal Office of Rural Health Policy, DHHS/HRSA

Center for Medicare and Medicaid Innovation, Centers for Medicare and Medicaid Services

Indian Health Services, DHH

MAP Clinician Workgroup Members

Committee Co-Chairs (voting)

Bruce Bagley, MD

Organizational Members (voting)

The Alliance

America's Physician Groups

American Academy of Family Physicians

American Academy of Pediatrics

American Association of Nurse Practitioners

American College of Cardiology

American College of Radiology

American Occupational Therapy Association

Anthem

Atrium Health

Consumers' Checkbook/Center for the Study of Services

Council of Medical Specialty Societies

Genentech

HealthPartners, Inc.

Kaiser Permanente

Louise Batz Patient Safety Foundation

Magellan Health, Inc.

National Association of ACOs

Pacific Business Group on Health

Patient-Centered Primary Care Collaborative

Patient Safety Action Network

St. Louis Area Business Health Coalition

Individual Subject Matter Experts (voting)

Nishant "Shaun" Anand

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Centers for Disease Control and Prevention (CDC)

Centers for Medicare and Medicaid Services (CMS)

Health Resources and Services Administration (HRSA)

MAP Hospital Workgroup Members

Committee Co-Chairs (voting)

R. Sean Morrison
National Coalition for Hospice and Palliative Care

Cristie Upshaw Travis, MSHHA
Memphis Business Group on Health

Organizational Members (voting)

America's Essential Hospitals

American Association of Kidney Patients

American Case Management Association

American Hospital Association

American Society of Anesthesiologists

Association of American Medical Colleges

City of Hope

Dialysis Patient Citizens

Greater New York Hospital Association

Henry Ford Health Systems

Intermountain Healthcare

Medtronic-Minimally Invasive Therapy Group

Molina Healthcare

Mothers Against Medical Error

National Association for Behavioral Healthcare (formerly National Association of Psychiatric Health Systems)

Pharmacy Quality Alliance

Premier, Inc.

Press Ganey

Project Patient Care

Service Employees International Union

Society for Maternal-Fetal Medicine

UPMC Health Plan

Individual Subject Matter Experts (voting)

Andreea Balan-Cohen, PhD

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Federal Government Liaisons (non-voting)

Agency for Healthcare Research and Quality

Centers for Disease Control and Prevention

Centers for Medicare and Medicaid Services

MAP Post-Acute Care/Long-Term Care Workgroup

Committee Co-Chairs (voting)

Gerri Lamb, PhD
Arizona State University

Kurt Merkelz, MD
Compassus

Organizational Members (voting)

AMDA – The Society for Post-Acute and Long-Term Care Medicine

American Academy of Physical Medicine and Rehabilitation

American Geriatrics Society

American Occupational Therapy Association

American Physical Therapy Association

Centene Corporation

Kindred Healthcare

National Hospice and Palliative Care Organization

National Partnership for Hospice Innovation

National Pressure Ulcer Advisory Panel

National Transitions of Care Coalition

Visiting Nurse Associations of America

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Eugene Nuccio, PhD

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Federal Government Liaisons (non-voting)

Center for Disease Control and Prevention

Centers for Medicare and Medicaid Services

Office of the National Coordinator for Health Information Technology

Appendix F: Federal Quality Reporting and Performance-Based Payment Programs Considered by MAP

1. Ambulatory Surgical Center Quality Reporting Program
2. End-Stage Renal Disease Quality Improvement Program
3. Home Health Quality Reporting Program
4. Hospice Quality Reporting Program
5. Hospital Acquired Condition Reduction Program
6. Hospital Inpatient Quality Reporting Program and Medicare and Medicaid Promoting Interoperability Program for Eligible Hospitals and Critical Access Hospitals
7. Hospital Outpatient Quality Reporting Program
8. Hospital Readmission Reduction Program
9. Hospital Value-Based Purchasing Program
10. Inpatient Psychiatric Facility Quality Reporting Program
11. Inpatient Rehabilitation Facility Quality Reporting Program
12. Long-Term Care Hospital Quality Reporting Program
13. Medicare Shared Savings Program
14. Medicare Part C & D Star Ratings
15. Merit-Based Incentive Payment System
16. Prospective Payment System Exempt Cancer Hospital Quality Reporting
17. Skilled Nursing Facility Quality Reporting Program
18. Skilled Nursing Facility Value-Based Purchasing Program

Appendix G: Identified Gaps by NQF Measure Portfolio

In 2019, NQF's standing committees identified the following measure gaps—where high value measures are too few or nonexistent to drive improvement—across topic areas for which measures were reviewed for endorsement.

All-Cause Admissions and Readmissions

Due to change in cycles, no measure gaps were identified.

Behavioral Health and Substance Use

- Measures that focus on social determinants of health (e.g. housing, employment, criminal justice issues)
- Care coordination across the life span
- Full course of the wellness/illness continuum (i.e., from prevention to prodromal to illness and recovery)
- Measures that focus on recovery, overall well-being, and total cost of care, including composite measures
- Patient goal measures that are precisely paired with functional outcomes
- Measures that focus on provider "burnout" including those tied to payer-managed care (e.g., prior authorization, treatment limits)
- Measures that focus on care integration between mental health, substance use disorders, and physical health (e.g., primary care).
- Over-prescription of opiates

Cancer

Due to change in cycle, no measure gaps were identified

Cardiovascular

Due to change in cycle, no measure gaps were identified

Cost and Efficiency

Due to change in cycle, no measure gaps were identified

Geriatric and Palliative Care

Due to change in cycle, no measure gaps were identified

Patient Experience and Function

Due to change in cycle, no measure gaps were identified

Patient Safety

Due to change in cycle, no measure gaps were identified

Perinatal and Women's Health

- Postpartum depression
- "Churn" (coming on and off) of healthcare coverage
- HPV vaccinations for males and for people up to age 45
- Percentage of minimally invasive hysterectomies
- Intimate partner violence
- Disordered eating
- Burden of caregiving
- Fibroids
- Endometriosis

- Pain
- Social determinants of health
- Social support, particularly during pregnancy and the postpartum period
- Prenatal depression/anxiety
- Appropriate weight gain during pregnancy

Neurology

Due to change in cycle, no measure gaps were identified

Prevention and Population Health

Due to change in cycle, no measure gaps were identified

Primary Care and Chronic Illness

Due to change in cycle, no measure gaps were identified

Renal

Due to change in cycle, no measure gaps were identified

Surgery

Due to change in cycle, no measure gaps were identified

Appendix H: Medicare Measure Gaps Identified by NQF's Measure Applications Partnership

During its 2018-2019 deliberations, MAP identified the following measure gaps—where high value measures are too few or nonexistent to drive improvement—for Medicare programs for hospitals and hospital settings, post-acute care/long-term care settings, and clinicians.

Program	Measure Gaps
End-Stage Renal Disease Quality Incentive Program (ESRD QIP)	• Assessment of quality of pediatric dialysis • Management of comorbid conditions (e.g., congestive heart failure, diabetes, and hypertension)
PPS-Exempt Cancer Hospital Quality Reporting (PCHQR) Program	• Measures that assess safety events broadly (i.e., a measure of global harm) • Patient-reported outcomes
Ambulatory Surgery Center Quality Reporting (ASCQR) Program	• Comparisons of surgical quality across sites of care • Infections and complications • Patient and family engagement • Efficiency measures, including appropriate pre-operative testing
Inpatient Psychiatric Facility Quality Reporting Program (IPFQR) Program	• Medical comorbidities • Quality of psychiatric care provided in the Emergency Department for patients not admitted to the hospital • Discharge planning • Condition-specific readmission measures
Hospital Outpatient Quality Reporting (OQR) Program	• Communication and care coordination • Falls • Accurate diagnosis
Hospital Inpatient Quality Reporting (IQR) Program and Medicare and Medicaid Promoting Interoperability Program	• Patient-reported outcomes • Dementia
Hospital Readmissions Reduction Program (HRRP)	• None discussed
Hospital Value-Based Purchasing Program (VBP)	• None discussed
Hospital-Acquired Condition Reduction Program (HACRP)	• Adverse drug events • Surgical site infections in additional locations
Merit-Based Incentive Payment System (MIPS)	• Composite measures to address multiple aspects of care quality • Outcome measures • Measures that allow a broad range of clinicians to report data
Medicare Shared Savings Program	• Composite measures to address multiple aspects of care quality
Inpatient Rehabilitation Facility Quality Reporting Program (IRF QRP)	• Transfer of patient information • Appropriate clinical use of opioids • Refinements to current infection measures
Long-Term Care Hospital Quality Reporting Program (LTCH QRP)	• Mental and behavioral health

Program	Measure Gaps
Skilled Nursing Facility Quality Reporting Program (SNF QRP)	• Bidirectional measures • Efficacy of transfers from acute care hospitals to SNFs • Appropriateness of transfers • Patient and caregiver transfer experience • Detailed advance directives
Skilled Nursing Facility Value-Based Purchasing Program (SNF VBP)	• None discussed
Home Health Quality Reporting Program (HH QRP)	• Measures that address social determinants of health • New measures to address stabilization of activities of daily living
Hospice Quality Reporting Program (HQRP)	• Medication management at the end of life • Provision of bereavement services • Effective service delivery to caregivers • Safety • Functional status • Symptom management, including pain • Psychological, social, and spiritual needs

Appendix I: Statutory Requirement of Annual Report Components

This annual report, *NQF 2019 Activities: Report to Congress and the Secretary of the Department of Health and Human Services*, highlights and summarizes the work that NQF performed between January 1 and December 31, 2019 under contract with the U.S. Department of Health and Human Services (HHS) in the following six areas:

- Recommendations on the National Quality Strategy and Priorities;
- Quality and Efficiency Measurement Initiatives (Performance Measures);
- Stakeholder Recommendations on Quality and Efficiency Measures;
- Gaps on Endorsed Quality and Efficiency Measures across HHS Programs;
- Gaps in Evidence and Targeted Research Needs; and
- Coordination with Measurement Initiatives by Other Payers.

Congress has recognized the role of a "consensus based entity" (CBE), currently NQF, in helping to forge agreement across the public and private sectors about what to measure and improve in healthcare. The 2008 Medicare Improvements for Patients and Providers Act (MIPPA) (PL 110-275) established the responsibilities of the consensus-based entity by creating section 1890 of the Social Security Act. The 2010 Patient Protection and Affordable Care Act (ACA) (PL 111-148) modified and added to the consensus-based entity's responsibilities. The American Taxpayer Relief Act of 2012 (PL 112-240) extended funding under the MIPPA statute to the consensus-based entity through fiscal year 2013. The Protecting Access to Medicare Act of 2014 (PL 113-93) extended funding under the MIPPA and ACA statutes to the consensus-based entity through March 31, 2015. Section 207 of the Medicare Access and Children's Health Insurance Program (CHIP) Reauthorization Act of 2015 (MACRA) (PL 114-10) extended funding under section 1890(d)(2) of the Social Security Act for quality measure endorsement, input, and selection for fiscal years 2015 through 2017. Section 50206 of the Bipartisan Budget Act of 2018 extended funding for federal quality efforts for two years (October 2017 – September 2019) among other requirements. Bipartisan action by numerous Congresses over several years has reinforced the importance of the role of the CBE. In accordance with section 1890 of the Social Security Act, NQF, in its designation as the CBE, is charged to report annually on its work to Congress and the HHS Secretary.

As amended by the above laws, the Social Security Act (the Act)—specifically section 1890(b)(5)(A)—mandates that the entity report to Congress and the Secretary of the Department of Health and Human Services (HHS) no later than March 1st of each year.

The report must include descriptions of:

- *how NQF has implemented quality and efficiency measurement initiatives under the Act and coordinated these initiatives with those implemented by other payers;*
- *NQF's recommendations with respect to an integrated national strategy and priorities for healthcare performance measurement in all applicable settings;*
- *NQF's performance of the duties required under its contract with HHS (Appendix A);*
- *gaps in endorsed quality and efficiency measures, including measures that are within priority areas identified by the Secretary under HHS' national strategy, and where quality and efficiency measures are unavailable or inadequate to identify or address such gaps;*
- *areas in which evidence is insufficient to support endorsement of measures in priority areas identified by the National Quality Strategy, and where targeted research may address such gaps;*

[FR Doc. 2020–21103 Filed 9–23–20; 8:45 am]
BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration (HRSA), or his or her successor, the authorities that are vested in the Secretary of Health and Human Services under sections 1833(bb) and 1834(o)(3) of the Social Security Act (42 U.S.C. 1395l and 42 U.S.C. 1395m(o)(3), respectively), as added by section 6083 of the Substance Use—Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act, Public Law 115–271. This authorizes the HRSA Administrator, on behalf of the

Secretary, to pay Federally Qualified Health Center and Rural Health Clinic for the training costs of eligible physicians and practitioners who obtain Drug Addiction Treatment Act of 2000 waivers to furnish opioid use disorder treatment services. This delegation may not be redelegated and does not confer authority to issue regulations.

This delegation of authorities is effective upon date of signature.

Dated: September 18, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–21098 Filed 9–23–20; 8:45 am]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of The Director, National Institutes of Health; Cancellation of Meeting

Notice is hereby given of the cancellation of the Office of The Director, National Institutes of Health, October 9, 2020, 3:00 p.m. to October 9, 2020, 4:00 p.m., National Institutes of Health, Building One, One Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on August 26, 2020, 85 FR 52614.

This meeting is being cancelled due to scheduling difficulties and the presentation will be rescheduled for the ACD in December 2020.

Dated: September 21, 2020.

Natasha M. Copeland,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–21118 Filed 9–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Novel Synthetic Nucleic Acid Technology Development SEP.

Date: December 7, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892, 301–594–4280, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 21, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–21091 Filed 9–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group; Genome Research Review Committee.

Date: November 5–6, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892, 301–594–4280, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 21, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–21089 Filed 9–23–20; 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: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Structure and Regeneration Study Section.

Date: October 22–23, 2020.

Time: 9:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yanming Bi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–451–0996, *ybi@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Imaging Probes and Contrast Agents Study Section.

Date: October 22–23, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108,

MSC 7854 Bethesda, MD 20892, (301) 435–8363, *wrightds@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Clinical and Integrative Cardiovascular Sciences Study Section.

Date: October 22–23, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Chee Lim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, 301–435–1850, *limc4@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurotransporters, Receptors, and Calcium Signaling Study Section.

Date: October 22, 2020.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Peter B. Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Behavioral Neuroscience.

Date: October 22–23, 2020.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mei Qin, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–875–2215, *qinmei@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Gastrointestinal Mucosal Pathobiology Study Section.

Date: October 22–23, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Prevention Study Section.

Date: October 22–23, 2020.

Time: 9:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Svetlana Kotliarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, 301–594–7945, *kotliars@mail.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Emerging Imaging Technologies in Neuroscience Study Section.

Date: October 22–23, 2020.

Time: 9:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Sharon S. Low, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7846, Bethesda, MD 20892, 301–237–1487, *lowss@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Social Sciences and Population Studies B Study Section.

Date: October 22–23, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3142, Bethesda, MD 20892, 301–435–2309, *fothergillke@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 21, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–21124 Filed 9–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel T32 SEP.

Date: November 9, 2020.

Time: 12:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892, (301) 402–0838, *pozzattr@mail.nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel Novel Sequencing Technology SEP.

Date: November 12, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892, 301–402–0838, *nakamurk@mail.nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel PRS Diversity Consortium RFAs.

Date: November 20, 2020.

Time: 10:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892, (301) 402–0838, *pozzattr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 21, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–21088 Filed 9–23–20; 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: Musculoskeletal, Oral and Skin Sciences Integrated Review Group Musculoskeletal Rehabilitation Sciences Study Section.
Date: October 19–20, 2020.
Time: 10:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435–1222, *nurminskayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Musculoskeletal Tissue Engineering.
Date: October 21, 2020.
Time: 10:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
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: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group Cellular Aspects of Diabetes and Obesity Study Section.
Date: October 22–23, 2020.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Elaine Sierra-Rivera, MS, BS, Ph.D., IRG Chief, EMNR IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182 MSC 7892, Bethesda, MD 20892, 301 435–2514, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Genes, Genomes and Genetics.
Date: October 22–23, 2020.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Lystranne Alysia Maynard Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–4809, *lystranne.maynard-smith@nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group Biodata Management and Analysis Study Section.
Date: October 22–23, 2020.
Time: 9:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, 301–435–0681, *liangw3@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group Neurotoxicology and Alcohol Study Section.
Date: October 22–23, 2020.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Sepandarmaz Aschrafi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040D, Bethesda, MD 20892, (301) 451.4251, *Armaz.aschrafi@nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group Macromolecular Structure and Function D Study Section.
Date: October 23, 2020.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Ian Frederick Thorpe, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–8662, *ian.thorpe@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships in Genes, Genomics and Genetics.
Date: October 23, 2020.
Time: 9:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Raj K Krishnaraju, Ph.D., MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 435–1047, *kkrishna@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR Panel: Global Infectious Disease Training Grants.
Date: October 23, 2020.
Time: 9:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Tamara Lyn McNealy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, Bethesda, MD 20892, 301–827–2372, *tamara.mcnealy@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 21, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–21125 Filed 9–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group Microbiology and Infectious Diseases Research Committee.
Date: October 14–15, 2020.
Time: 9:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G51, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Amir E. Zeituni, Ph.D., Scientific Review Program, Division of Extramural Activities, Room 3G51, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G51, Rockville, MD 20852–9823, 301–496–2550, *amir.zeituni@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 21, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–21117 Filed 9–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent Commercialization License: Method of Treating Periodontal Disease via ENPP1 Inhibition

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institute of Arthritis and Musculoskeletal and Skin Diseases, of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent commercialization license to Petragen, Inc., a start-up company incorporated in the state of Delaware, to practice the inventions covered by the patent estate listed in the Supplementary Information section of this notice. This notice is intended to apprise the public of the aforementioned license and provide a fifteen (15) day notice period for the objection.

DATES: Only written comments and/or applications for a license which are received by the National Heart, Lung, and Blood Institute Office of Technology Transfer and Development on or before October 9, 2020 will be considered.

ADDRESSES: Requests for copies of patent applications (electronic only), inquiries, and comments relating to the contemplated an exclusive patent license should be emailed to: Benfeard Williams, II, Ph.D., Technology Transfer Manager, 31 Center Drive, Room 4A29, MSC 2479, Bethesda, MD 20892–2479, phone number 301–435–4507, or *benfeard.williams@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property (Patent Estate)

HHS Ref. No. E–024–2018–0, U.S. Provisional Patent Application 62/590,824 filed November 27, 2017, International Patent Application PCT/US2018/062593 filed November 27, 2018, Chinese Patent Application 201880076753.7 filed November 27, 2018, European Patent Application 18816451.1 filed November 27, 2018, Israeli Patent Application 274529 filed November 27, 2018 and U.S. Patent Application 16/765,420 filed May 19, 2020, and any and all continuation or divisional applications claiming priority to any of the above.

The patent rights in these inventions have been assigned or exclusively licensed to the Government of the United States of America.

The aforementioned patent estate covers methods of treating or preventing periodontal disease in a subject by administering an inhibitor of ENPP1. In addition, the claims cover pharmaceutical compositions for use in the treatment or prevention of periodontal disease, or for increasing cementum formation. In particular, the dependent claims cover ENPP1 inhibitors comprising analogues of ATP derivatives, wherein the ENPP1 inhibitor is bound to nanoparticles, nanofibers, suture materials, microspheres, polymers, fibers, matrices, gels, or a combination thereof. The treatment methods also include dependent claims wherein treating or preventing periodontal disease comprises increasing cementum formation and wherein the composition is formulated for injection in gum tissue, local delivery at a surgical flap, buccal delivery, delivery by a resorbable suture, delivery by a wound healing dressing, or a combination of the foregoing.

Inhibition of the glycoprotein ENPP1 promotes cementum formation in mammals. Cementum, an avascular mineralized tooth root structure, attaches the tooth to the periodontal ligament and supporting bone. Cementum has limited turnover and subjects with periodontal disease experience localized loss of cementum resulting in the detachment of the periodontal ligament from the tooth root. Increasing cementum formation can be used to treat periodontal disease.

The prospective exclusive license territory may be worldwide and in a field of use that may be limited to *Therapeutics for periodontitis or gingivitis,* and where the ''Licensed Products'' are expected to be inhibitors of ecto-nucleotide pyrophosphate/phosphodiesterase-I (ENPP1) within the scope of the Licensed Patent Rights.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive patent commercialization license will be royalty bearing. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Heart, Lung, and Blood Institute Office of Technology Transfer and Development receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 17, 2020.

Bruce D. Goldstein,

Director, Office of Technology Transfer and Development, National Heart, Lung, and Blood Institute.

[FR Doc. 2020–21060 Filed 9–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7024–N–40]

30-Day Notice of Proposed Information Collection: Project Based Vouchers (PBV) Data Collection; OMB Control No.: 2577–NEW Collection

AGENCY: Office of the Chief Information Officer, Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* October 26, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/Start Printed Page 15501PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 26, 2019 at 84 FR 70986.

60 Day Collection:

On December 26, 2019, at 84 FR 70986, HUD published its 60-day notice, the first notice for public comment required by the PRA, to commence the process for approval of the collection of certain data on Project Based-Vouchers (PBV) via an online form. HUD specifically solicited public comment on several issues. The 60-day public comment period ended on February 24, 2020. HUD received 13 comments. The following section, includes HUD's responses to these comments, several of which prompted changes to the proposed data fields to be collected.

Comment: A number of commenters replied that HUD collects a portion of this data in existing systems such as PIC or VMS, or through collection of data through the RAD conversion or subsidy layering review processes. They urged HUD to look at ways to utilize and aggregate existing data to reduce the amount of data that PHAs will have to enter for this PRA.

HUD Response: HUD appreciates these commenters' concerns that HUD may collect some of this information through existing processes and systems. While there is no systematic, universal collection of data on PBV at the project level, HUD is aware that it does collect some information through systems such as PIC that could be useful for prepopulating fields. HUD will explore the feasibility of aggregating this data to prepopulate those fields that could be prepopulated. In addition, HUD anticipates that some of the current PBV reporting would be replaced by the new online form.

Comment: Commenters expressed concern about the potential burden this data collection would have on PHAs. Specific concerns were addressed around the Department's estimate of burden that estimated PHAs would report on this data 6 times per year. Some commenters suggested that PHAs should only have to report on this information annually. Other commenters stated that the estimated time suggested for each individual entry was too low at 1.5 hours and suggested a more accurate time estimate would be 3–4 hours per project.

HUD response: HUD understands PHA concerns about burden and the estimate in the notice. First, HUD would like to clarify that this data would not be collected once a year or annually. This involves an initial one-time collection of data on PBV projects for PHAs. Any subsequent reporting would only be required when changes occurred on the project that would require the PHA to update any of the fields listed in the notice. Since most of the fields in the notice would not need to be updated during the course of the PBV contract, the burden hours after the initial collection would drop significantly.

Comment: Several commenters expressed concern whether the information collection was designed to provide a systematic means to collect information or whether HUD intends to use this information collection to implement new regulations and other enforcement actions.

HUD Response: The primary purpose of this collection is not to implement any enforcement actions. The purpose of the collection is for HUD to have data on the project level for this part of the HCV program which

Comment: Several Commenters recommended that the Department make the data it collects easily available to the public in an easily accessible manner while maintaining all necessary protections for privacy for HCV families.

HUD Response: HUD appreciates the concerns of commenters and is committed to making as much information public as feasible while protecting the legitimate privacy concerns of tenants and other stakeholders.

Comment: One commenter stated they do not specifically designate 504 accessible units until the tenant informs them and then they retrofit the unit. They indicated that it may be difficult to identify these units.

HUD Response: For projects that come under new PBV Housing Assistance Payment (HAP) contracts, the online form will require that the PHA identify the PBV-assisted accessible units at the project. For projects under existing HAP contracts, the online form will include fields where the PHA may identify the PBV-assisted accessible units at the project. The PHA must enter this information if it has this information or can readily obtain this information. PHAs are strongly encouraged to make reasonable efforts to obtain this information and enter it into the online form as it would provide both HUD and the PHA with a more complete picture of the PHA's accessible housing stock. Such information can be used by both HUD and the PHA to ensure that PBV projects meet the requirements for the minimum number of accessible units and that accessible units are occupied by persons with disabilities who require the accessibility features of the unit, in accordance with Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8. If a PHA makes alterations to a project that results in the creation of PBV-assisted accessible units, this would be considered a change in the project and the PHA must report this change by updating the online form.

Comment: One commenter asked in regard to the collection also requiring the identification of Section 504 mobility units and Section 504 vision- and hearing-impaired units whether a number of units by bedroom size needs to be provided, or whether the specific units need to be identified.

HUD Response: The online form will require the PHA to report the number of PBV-assisted units, by bedroom size, that are accessible to persons with mobility impairments or accessible to persons with hearing or vision impairments. The specific units will not need to be entered into the online form.

Comment: Another commenter asked regarding the reporting of accessible units meeting either the UFAS or the 2010 ADA standards: whether the specific standard met would need to be identified.

HUD Response: The online form will require the PHA to identify which accessibility standard was used. The online form will require the PHA to indicate whether the accessible unit meets UFAS or the *Deeming Notice*/2010 ADA standards, in accordance

with HUD's Notice on ''Instructions for use of alternative accessibility standard,'' published in the **Federal Register** on May 23, 2014 (''Deeming'').

Collecting information on Section 504 accessible units that are not receiving PBV assistance that exist in properties where other units are receiving PBV assistance would have some usefulness in assessing the overall availability of accessible units in the community, neighborhood, municipality, etc. This usefulness would be limited, however, without a much broader inventory of accessible units. It also might be useful to individuals and service agencies in identifying accessible units for those seeking such units. The feasibility of collecting such information, however, will vary tremendously from project to project and will not be feasible in all situations. HUD strongly encourages PHAs to report the total number and bedroom distribution of accessible units at PBV projects (including PBV-assisted and non-PBV-assisted accessible units), as this would provide a more complete picture of whether the PBV project is providing the required minimum number of accessible units. However, HUD recognizes that PHAs may face challenges in collecting information on accessible units that are not receiving PBV assistance. The online form will contain a field that allows PHA to identify non-PBV-assisted accessible units at the project, but completion of this field will not be mandatory.

Comment: One commenter discussed how burdensome the initial data collection would be for PHAs with many PBV contracts. The commenter suggested that, once the collection begins, PHAs enter the initial submission for new HAP/AHAP contracts at time of execution and enter all initial submissions for existing contracts at time of contract renewal.

HUD Response: HUD understands that PHAs with many HAP contracts would have significant amounts of data to input on first submission. However, waiting until contract renewal would take many years for HUD to get a full picture of the PBV portfolio since HAP contracts may have initial terms of up to 20 years and extension terms of up to 20 years. Instead HUD will allow a phase-in period for existing contracts to be inputted once the collection begins. Additionally, HUD is mindful of the challenges facing PHAs in 2020 from the COVID–19 pandemic and does not plan on starting the clock on any collection in 2020.

Comment: Some commenters suggested that for MTW agencies who already answer a few PBV questions on the MTW report, that it would be better to add additional necessary questions there.

HUD Response: The intent of this form is to centralize the collection of PBV data. It is HUD's intention to remove PBV questions from the MTW report when this collection of PBV data actually occurs.

Comment: One commenter said that MTW agencies can waive the independent entity requirement and so cannot adequately answer the question on the name of the independent entity for a PBV project on the form.

HUD Response: MTW agencies may indicate that this question is not applicable to them, should they be implementing this waiver.

Comment: One commenter pointed out that MTW agencies can waive the income-mixing requirement and there was no way to indicate that on the form.

HUD Response: MTW agencies may indicate that this question is not applicable to them, should they be implementing this waiver.

Comment: One commenter stated that the form asks if a PHA is exceeding the program cap with an exception and what that exception is. MTW agencies may waive the program cap without an exception.

HUD Response: MTW agencies may indicate if they are waiving the program cap and are not applying any specific exceptions.

B. Overview of Information Collection

Title of Information Collection: Project Based Vouchers (PBV) Online Form.

OMB Approval Number: Pending OMB Approval.

Type of Request: New.

Form Number: HUD is developing a standardized electronic system and data exchange standard for this collection and will provide a web service to support electronic file transfer using Java Script Object Notation (JSON). Within the scope of this collection, HUD requests the information in this notice from participating PHAs.

Description of the need for the information and proposed use:

Public Housing Agencies (PHAs) apply for funding to assist low-income families to lease housing. One of the programs through which PHAs provide housing assistance is the Housing Choice Voucher (HCV) Program, a tenant-based rental assistance program. This program operates by providing vouchers that cover a portion of the contract rent for a unit. Some PHAs project-base their vouchers (the rental assistance is connected to a unit, not a family). Project-based vouchers (PBVs) are becoming a larger percentage of PHAs overall HCV portfolios, rising from just over 110,000 in 2016 to approximately 215,000 in mid-2019. The PBV portfolio is expected to grow even more with the on-going conversion of up to 455,000 public housing units to project-based assistance under the Congressionally-authorized Rental Assistance Demonstration (RAD). HUD currently collects information on individual participants in the HCV program who are in PBV units and Project certificate (PBC) housing through the PIC system. In addition, HUD collects aggregate information on the total number of PBVs under contract at the PHA level. HUD currently does not systematically collect information on the project or development level for PBVs.

This leaves a gap in HUD's information collection of PBVs between the individual tenant data and the aggregated PHA data. HUD does not systematically collect information on the development or project level, including the number of units at PBV projects, what exceptions apply, their rents, the terms of contract, and numerous other potential data points. This creates a challenge for monitoring, tracking and analyzing PBV projects, and limits HUD's ability to respond to requests for information on the PBV program from Congress and other sources. Additionally, it prevents HUD from having data with which to make informed decisions on risk-mitigation strategies with respect to PBVs.

Potential risks are particularly heightened in the case of two specific program categories; Rental Assistance Demonstration (RAD) that transition to be Project Based Vouchers and PHA-owned units where an independent entity performs inspections and determines the rent amounts. What distinguishes RAD PBVs from regular Project-Based Vouchers is the initial construction of public housing was paid for by HUD, rents are initially set below market level, and they are supposed to remain affordable in perpetuity. Currently, HUD has very limited information about RAD–PBV properties after their conversion and is unable to adequately monitor their long-term viability. PHA-owned PBVs pose a risk because PHAs may assist properties they own, subject to the independent entity requirement. In addition, many other non-RAD or PHA-owned projects, such as those with 100% PBVs serving disabled or requiring supporting services represent crucial affordable housing resources for vulnerable communities that cannot be quickly and easily replaced through providing a voucher.

Through this collection, HUD is requiring the submission of project-level data on all Project-Based Vouchers, including but not limited to Rental Assistance Demonstration Project Based-Vouchers, mixed-finance Project-Based Vouchers, all Project-Based Vouchers at Moving to Work Agencies, and all Project Based Vouchers at non-Moving to Work Agencies.

The fields of collection for PBV projects may include:

HAP Contract Number
Name of Project
Address of Building(s) and Units
Number of Units Under AHAP
Number of Units Under HAP Contract by Bedroom Size
Number of Total Units in the Project
Structure Type
Type: Existing, Rehabilitated, or Newly Constructed
Effective Date(s) of HAP Contract
Expiration Date
Owner Name
Owner Tax ID
PHA-Owned, PHA Has Ownership Interest but Not PHA-Owned, No PHA Ownership Interest
If PHA-Owned: Name of Independent Entity or Entities
Other Related Programs: Tax Credit, RAD, HUD-insured, VASH, or Other
Population Served: General, Homeless, Veterans, Families Eligible for Supportive Services, Families Receiving Supportive Services, Elderly Family, Disabled Family
Does an Exception to the Income-Mixing Requirement Apply?
If Yes, Which Exceptions(s)
Supportive Services Available (Y/N)?
Vacancy Payments Permitted (Y/N)?
Program Cap Exception (Y/N)?
Program Cap Exception Category
Unique Project Building Code *
HAP Contract Code *
Number of RAD PBVs
Use Restriction End Date
Year Built
Number and Bedroom Distribution of PBV-Assisted Section 504 Mobility Units at the Project
Number and Bedroom Distribution of PBV-Assisted Section 504 Hearing/Vision Units at the Project

* The Unique Project Building Code and HAP Contract Code may be produced by the system or a protocol for numbering may be established by HUD.

It is important to note that those fields that may not apply to MTW agencies because of exemptions to specific areas (for example, the program cap exception category) will not be required fields for those agencies.

HUD recognizes that some of this information may be submitted to HUD, for instance as part of the initial subsidy layering review process, however, these submissions are insufficient to give HUD a universal and currently accurate picture of the Project Based Voucher universe. Therefore, HUD is proposing this information collection.

Definitions—

HAP Contract Number

A unique number assigned to a Form HUD–52530–A (PBV HAP Contract—New Construction Or Rehabilitation) or Form HUD–52530–B (PBV HAP Contract—Existing Housing) (hereinafter ''HAP contract'') executed for the project, which may be produced by the system or a protocol for numbering may be established by HUD.

Name of Project

The name of the project as determined by the PHA as used in public or property records (where such records contain a name of the property as a whole) or the commonly used name of the project (such as the name on a sign at the property entrance). If no such name exists, a name for the project designated by the PHA for use in the system. ''Project'' is defined consistent with 24 CFR 983.3(b) as ''a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land.''

Address of Building(s) and Units

The street address, city, state, and zip code of the building or buildings covered by the HAP contract and all units covered under the HAP contract.

Number of Units Under HAP Contract by Bedroom Size

Total number of contract units in the project covered by the HAP contract, broken out by each bedroom size (0, 1, 2, 3, 4, 5+).

Number of Total Units in the Project

Total number of units in the project, including those covered by Form HUD–52523–A and Form HUD–52523–B (Agreement to Enter into a Housing Assistance Payment Contract) (hereinafter ''AHAP'') or HAP contract and non-contract units.

Structure Type

The most closely matching description of the project from among this list: Elevator Structure, Mixed Type, Row or Townhouse Style (Separate Entrances), Semi Detached, Single Family/Detached, Walkup/Multifamily Apt (Shared Entrance).

Type: Existing, Rehabilitation or Newly Constructed

The following definitions apply consistent with 24 CFR 983.3(b), as amended by 82 FR 5458 (Jan. 18, 2017), 82 FR 32461 (Jul. 14, 2017):

Existing Housing

Housing units that already exist on the proposal selection date and that substantially comply with the HQS on that date.

Rehabilitated Housing

Housing units that exist on the proposal selection date, but do not substantially comply with the HQS on that date, and are developed, pursuant to an Agreement between the PHA and owner, for use under the PBV program.

Newly Constructed Housing

Housing units that do not exist on the proposal selection date and are developed after the date of selection pursuant to an Agreement between the PHA and owner for use under the PBV program.

Upon amendment of 24 CFR 983.3(b), the new definitions therein will supersede the definitions listed here.

Effective Date(s) of HAP Contract

Effective date(s) listed in § 1(d) of Part 1 of the HAP contract. A single-stage project will have the same effective date for all contract units. For a multi-stage project, include the dates of each stage and the contract units covered by each stage.

Expiration Date

The HAP contract term end date, as determined by adding the length of the HAP contract term (initial and any extensions) to the effective date listed in § 1(d) of Part 1 of the HAP contract (for a multi-stage project, use the effective date of the first stage). The length of the initial and extension HAP contract terms shall be those listed in the HAP contract (for existing projects: § 1(d) of Part 1 of the Form HUD–52530–B HUD and associated exhibits; for newly constructed and rehabilitated projects: § 1(e) of Part 1 of the Form HUD–52530–A and associated exhibits).

Owner Name

The owner name as listed in § 1(a) of Part 1 of the HAP contract and contact information (telephone and email).

Owner Tax ID

The owner's federal tax identification number.

PHA-Owned, PHA Has Ownership Interest but Not PHA-Owned, No PHA Ownership Interest

The following definitions apply consistent with 24 CFR part 983, as amended by 82 FR 5458 (Jan. 18, 2017), 82 FR 32461 (Jul. 14, 2017):

(1) PHA-owned:

a. Owned by the PHA (which includes a PHA having a ''controlling interest'' in the entity that owns the unit);

b. Owned by an entity wholly controlled by the PHA; or

c. Owned by a limited liability company (LLC) or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general partner.

''Controlling interest'' means:

a. Holding more than 50 percent of the stock of any corporation;

b. Having the power to appoint more than 50 percent of the members of the board of directors of a non-stock corporation (such as a non-profit corporation);

c. Where more than 50 percent of the members of the board of directors of any corporation also serve as directors, officers, or employees of the PHA;

d. Holding more than 50 percent of all managing member interests in an LLC;

e. Holding more than 50 percent of all general partner interests in a partnership; or

f. Having equivalent levels of control in other ownership structures. Most ownership structures are already covered in the categories listed above. This last category is meant to cover any ownership structure not already listed in the categories above. Also, under this category (f), a PHA must have more than 50 percent control in that ownership structure (an equivalent level of control) for the project to be considered PHA-owned.

(2) PHA ownership interest: An ownership interest means that the PHA or its officers, employees, or agents are in an entity that holds any direct or indirect interest in the project in which the units are located, including, but not limited to, an interest as:

a. Titleholder;

b. Lessee;

c. Stockholder;

d. Member, or general or limited partner; or

e. Member of a limited liability corporation.

(3) No PHA ownership interest: The PHA has no ownership interest in the property.

Upon amendment of 24 CFR part 983, the new definitions therein will supersede the definitions listed here.

If PHA-Owned: Name of Independent Entity or Entities

If the project is PHA-owned, the independent entity or entities which perform the following functions consistent with 24 CFR part 983:

1. Review the PHA's PBV selection process.

2. Establish PBV contract rents (initial rent to owner and redetermined rent to owner).

3. Determine rent reasonableness.

4. Provide a copy of the rent reasonableness determination to the PHA and the HUD field office where the project is located.

5. Establish term of initial and any renewal HAP contract as required in 24 CFR 983.205.

6. Inspect units.

7. Provide a copy of the inspection report to PHA and HUD field office where the project is located.

Other Related Programs: Tax Credit, RAD, HUD-Insured, VASH, or Other

List any HUD voucher authority other than regular Housing Choice Vouchers used to provide PBVs to the project (*e.g.,* RAD, VASH). List other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits (*e.g.,* HUD-insured, Tax Credit). This is a required field for new projects and those that have been substantially rehabilitated. HUD encourages PHAs to submit data for other projects to the extent it is readily available.

Population Served: General, Homeless, Veterans, Families Eligible for Supportive Services, Families Receiving Supportive Services, Elderly Family, Disabled Family

List the population(s) served if the project contains units specifically made available for or exclusively made available to a specific population. If some units are not specifically made available for or exclusively made available to a specific population listed below, mark ''General.'' The definitions of each population are found in the following locations, consistent with 24 CFR parts 5, 983, as amended by 82 FR 5458 (Jan. 18, 2017), 82 FR 32461 (Jul. 14, 2017):

1. Homeless: PIH Notice 2017–21, Attachment D.

2. Veterans: PIH Notice 2017–21, Attachment D.

3. Families eligible for supportive services: PIH Notice 2017–21, Attachments D and E.

4. Families receiving supportive services: PIH Notice 2017–21, Attachment E.

5. Elderly family: 24 CFR 5.403.

6. Disabled family: 24 CFR 5.403.

Upon amendment of 24 CFR part 983, the new definitions therein will supersede the definitions listed here.

Does an Exception to the Income-Mixing Requirement Apply?

Provide an answer (yes/no) to the question of whether the project qualifies for an exception to the income-mixing requirement under 24 CFR 983.56, as amended by 82 FR 5458 (Jan. 18, 2017), 82 FR 32461 (Jul. 14, 2017).

If Yes, Which Exception(s)

Choose the applicable exception from among those allowed by 24 CFR 983.56, as amended by 82 FR 5458 (Jan. 18, 2017), 82 FR 32461 (Jul. 14, 2017). The definitions of the exception categories are found in the following locations:

1. Units that are exclusively made available to households eligible for supportive services: PIH Notice 2017–21, Attachment E.

2. Units that are specifically made available for families receiving supportive services: PIH Notice 2017–21, Attachment E, for grandfathered projects as described therein.

3. Units that are exclusively made available to elderly families: PIH Notice 2017–21, Attachment E.

4. Units that are specifically made available for disabled families: PIH Notice 2017–21, Attachment E, for grandfathered projects as described therein.

5. Units located in a census tract with a poverty rate of 20 percent or less: PIH Notice 2017–21, Attachment E.

6. Units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD: PIH Notice 2017–21, Attachment F, for projects that meet the additional requirements as described therein.

7. RAD PBV units: PIH Notice 2017–21, Attachment F.

8. HUD–VASH vouchers specifically designated for project-based assistance: PIH Notice 2017–21, Attachment F.

Upon amendment of 24 CFR part 983, the new definitions therein will supersede the definitions listed here.

Supportive Services Required/Available

If the project has supportive services available to residents so as to qualify for an exception to 24 CFR 983.56.

Vacancy Payments Permitted

Provide an answer (yes/no) to the question of whether the PHA has included the vacancy payment provision in this HAP contract (for existing projects: § 1(e)(2) of Part 1 of

the Form HUD–52530–B HUD; for newly constructed and rehabilitated projects: § 1(f)(2) of Part 1 of the Form HUD–52530–A).

Program Cap Exception (Y/N)?

Provide an answer (yes/no) to the question of whether the project qualifies for an exception to the program cap under 24 CFR 983.6, as amended by 82 FR 5458 (Jan. 18, 2017), 82 FR 32461 (Jul. 14, 2017).

Program Cap Exception Category

Choose the applicable exception from among those allowed by 24 CFR 983.6, as amended by 82 FR 5458 (Jan. 18, 2017), 82 FR 32461 (Jul. 14, 2017). The definitions of the exception categories are found in the following locations:

1. Units that are specifically made available to house homeless individuals and families: PIH Notice 2017–21, Attachment D.
2. Units that are specifically made available to house families that are comprised of or include a veteran: PIH Notice 2017–21, Attachment D.
3. Units that provide supportive housing to persons with disabilities or to elderly persons: PIH Notice 2017–21, Attachment D.
4. Units located in a census tract with a poverty rate of 20 percent or less: PIH Notice 2017–21, Attachment D.
5. Units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD: PIH Notice 2017–21, Attachment F, for projects that meet the additional requirements as described therein.
6. RAD PBV units: PIH Notice 2017–21, Attachment F.
7. HUD–VASH vouchers specifically designated for project-based assistance: PIH Notice 2017–21, Attachment F.

Upon amendment of 24 CFR part 983, the new definitions therein will supersede the definitions listed here.

Unique Project Building Code *

Code may be produced by the system or a protocol for numbering may be established by HUD.

Use Restriction End Date

Provide an answer (yes/no) to the question of whether the project is subject to a use restriction imposed by HUD. If yes, provide the end date of the use restriction.

Number of RAD PBVs

Number of PBVs that converted under the Rental Assistance Demonstration Program.

HAP Contract Number

Code may be produced by the system or a protocol for numbering may be established by HUD.

Year Built

The year the project's construction was first completed.

Number and Bedroom Distribution of PBV-Assisted Section 504 Mobility Units at the Project

This field captures the number of PBV-assisted units at the project that are accessible for persons with mobility impairments in accordance with Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8. Such units must meet either the Uniform Federal Accessibility Standards (UFAS) or 2010 Americans with Disabilities Act (ADA) Standards (in accordance with HUD's Deeming Notice published in the **Federal Register** on May 23, 2014 (79 FR 29671)). For projects that come under new PBV Housing Assistance Payment (HAP) contracts, the online form will require that the PHA identify the PBV-assisted accessible units at the project. For projects under existing HAP contracts, the online form will include fields where the PHA may identify the PBV-assisted accessible units at the project. The PHA must enter this information if it has this information or can readily obtain this information.

Number and Bedroom Distribution of PBV-Assisted Section 504 Hearing/Vision Units at the Project

PHAs will be required to enter this information into the online form when a new project comes under HAP contract, and when project or development information changes. The unique project code identifier will tie to future potential changes to the 50058 which will permit linking HUD assisted-tenants to HUD assisted-properties. This is a new information collection.

Respondents (*i.e.,* affected public): Public housing authorities (PHAs) that have project-based vouchers (PBVs) as a part of their portfolio

Note: Preparer of this notice may substitute the chart for everything beginning with estimated number of respondents above:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
PBV Property Information	668	6	4,008	1.5	6,012	$40.10	$241,018.20

Our burden estimate for the number of respondents is based on a recent VMS total of the number of PHAs reporting PBVs in VMS. It is assumed PHAs will have to do a one-time submission for all the projects as well as potentially make updates when changes occur to the PBV projects (frequency of responses). The ''responses per annum'' represents an estimate of the amount of PBV projects that will need to be entered into the system. This number is multiplied by the frequency of responses to arrive at an annual estimate of burden hours. This is then multiplied by median average wage of a ''Management Analyst'' according to the Bureau of Labor Statistics for 2019 to arrive at a total annual cost.[1] Commenters stated that the initial input of this data would take more than the estimated 1.5 hours, however, it is important to consider that the 1.5 hours is an average between the higher amount of time required on the initial submission and the lower time required by subsequent updates which may only require updating one or two fields. It is anticipated that this cost will decline in subsequent years as PHAs only need to update information already in the system when changes are made to PBV projects.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of

[1] *https://www.bls.gov/oes/current/oes131111.htm.*

information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Department Reports Management Officer for the Office of the Chief Information Officer, Colette Pollard, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Nacheshia Foxx, who is the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register**.

Dated: September 18, 2020.

Nacheshia Foxx,

Federal Register Liaison for the Department of Housing and Urban Development.

[FR Doc. 2020–21051 Filed 9–23–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6235–N–01]

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2021

AGENCY: Office of the Assistant Secretary for Policy Development and Research, Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: This document designates ''Difficult Development Areas'' (DDAs) and ''Qualified Census Tracts'' (QCTs) for purposes of the Low-Income Housing Credit (LIHTC) under Internal Revenue Code (IRC) Section 42. The United States Department of Housing and Urban Development (HUD) makes new DDA and QCT designations annually.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Senior Economist, Public Finance and Regulatory Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW, Room 8216, Washington, DC 20410–6000; telephone number 202–402–5878, or send an email to *Michael.K.Hollar@hud.gov.* For specific legal questions pertaining to Section 42, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224; telephone number 202–317–4137. For questions about the ''HUBZone'' program, contact Bruce Purdy, Deputy Director, HUBZone Program, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third Street SW, Suite 8800, Washington, DC 20416; telephone number 202–205–7554, or send an email to *hubzone@sba.gov.* (These are not toll-free telephone numbers.) A text telephone is available for persons with hearing or speech impairments at 800–877–8339. Additional copies of this notice are available through HUD User at 800–245–2691 for a small fee to cover duplication and mailing costs.

SUPPLEMENTARY INFORMATION:

Copies Available Electronically: This notice and additional information about DDAs and QCTs including the lists of DDAs and QCTs are available electronically on the internet at *https://www.huduser.gov/portal/datasets/qct.html.*

I. This Notice

Under IRC Section 42(d)(5)(B)(iii)(I), for purposes of the LIHTC, the Secretary of HUD must designate DDAs, which are areas with high construction, land, and utility costs relative to area median gross income (AMGI). This notice designates DDAs for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. HUD makes the designations of DDAs in this notice based on modified Fiscal Year (FY) 2020 Small Area Fair Market Rents (Small Area FMRs), FY 2020 nonmetropolitan county FMRs, FY 2020 income limits, and 2010 Census population counts, as explained below.

Similarly, under IRC Section 42(d)(5)(B)(ii)(I), the Secretary of HUD must designate QCTs, which are areas where either 50 percent or more of the households have an income less than 60 percent of the AMGI for such year or have a poverty rate of at least 25 percent. This notice designates QCTs based on new income and poverty data released in the American Community Survey (ACS). Specifically, HUD relies on the most recent three sets of ACS data to ensure that anomalous estimates, due to sampling, do not affect the QCT status of tracts.

II. Data Used To Designate DDAs

HUD uses data from the 2010 Census on total population of metropolitan areas, metropolitan ZIP Code Tabulation Areas (ZCTAs), and nonmetropolitan areas in the designation of DDAs. The Office of Management and Budget (OMB) published updated metropolitan areas in OMB Bulletin No. 15–01 on July 15, 2015. FY 2020 FMRs and FY 2020 income limits HUD uses to designate DDAs are based on these metropolitan statistical area (MSA) definitions, with modifications to account for substantial differences in rental housing markets (and, in some cases, median income levels) within MSAs. HUD calculates Small Area FMRs for the ZCTAs, or portions of ZCTAs within the metropolitan areas defined by OMB Bulletin No. 15–01.

III. Data HUD Uses To Designate QCTs

HUD uses data from the 2010 Census on total population of census tracts, metropolitan areas, and the nonmetropolitan parts of states in the designation of QCTs. The FY 2020 income limits HUD uses to designate QCTs are based on these MSA definitions with modifications to account for substantial differences in rental housing markets (and in some cases median income levels) within MSAs. In this QCT designation, HUD uses the OMB metropolitan area definitions published in OMB Bulletin No. 15–01 on July 15, 2015, without modification for purposes of evaluating how many census tracts can be designated under the population cap but uses the HUD-modified definitions and their associated area median incomes for determining QCT eligibility.

Because the 2010 Decennial Census did not include questions on respondent household income, HUD uses ACS data to designate QCTs. The ACS tabulates data collected over 5 years to provide estimates of socioeconomic variables for small areas containing fewer than 65,000 persons, such as census tracts. Due to sample-related anomalies in estimates from year to year, HUD utilizes three sets of ACS tabulations to ensure that anomalous estimates do not affect QCT status.

IV. Disaster Relief

On March 13, 2020, the President issued major disaster declarations under the authority of the Stafford Act with respect to all 50 States, the District of Columbia, and 5 territories (American Samoa, Guam, Puerto Rico, Northern Mariana Islands, and the U.S. Virgin Islands) to assist with additional needs identified under the nationwide emergency declaration for COVID–19. In the context of a Presidentially-declared Major Disaster, IRS Revenue Procedure 2014–49, 2014–37 I.R.B. 535, provides

temporary relief to housing finance agencies (HFAs) and owners from certain requirements of IRC Section 42 in the context of a Presidentially-declared Major Disaster. Among the relief provided, if an owner has a carryover allocation for a building located in a Major Disaster Area and the Major Disaster occurs on or after the date of the carryover allocation, an HFA may grant an extension to the placed in service requirement. Rev. Proc. 2014–49, Section 6.03.

As explained below, HUD's effective date definition allows an owner to qualify for the basis boost if a property is placed in service within 730 days of the receipt of the complete application by the HFA or the issuer of tax-exempt bonds (bond-issuing agency) and the property was located in a QCT or DDA at the time that the complete application was accepted. If an owner with a carryover allocation receives an extension under IRS Revenue Procedure 2014–49, the owner is eligible for the basis boost as long as (1) the building is placed in service before the expiration of the extension period, (2) the extension is granted within HUD's 730-day grace period, and (3) the other conditions of the QCT/DDA eligibility rules were already met.

V. Background

The U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of IRC Section 42. In order to assist in understanding HUD's mandated designation of DDAs and QCTs for use in administering IRC Section 42, a summary of the section is provided below. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, since HUD has authority to interpret or administer the IRC only in instances where it receives explicit statutory delegation.

VI. Summary of the Low-Income Housing Credit

A. Determining Eligibility

The LIHTC is a tax incentive intended to increase the availability of low-income rental housing. IRC Section 42 provides an income tax credit to certain owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Section 42 allows each state a credit ceiling based on a statutory formula indicated at IRC Section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent such unallocated credits are not used by then, the credits go into a national pool to be allocated to qualified states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides IRC Section 42 credits derived from the credit ceiling, states may also provide IRC Section 42 credits to owners of buildings based on the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided based on the use of tax-exempt bond proceeds do not reduce the credits available from the credit ceiling. *See* IRC Section 42(h)(4).

The credits allocated to a building are based on the cost of units placed in service as low-income units under particular minimum occupancy and maximum rent criteria. Prior to the enactment of the Consolidated Appropriations Act of 2018 (the 2018 Act), under IRC Section 42(g), a building was required to meet one of two tests to be eligible for the LIHTC; either: (1) 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of AMGI, or (2) 40 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. A unit is ''rent-restricted'' if the gross rent, including an allowance for tenant-paid utilities, does not exceed 30 percent of the imputed income limitation (*i.e.,* 50 percent or 60 percent of AMGI) applicable to that unit. The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The 2018 Act added a third test, the average income test. *See* IRC Section 42(g)(1), as amended by Public Law 115–141, Section 103(a)(1), Division T (March 23, 2018). A building meets the minimum requirements of the average income test if 40 percent or more (25 percent or more in the case of a project located in a high cost housing area as described in IRS Section 142(d)(6)) of the residential units in such project are both rent-restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. The taxpayer designates the imputed income limitation for each unit. The designated imputed income limitation of any unit is determined in 10-percentage-point increments, and may be designated as 20, 30, 40, 50, 60, 70, or 80 percent of AMGI. The average of the imputed income limitations designated must not exceed 60 percent of AMGI. *See* IRC Section 42(g)(1)(C).

B. Calculating the LIHTC

The LIHTC reduces income tax liability dollar-for-dollar. It is taken annually for a term of 10 years and is intended to yield a present value of either: (1) 70 percent of the ''qualified basis'' for new construction or substantial rehabilitation expenditures that are not federally subsidized (as defined in IRC Section 42(i)(2)), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The tax credit rates are determined monthly under procedures specified in IRC Section 42 and cannot be less than 9 percent for new buildings that are not federally subsidized. Individuals can use the credits up to a deduction equivalent of $25,000 (the actual maximum amount of credit that an individual can claim depends on the individual's marginal tax rate). For buildings placed in service after December 31, 2007, individuals can use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax, and, for buildings placed in service after December 31, 2007, against the alternative minimum tax. These corporations also can deduct losses from the project.

The qualified basis represents the product of the building's ''applicable fraction'' and its ''eligible basis.'' The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low-income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated DDAs or designated QCTs, or buildings designated by the state agency, eligible basis can be increased up to 130 percent from what it would otherwise be. This means that the available credits also can be increased by up to 30 percent. For example, if a 70 percent credit is

available, it effectively could be increased to as much as 91 percent (70 percent × 130 percent).

C. Defining Difficult Development Areas (DDAs) and Qualified Census Tracts (QCTs)

As stated above, IRC Section 42 defines a DDA as an area designated by the Secretary of HUD that has high construction, land, and utility costs relative to the AMGI. All designated DDAs in metropolitan areas (taken together) may not contain more than 20 percent of the aggregate population of all metropolitan areas, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas. *See* IRC Section 42(d)(5)(B)(iii).

Similarly, IRC Section 42 defines a QCT as an area designated by the Secretary of HUD where, for the most recent year for which census data are available on household income in such tract, either 50 percent or more of the households in the tract have an income which is less than 60 percent of the AMGI or the tract's poverty rate is at least 25 percent. All designated QCTs in a single metropolitan area or nonmetropolitan area (taken together) may not contain more than 20 percent of the population of that metropolitan or nonmetropolitan area. Thus, unlike the restriction on DDA designations, QCTs are restricted by the total population of each individual area as opposed to the aggregate population across all metropolitan areas and nonmetropolitan areas. *See* IRC Section 42(d)(5)(B)(ii).

IRC Section 42(d)(5)(B)(v) allows states to award an increase in basis up to 30 percent to buildings located outside of federally designated DDAs and QCTs if the increase is necessary to make the building financially feasible. This state discretion applies only to buildings allocated credits under the state housing credit ceiling and is not permitted for buildings receiving credits entirely in connection with tax-exempt bonds. Rules for such designations shall be set forth in the LIHTC-allocating agencies' qualified allocation plans (QAPs). *See* IRC Section 42(m).

VII. Explanation of HUD Designation Method

A. 2021 Difficult Development Areas

In developing the 2021 list of DDAs, as required by IRC Section 42(d)(5)(B)(iii), HUD compared housing costs with incomes. HUD used 2010 Census population for ZCTAs, and nonmetropolitan areas, and the MSA definitions, as published in OMB Bulletin 15–01 on July 15, 2015, with modifications, as described below. In keeping with past practice of basing the coming year's DDA designations on data from the preceding year, the basis for these comparisons is the FY 2020 HUD income limits for very low-income households (very low-income limits, or VLILs), which are based on 50 percent of AMGI, and modified FMRs based on the FY 2020 FMRs used for the Housing Choice Voucher (HCV) program. For metropolitan DDAs, HUD used Small Area FMRs based on three annual releases of ACS data, to compensate for statistical anomalies which affect estimates for some ZCTAs. For non-metropolitan DDAs, HUD used the FY 2020 FMRs released on August 30, 2019 and effective on October 1, 2019 (84 FR 45789) as updated by the March 11, 2020 publication effective April 10, 2020 (85 FR 14235).

In formulating the FY 2020 FMRs and VLILs, HUD modified the current OMB definitions of MSAs to account for differences in rents among areas within each current MSA that were in different FMR areas under definitions used in prior years. HUD formed these ''HUD Metro FMR Areas'' (HMFAs) in cases where one or more of the parts of newly defined MSAs were previously in separate FMR areas. All counties added to metropolitan areas are treated as HMFAs with rents and incomes based on their own county data, where available. HUD no longer requires recent-mover rents to differ by five percent or more in order to form a new HMFA. All HMFAs are contained entirely within MSAs. All nonmetropolitan counties are outside of MSAs and are not broken up by HUD for purposes of setting FMRs and VLILs. (Complete details on HUD's process for determining FY 2020 FMR areas and FMRs are available at *https://www.huduser.gov/portal/datasets/fmr.html#2020.* Complete details on HUD's process for determining FY 2020 income limits are available at *https://www.huduser.gov/portal/datasets/il.html#2020.*)

HUD's unit of analysis for designating metropolitan DDAs consists of ZCTAs, whose Small Area FMRs are compared to metropolitan VLILs. For purposes of computing VLILs in metropolitan areas, HUD considers entire MSAs in cases where these were not broken up into HMFAs; and HMFAs within the MSAs that were broken up for such purposes. Hereafter in this notice, the unit of analysis for designating metropolitan DDAs will be called the ZCTA, and the unit of analysis for nonmetropolitan DDAs will be the nonmetropolitan county or county equivalent area. The procedure used in making the DDA designations follows:

1. *Calculate FMR-to-Income Ratios.* For each metropolitan ZCTA and each nonmetropolitan county, HUD calculated a ratio of housing costs to income. HUD used a modified FY 2020 two-bedroom Small Area FMR for ZCTAs, a modified FY 2020 two-bedroom FMR for non-metropolitan counties, and the FY 2020 four-person VLIL for this calculation.

The modified FY 2020 two-bedroom Small Area FMRs for ZCTAs differ from the FY 2020 Small Area FMRs in four ways. First, HUD did not limit the Small Area FMR to 150 percent of its metropolitan area FMR. Second, HUD did not limit annual decreases in Small Area FMRs to ten percent, which was first applied in the FY 2018 FMR calculations. Third, HUD adjusted the Small Area FMRs in New York City using the New York City Housing and Vacancy Survey, which is conducted by the U.S. Census Bureau, to adjust for the effect of local rent control and stabilization regulations. No other jurisdictions have provided HUD with data that could be used to adjust Small Area FMRs for rent control or stabilization regulations.[1] Finally, the Small Area FMRs are not limited to the State non-metropolitan minimum FMR.

The FY 2020 two-bedroom FMR for non-metropolitan counties was modified only by removing the state non-metropolitan minimum FMR.

The numerator of the ratio, representing the development cost of housing, was the area's FY 2020 FMR, or Small Area FMR in metropolitan areas. In general, the FMR is based on the 40th-percentile gross rent paid by recent movers to live in a two-bedroom rental unit.

The denominator of the ratio, representing the maximum income of eligible tenants, was the monthly LIHTC income-based rent limit, which was calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent-of-AMGI base).

2. *Sort Areas by Ratio and Exclude Unsuitable Areas.* The ratios of the FMR, or Small Area FMR, to the LIHTC income-based rent limit were arrayed in descending order, separately, for ZCTAs and for nonmetropolitan counties. ZCTAs with populations less than 100

[1] HUD encourages other jurisdictions with rent control laws that affect rents paid by recent movers into existing units to contact HUD about what data might be provided or collected to adjust Small Area FMRs in those jurisdictions.

were excluded in order to avoid designating areas unsuitable for residential development, such as ZCTAs containing airports.

3. *Select Areas with Highest Ratios and Exclude QCTs.* The DDAs are those areas with the highest ratios that cumulatively comprise 20 percent of the 2010 population of all metropolitan areas and all nonmetropolitan areas. For purposes of applying this population cap, HUD excluded the population in areas designated as 2021 QCTs. Thus, an area can be designated as a QCT or DDA, but not both.

B. Application of Population Caps to DDA Determinations

In identifying DDAs, HUD applied caps, or limitations, as noted above. The cumulative population of metropolitan DDAs cannot exceed 20 percent of the cumulative population of all metropolitan areas, and the cumulative population of nonmetropolitan DDAs cannot exceed 20 percent of the cumulative population of all nonmetropolitan areas.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains those procedures. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio, as described above, was identical (to four decimal places) to the last area selected, and its inclusion resulted in only a minor overrun of the cap. Thus, for both the designated metropolitan and nonmetropolitan DDAs, there may be minimal overruns of the cap. HUD believes the designation of additional areas in the above examples of minimal overruns is consistent with the intent of the IRC. As long as the apparent excess is small due to measurement errors, some latitude is justifiable, because it is impossible to determine whether the 20 percent cap has been exceeded. Despite the care and effort involved in a Decennial Census, the Census Bureau and all users of the data recognize that the population counts for a given area and for the entire country are not precise. Therefore, the extent of the measurement error is unknown. There can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20 percent limit.

C. Qualified Census Tracts

In developing the list of QCTs, HUD used 2010 Census 100-percent count data on total population, total households, and population in households; the median household income and poverty rate as estimated in the 2012–2016, 2013–2017 and 2014–2018 ACS tabulations; the FY 2020 Very Low-Income Limits (VLILs) computed at the HMFA level to determine tract eligibility; and the MSA definitions published in OMB Bulletin No. 15–01 on July 15, 2015, for determining how many eligible tracts can be designated under the statutory 20 percent population cap.

HUD uses the HMFA-level AMGIs to determine QCT eligibility because the statute, specifically IRC Section 42(d)(5)(B)(iv)(II), refers to the same section of the IRC that defines income for purposes of tenant eligibility and unit maximum rent, specifically IRC Section 42(g)(4). By rule, the IRS sets these income limits according to HUD's VLILs, which, starting in FY 2006 and thereafter, are established at the HMFA level. HUD uses the entire MSA to determine how many eligible tracts can be designated under the 20 percent population cap as required by the statute (IRC Section 42(d)(5)(B)(ii)(III)), which states that MSAs should be treated as singular areas.

HUD determined the QCTs as follows:

1. *Calculate 60 percent AMGI.* To be eligible to be designated a QCT, a census tract must have 50 percent of its households with incomes below 60 percent of AMGI or have a poverty rate of 25 percent or more. Due to potential statistical anomalies in the ACS 5-year estimates, one of these conditions must be met in at least 2 of the 3 ACS 5-year tabulations for a tract to be considered eligible for QCT designation. HUD calculates 60 percent of AMGI by multiplying by a factor of 1.2 the HMFA or nonmetropolitan county FY 2020 VLIL adjusted for inflation to match the ACS estimates, which are adjusted to the value of the dollar in the last year of the 5-year group.

2. *Determine Whether Census Tracts Have Less Than 50 Percent of Households Below 60 percent AMGI.* For each census tract, whether or not 50 percent of households have incomes below the 60 percent income standard (income criterion) was determined by: (a) Calculating the average household size of the census tract, (b) adjusting the income standard to match the average household size, and (c) comparing the average-household-size-adjusted income standard to the median household income for the tract reported in each of the three years of ACS tabulations (2012–2016, 2013–2017 and 2014–2018). HUD did not consider estimates of median household income to be statistically reliable unless the margin of error was less than half of the estimate (or a Margin of Error Ratio, MoER, of 50 percent or less). If at least two of the three estimates were not statistically reliable by this measure, HUD determined the tract to be ineligible under the income criterion due to lack of consistently reliable median income statistics across the three ACS tabulations. Since 50 percent of households in a tract have incomes above and below the tract median household income, if the tract median household income is less than the average-household-size-adjusted income standard for the tract, then more than 50 percent of households have incomes below the standard.

3. *Estimate Poverty Rate.* For each census tract, HUD determined the poverty rate in each of the three releases of ACS tabulations (2012–2016, 2013–2017 and 2014–2018) by dividing the population with incomes below the poverty line by the population for whom poverty status has been determined. As with the evaluation of tracts under the income criterion, HUD applies a data quality standard for evaluating ACS poverty rate data in designating the 2021 QCTs. HUD did not consider estimates of the poverty rate to be statistically reliable unless both the population for whom poverty status has been determined and the number of persons below poverty had MoERs of less than 50 percent of the respective estimates. If at least two of the three poverty rate estimates were not statistically reliable, HUD determined the tract to be ineligible under the poverty rate criterion due to lack of reliable poverty statistics across the ACS tabulations.

4. *Designate QCTs Where 20 Percent or Less of Population Resides in Eligible Census Tracts.* QCTs are those census tracts in which 50 percent or more of the households meet the income criterion in at least two of the three years evaluated, or 25 percent or more of the population is in poverty in at least two of the three years evaluated, such that the population of all census tracts that satisfy either one or both of these criteria does not exceed 20 percent of the total population of the respective area.

5. *Designate QCTs Where More Than 20 Percent of Population Resides in Eligible Census Tracts.* In areas where

more than 20 percent of the population resides in eligible census tracts, census tracts are designated as QCTs in accordance with the following procedure:

a. The statistically reliable income and poverty criteria are each averaged over the three ACS tabulations (2012–2016, 2013–2017 and 2014–2018). Statistically reliable values that did not exceed the income and poverty rate thresholds were included in the average.

b. Eligible tracts are placed in one of two groups based on the averaged values of the income and poverty criteria. The first group includes tracts that satisfy both the income and poverty criteria for QCTs for at least two of the three evaluation years; a different pair of years may be used to meet each criterion. The second group includes tracts that satisfy either the income criterion in at least two of the three years, or the poverty criterion in at least two of three years, but not both. A tract must qualify by at least one of the criteria in at least two of the three evaluation years to be eligible.

c. HUD ranked tracts in the first group from highest to lowest by the average of the ratios of the tract average-household-size-adjusted income limit to the median household income. Then, HUD ranked tracts in the first group from highest to lowest by the average of the poverty rates. HUD averaged the two ranks to yield a combined rank. HUD then sorted the tracts on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, HUD ranked more populous tracts above less populous ones.

d. HUD ranked tracts in the second group from highest to lowest by the average of the ratios of the tract average-household-size-adjusted income limit to the median household income. Then, HUD ranked tracts in the second group from highest to lowest by the average of the poverty rates. HUD then averaged the two ranks to yield a combined rank. HUD then sorted the tracts on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, HUD ranked more populous tracts above less populous ones.

e. HUD stacked the ranked first group on top of the ranked second group to yield a single, concatenated, ranked list of eligible census tracts.

f. Working down the single, concatenated, ranked list of eligible tracts, HUD identified census tracts as designated until the designation of an additional tract would cause the 20 percent limit to be exceeded. If HUD does not designate a census tract because doing so would raise the percentage above 20 percent, HUD then considers subsequent eligible census tracts to determine if one or more eligible census tract(s) with smaller population(s) could be designated without exceeding the 20 percent limit.

D. Exceptions to OMB Definitions of MSAs and Other Geographic Matters

As stated in OMB Bulletin 15–01, defining metropolitan areas:

> ''OMB establishes and maintains the delineations of Metropolitan Statistical Areas, . . . solely for statistical purposes. . . . OMB does not take into account or attempt to anticipate any non-statistical uses that may be made of the delineations, [.] In cases where . . . an agency elects to use the Metropolitan . . . Area definitions in nonstatistical programs, it is the sponsoring agency's responsibility to ensure that the delineations are appropriate for such use. An agency using the statistical delineations in a nonstatistical program may modify the delineations, but only for the purposes of that program. In such cases, any modifications should be clearly identified as delineations from the OMB statistical area delineations in order to avoid confusion with OMB's official definitions of Metropolitan . . . Statistical Areas.''

Following OMB guidance, HUD's estimation procedure for the FMRs and income limits incorporates the current OMB definitions of metropolitan Core-Based Statistical Areas (CBSAs) based on the CBSA standards, as implemented with 2010 Census data, but makes adjustments to the definitions, in order to separate subparts of these areas in cases where counties were added to an existing or newly defined metropolitan area. In CBSAs where HUD establishes subareas, it is HUD's view that the geographic extent of the housing markets is not the same as the geographic extent of the CBSAs.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), HUD defines HMFAs according to county subdivisions or minor civil divisions (MCDs), rather than county boundaries. However, since no part of an HMFA is outside an OMB-defined, county-based MSA, all New England nonmetropolitan counties are kept intact for purposes of designating Nonmetropolitan DDAs.

VIII. Future Designations

HUD designates DDAs annually as updated HUD income limit and FMR data are made public. HUD designates QCTs annually as new income and poverty rate data are released.

A. Effective Date

The 2021 lists of QCTs and DDAs are effective:

(1) For allocations of credit after December 31, 2020; or

(2) for purposes of IRC Section 42(h)(4), if the bonds are issued and the building is placed in service after December 31, 2020.

If an area is not on a subsequent list of QCTs or DDAs, the 2021 lists are effective for the area if:

(1) The allocation of credit to an applicant is made no later than the end of the 730-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

(2) for purposes of IRC Section 42(h)(4), if:

(a) The bonds are issued or the building is placed in service no later than the end of the 730-day period after the applicant submits a complete application to the bond-issuing agency, and

(b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A ''complete application'' means that no more than de minimis clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a ''multiphase project,'' the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of IRC Section 42(h)(4), the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) The building(s) in the first phase were placed in service, or (b) the bonds were issued.

For purposes of this notice, a ''multiphase project'' is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) The multiphase composition of the project (*i.e.,* total number of buildings and phases in project, with a description of how many buildings are to be built in each phase and when each

phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) the aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the Qualified Allocation Plan (QAP) of the LIHTC-allocating agency, or the annual per-capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) all applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary's designee, has legal authority to designate DDAs and QCTs, by publishing lists of geographic entities as defined by, in the case of DDAs, the Census Bureau, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the IRC and associated regulations, including **Federal Register** notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

B. Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose QCT or DDA status. The examples covering DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2021 DDA that is NOT a designated DDA in 2022 or 2023. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2021. Credits are allocated to Project A on October 30, 2023. Project A is eligible for the increase in basis accorded a project in a 2021 DDA because the application was filed BEFORE January 1, 2022 (the assumed effective date for the 2022 DDA lists), and because tax credits were allocated no later than the end of the 730-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project B is located in a 2021 DDA that is NOT a designated DDA in 2022 or 2023. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2021. Credits are allocated to Project B on March 30, 2024. Project B is NOT eligible for the increase in basis accorded a project in a 2021 DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2022 (the assumed effective date of the 2022 DDA lists), the tax credits were allocated later than the end of the 730-day period after the filing of the complete application.

(Case C) Project C is located in a 2021 DDA that was not a DDA in 2020. Project C was placed in service on November 15, 2020. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2021. The tax-exempt bonds that will support the permanent financing of Project C are issued on September 30, 2021. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2021 DDA, because the project was placed in service BEFORE January 1, 2021.

(Case D) Project D is located in an area that is a DDA in 2021 but is NOT a DDA in 2022 or 2023. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2021. Tax-exempt bonds are issued for Project D on April 30, 2023, but Project D is not placed in service until January 30, 2024. Project D is eligible for the increase in basis available to projects located in 2021 DDAs because: (1) One of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the IRC (the two events being tax-exempt bonds issued and buildings placed in service) took place on April 30, 2023, within the 730-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a DDA, and (3) both the issuance of the tax-exempt bonds and placement in service of Project D occurred after the application was submitted.

(Case E) Project E is a multiphase project located in a 2021 DDA that is NOT a designated DDA or QCT in 2022. The first phase of Project E received an allocation of credits in 2021, pursuant to an application filed March 15, 2021, which describes the multiphase composition of the project. An application for tax credits for the second phase of Project E is filed with the allocating agency by the same entity on March 15, 2022. The second phase of Project E is located on a contiguous site. Credits are allocated to the second phase of Project E on October 30, 2022. The aggregate amount of credits allocated to the two phases of Project E exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project E is, therefore, eligible for the increase in basis accorded a project in a 2021 DDA, because it meets all of the conditions to be a part of a multiphase project.

(Case F) Project F is a multiphase project located in a 2021 DDA that is NOT a designated DDA in 2022 or 2023. The first phase of Project F received an allocation of credits in 2021, pursuant to an application filed March 15, 2021, which does not describe the multiphase composition of the project. An application for tax credits for the second phase of Project F is filed with the allocating agency by the same entity on March 15, 2023. Credits are allocated to the second phase of Project F on October 30, 2023. The aggregate amount of credits allocated to the two phases of Project F exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project F is, therefore, NOT eligible for the increase in basis accorded a project in a 2021 DDA, since it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project F was not made in the year immediately following the first phase application year.

(Case G) Project G is located in a 2018 DDA that is NOT a designated DDA or QCT in 2020 or 2021. A complete application for tax credits for Project G was filed with the allocating agency on May 1, 2018. Credits are allocated to Project G on June 1, 2018. Due to COVID–19 restrictions, the property cannot be completed and placed in service by April 30, 2020. The owner contacts the allocating agency and requests an extension under IRS Revenue Procedure 2014–49. The allocating agency grants an extension of

one year to the placed-in-service requirements on April 15, 2020. The property is placed into service on January 30, 2021. Project G is eligible for the increase in basis because the owner received an extension from the state allocating agency prior to the end of the 730-day period and the property was placed in service within the extension granted under Revenue Procedure 2014–49.

Findings and Certifications

Environmental Impact

This notice involves the establishment of fiscal requirements or procedures that are related to rate and cost determinations and do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates DDAs and QCTs as required under IRC Section 42, as amended, for the use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical methods used in making such designations. As a result, this notice is not subject to review under the order.

Seth D. Appleton,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2020–21041 Filed 9–23–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/ A0A501010.999900 253G; OMB Control Number 1076–0179]

Agency Information Collection Activities; Solicitation of Nominations for the Advisory Board for Exceptional Children

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 23, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the Ms. Jennifer Davis, Bureau of Indian Education, 2600 N. Central Avenue, Suite 800, Phoenix, Arizona 85004, fax: (602) 265–0293; or by email to *jennifer.davis@bie.edu.* Please reference OMB Control Number 1076–0179 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Jennifer Davis by email at *jennifer.davis@bie.edu* or by telephone at (602) 265–1592.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIE; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIE enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Bureau of Indian Education (BIE) is seeking renewal for an information collection that would allow it to collect information regarding individuals' qualifications to serve on the Federal advisory committee known as the Advisory Board for Exceptional Children. This information collection requires persons interested in being nominated to serve on the Board to provide information regarding their qualifications. This information collection includes one form.

The Individuals with Disabilities Education Improvement Act (IDEA) of 2004, (20 U.S.C. 1400 *et seq.*) requires the BIE to establish an Advisory Board on Exceptional Education. See 20 U.S.C. 1411(h)(6). Advisory Board members serve staggered terms of two or three years from the date of their appointment. This Board is currently in operation. This information collection allows BIE to better manage the nomination process for future appointments to the Board.

Title of Collection: Solicitation of Nominations for the Advisory Board for Exceptional Children.

OMB Control Number: 1076–0179.

Form Number: None.

Type of Review: Extension without change of currently approved collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Respondents: 20 per year.

Total Estimated Number of Annual Responses: 20 per year.

Estimated Completion Time per Response: 1 hour.

Total Estimated Number of Annual Burden Hours: 20 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to

respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2020–21043 Filed 9–23–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–19X–L71300000.BK0000–LVTSEX983860; MO#4500147287]

Notice of Proposed Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed official filing.

SUMMARY: The plats of survey for the lands described in this notice are scheduled to be officially filed 30 calendar days after the date of this publication in the BLM Montana State Office, Billings, Montana. The surveys, which were executed at the request of the Confederated Salish and Kootenai Tribes, Rocky Mountain Region, Pablo, Montana, are necessary for the management of these lands.

DATES: A person or party who wishes to protest this decision must file a notice of protest in time for it to be received in the BLM Montana State Office no later than 30 days after the date of this publication.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Josh Alexander, BLM Chief Cadastral Surveyor for Montana; telephone: (406) 896–5123; email: *jalexand@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (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:

Principal Meridian, Montana

T. 16 N., R. 16 W.
Secs. 18, 19, and 30.

A person or party who wishes to protest an official filing of a plat of survey identified above must file a written notice of protest with the BLM Chief Cadastral Surveyor for Montana at the address listed in the **ADDRESSES** section of this notice. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be received in the BLM Montana State Office no later than the scheduled date of the proposed official filing for the plat(s) of survey being protested; 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 the protest, if not filed with the notice of protest, must be filed with the BLM Chief Cadastral Surveyor for Montana within 30 calendar days after the notice of protest is received.

If a notice of protest of the plat(s) of survey is received prior to the scheduled date of official filing or during the 10 calendar day grace period provided in 43 CFR 4.401(a) and the delay in filing is waived, the official filing of the plat(s) 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 next business day after all timely protests have been dismissed or otherwise resolved, including appeals.

If a notice of protest is received after the scheduled date of official filing and the 10 calendar day grace period provided in 43 CFR 4.401(a), the notice of protest will be untimely, may not be considered, and may be dismissed.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chapter 3.

Joshua F. Alexander,

Chief Cadastral Surveyor for Montana.

[FR Doc. 2020–21077 Filed 9–23–20; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030813; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Michigan State University, East Lansing, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Michigan State University has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Michigan State University. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Michigan State University at the address in this notice by October 26, 2020.

ADDRESSES: Judith Stoddart, Associate Provost for University Collections and Arts Initiatives, Michigan State University, 466 W Circle Drive, East Lansing, MI 48824–1044, telephone (517) 432–2524, email *stoddart@msu.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of Michigan State University, East Lansing, MI. The human remains and associated funerary objects were removed from Levy and Manatee Counties, FL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25

U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Michigan State University professional staff in consultation with representatives of the Seminole Tribe of Florida (previously listed as Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)) and The Seminole Nation of Oklahoma, hereafter referred to as ''The Consulted Tribes.''

An invitation to consult was extended to the Miccosukee Tribe of Indians, hereafter referred to as ''The Invited Tribe.''

History and Description of the Remains

In 1965, human remains representing, at minimum, one individual were removed from the Cedar Key State Museum site, Levy County, FL. The human remains (3383.1) were removed by a Mr. Thompson from the grounds of what would become the Cedar Key Museum State Park. Until his death in 1959, this real estate was owned by St. Clair Whitman. His family retained ownership of the property until 1991, when they donated it to the State of Florida. In 1968, Mr. Thompson donated the human remains and a lot of associated funerary items to the Michigan State University Museum. No known individual was identified. The one associated funerary object is a lot of ceramic sherds (3383.2).

On an unknown date, human remains representing, at minimum, one individual were removed from Palma Sola, shell mound cemetery, Manatee County, FL. The human remains (6506 CW) were acquired by Eugene Davis. On an unknown date, Mr. Davis donated the human remains to the Chamberlain Memorial Museum, founded in 1916 by Mr. Edward K. Warren and located in Three Oaks, Michigan. In September of 1952, Michigan State College Museum (now the Michigan State University Museum) acquired the contents of the Chamberlain Memorial Museum from Fred P. Warren, President of the Board of Trustees of the E. K. Warren Foundation. In 2019, the human remains in this notice, which were included in the 1952 acquisition, were discovered in the Michigan State University Forensic Anthropology Laboratory. No known individual was identified. No associated funerary objects are present.

Determinations Made by Michigan State University

Officials of Michigan State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry based on biological evidence and museum records.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and The Consulted Tribes and The Invited Tribe, based on archeological evidence, expert opinion, geographical evidence, historical evidence, and oral tradition.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of the request to Judith Stoddart, Associate Provost for University Collections and Arts Initiatives, Michigan State University, 466 W Circle Drive, East Lansing, MI 48824–1044, telephone (517) 432–2524, email *stoddart@msu.edu,* by October 26, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary object to The Consulted Tribes and The Invited Tribe may proceed.

The Michigan State University is responsible for notifying The Consulted Tribes and The Invited Tribe that this notice has been published.

Dated: August 24, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–21079 Filed 9–23–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030809; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Oshkosh Public Museum, Oshkosh, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Oshkosh Public Museum, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of object of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the Oshkosh Public Museum. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the Oshkosh Public Museum at the address in this notice by October 26, 2020.

ADDRESSES: Emily Rock, Registrar, Oshkosh Public Museum, 1331 Algoma Blvd., Oshkosh, WI 54901, telephone (920) 236–5766, email *erock@ci.oshkosh.wi.us.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the Oshkosh Public Museum, Oshkosh, WI, that meets the definition of object of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

In 1934, one cultural item was loaned to the Oshkosh Public Museum by Fred McKay, who had obtained it from the Quinney family at an unknown date. As this item was never reclaimed by the lender, in 2002, under the 1993 Wisconsin Act 18 Abandoned Loans procedures, the Oshkosh Public Museum accessioned the item. The object of cultural patrimony is an ornately carved powder horn that belonged to John W. Quinney (1797–1855), Sachem of the Stockbridge-Munsee Tribe from 1852–1855. Quinney was a renowned orator and lobbyist for the Stockbridge Munsee who negotiated with the United States on behalf of his people, and his leadership is credited with helping their Tribe survive difficult times.

According to the Stockbridge Munsee Community, Wisconsin, because of Quinney's importance to the Community, the powder horn is a symbol of the Tribe's cultural identity. Based on the information presented by the Stockbridge Munsee Community, Wisconsin, the Oshkosh Public Museum has determined that the powder horn meets the definition of an object of cultural patrimony.

Determinations Made by the Oshkosh Public Museum

Officials of the Oshkosh Public Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and the Stockbridge Munsee Community, Wisconsin.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Emily Rock, Registrar, Oshkosh Public Museum, 1331 Algoma Blvd., Oshkosh, WI 54901, telephone (920) 236–5766, email *erock@ci.oshkosh.wi.us,* by October 26, 2020. After that date, if no additional claimants have come forward, transfer of control of the object of cultural patrimony to the Stockbridge Munsee Community, Wisconsin may proceed.

The Oshkosh Public Museum is responsible for notifying the Stockbridge Munsee Community, Wisconsin that this notice has been published.

Dated: August 24, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–21080 Filed 9–23–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030812; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Texas Parks and Wildlife Department, Austin, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Texas Parks and Wildlife Department has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Texas Parks and Wildlife Department. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Texas Parks and Wildlife Department at the address in this notice by October 26, 2020.

ADDRESSES: Aina Dodge, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, TX 78744, telephone (512) 389–4876, email *aina.dodge@tpwd.texas.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Texas Parks and Wildlife Department, Austin, TX. The human remains were removed from Big Bend Ranch State Park, Presidio County, TX.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Texas Parks and Wildlife Department professional staff in consultation with representatives of the Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Tonkawa Tribe of Indians of Oklahoma; Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma; and the Ysleta del Sur Pueblo (previously listed as Ysleta Del Sur Pueblo of Texas) (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In December 2012, human remains representing, at minimum, one individual were removed from Big Bend Ranch State Park in Presidio County, TX. In November 2012, a park visitor found that a human burial was eroding from a rock cairn located within the extreme eastern part of the park. Owing to their precarious position in a drainage, and their possible discovery by visitors, the human remains were removed by Texas Parks and Wildlife Department archeologists in December 2012. The burial, which was situated under a stone cairn, contained the remains of a female 27–34 years of age. No known individual was identified. No associated funerary objects are present.

Determinations Made by the Texas Parks and Wildlife Department

Officials of the Texas Parks and Wildlife Department have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on their geographical location and the presence of several craniofacial traits that are indicative of Native American populations;
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.

• According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of The Tribes.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Aina Dodge, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, TX 78744, telephone (512) 389–4876, email *aina.dodge@tpwd.texas.gov,* by October 26, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The Texas Parks and Wildlife Department is responsible for notifying The Tribes that this notice has been published.

Dated: August 24, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–21081 Filed 9–23–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0030811; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Eastern Washington State Historical Society/Northwest Museum of Art & Culture, Spokane, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Eastern Washington State Historical Society/Northwest Museum of Art & Culture, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of either unassociated funerary objects or objects of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Eastern Washington State Historical Society/Northwest Museum of Art & Culture. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Eastern Washington State Historical Society/Northwest Museum of Art & Culture at the address in this notice by October 26, 2020.

ADDRESSES: Wesley Jessup, Eastern Washington State Historical Society/Northwest Museum of Art & Culture, 2316 West First Avenue, Spokane, WA 99201, telephone (509) 363–5354, email *wesley.jessup@northwestmuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Eastern Washington State Historical Society/Northwest Museum of Art & Culture, Spokane, WA, that meet the definition of either unassociated funerary objects or objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item(s)

At an unknown time, 16 cultural items were removed from undetermined locations in Tlingit/Haida aboriginal territory of southeast AK. These objects were collected by various donors and/or their antecedents from the mid-19th century to the late 20th century. The items were donated to the Museum between 1916 and 1992. Eight of the items are unassociated funerary objects. They are one Chilkat blanket (NN95.365), three Shaman objects (MONAC.1971.46; MONAC.1971.44; 703.2), one Armor (HEINE.1978/2), and three Whistles (1070.243; 1070.247; 1070.248). Eight of the items are objects of cultural patrimony. They are one Chilkat blanket (2054.1), one Chilkat apron (YOUNG.1982.1), one Porpoise figure (175.49), one Killer whale hat (STORIE.1981.7), one Woven hat (ND.4986), one Ceremonial shirt (500.88), one Bentwood box (172.22), and one Whale totem (MONAC.1971.34).

In July 2018, six representatives from the Central Council of the Tlingit & Haida Indian Tribes completed a consultation visit to the Eastern Washington State Historical Society/Northwest Museum of Art & Culture's American Indian collection. The representatives from the Central Council of the Tlingit and Haida Indian Tribes provided oral history and documentation showing that the items in this notice are either unassociated funerary objects or objects of cultural patrimony.

Determinations Made by the Eastern Washington State Historical Society/Northwest Museum of Art & Culture

Officials of the Eastern Washington State Historical Society/Northwest Museum of Art & Culture have determined that:

• Pursuant to 25 U.S.C. 3001(3)(B), eight of the items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

• Pursuant to 25 U.S.C. 3001(3)(D), eight of the items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and objects of cultural patrimony and Central Council of the Tlingit & Haida Indian Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Wesley Jessup, Eastern Washington State Historical Society/Northwest Museum of Art & Culture, 2316 West First Avenue, Spokane, WA 99201, telephone (509) 363–5354, email *wesley.jessup@northwestmuseum.org,*

by October 26, 2020. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects and objects of cultural patrimony to the Central Council of the Tlingit & Haida Indian Tribes may proceed.

The Eastern Washington State Historical Society/Northwest Museum of Art & Culture is responsible for notifying the Central Council of the Tlingit & Haida Indian Tribes that this notice has been published.

Dated: August 24, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–21082 Filed 9–23–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: List of restricted joint bidders.

SUMMARY: Pursuant to the Bureau of Ocean Energy Management (BOEM) regulatory restrictions on joint bidding, the Director of BOEM is publishing a List of Restricted Joint Bidders. Each entity within one of the following groups is restricted from bidding with any entity in any of the other following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period November 1, 2020, through April 30, 2021.

DATES: This List of Restricted Joint Bidders will cover the period November 1, 2020, through April 30, 2021, and replaces the prior list published on April 17, 2020 (85 FR 21455), which covered the period of May 1, 2020, through October 31, 2020.

SUPPLEMENTARY INFORMATION:

Group I
- BP America Production Company
- BP Exploration & Production Inc.
- BP Exploration (Alaska) Inc.

Group II
- Chevron Corporation
- Chevron U.S.A. Inc.
- Chevron Midcontinent, L.P.
- Unocal Corporation
- Union Oil Company of California
- Pure Partners, L.P.

Group III
- Eni Petroleum Co. Inc.
- Eni Petroleum US LLC
- Eni Oil US LLC
- Eni Marketing Inc.
- Eni BB Petroleum Inc.
- Eni US Operating Co. Inc.
- Eni BB Pipeline LLC

Group IV
- Equinor ASA
- Equinor Gulf of Mexico LLC
- Equinor USA E&P Inc.

Group V
- Exxon Mobil Corporation

Group VI
- Shell Oil Company
- Shell Offshore Inc.
- SWEPI LP
- Shell Frontier Oil & Gas Inc.
- SOI Finance Inc.
- Shell Gulf of Mexico Inc.

Group VII
- Total E&P USA, Inc.

Even if an entity does not appear on the above list, certain joint or single bids submitted by such entity may be disqualified, and rejected, by BOEM if that entity is chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas, and natural gas liquids. *See* 30 CFR 556.512.

(Authority: 42 U.S.C. 6213; and 30 CFR 556.511–556.515)

Walter D. Cruickshank,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2020–21099 Filed 9–23–20; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Digital Video-Capable Devices and Components Thereof, DN 3492;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Koninklijke Philips N.V. and Philips North America LLC on September 18, 2020. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital video-capable devices and components thereof. The complaint names as respondents: Dell Technologies Inc., Round Rock of, TX; Dell Inc. of Round Rock, TX; Hisense Co. Ltd. of China; Hisense Visual Technology Co., Ltd. (f/k/a Qingdao Hisense Electric Co., Ltd.) of China; Hisense Electronics Manufacturing Company of America Corporation of Suwanee, GA; Hisense USA Corporation of Suwanee, GA; Hisense Import & Export Co. Ltd. of China; Hisense International Co., Ltd. of China; Hisense International (HK) Co., Ltd. of Hong Kong; Hisense International (Hong Kong) America Investment Co., Ltd., Hong Kong; HP, Inc. of Palo Alto, CA; Lenovo Group Ltd. of Hong Kong; Lenovo (United States), Inc. of Morrisville, NC; LG Electronics, Inc. of Korea; LG Electronics USA, Inc. of Englewood Cliffs, NJ; TCL Industries Holdings Co., Ltd. of China; TCL Electronics Holdings Ltd. (f/k/a TCL Multimedia Technology Holdings Ltd.) of Hong Kong; TCL King Electrical Appliances (Huizhou) Co. Ltd. of China; TTE Technology, Inc. of Corona, CA; TCL Moka International Ltd. of Hong Kong; TCL Moka Manufacturing S.A. de C.V. of Mexico; TCL Smart Device (Vietnam) Company Ltd. of Vietnam; MediaTek Inc. of Taiwan; MediaTek USA Inc. of San Jose, CA; Realtek Semiconductor Corp. of Taiwan; and Intel Corporation, Santa Clara, CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond to upon respondents'

alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3492'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 21, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–21087 Filed 9–23–20; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Invitation for Membership on Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Request for applications.

SUMMARY: The Joint Board for the Enrollment of Actuaries (Joint Board), established under the Employee Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. To assist in its examination duties mandated by ERISA, the Joint Board has established the Advisory Committee on Actuarial Examinations (Advisory Committee) in accordance with the provisions of the Federal Advisory Committee Act (FACA). The current Advisory Committee members' terms expire on February 28, 2021. This notice describes the Advisory Committee and invites applications from those interested in serving on the Advisory Committee for the March 1, 2021–February 28, 2023, term.

DATES: Applications for membership on the Advisory Committee must be received by the Joint Board, by no later than December 4, 2020.

ADDRESSES: Send applications electronically with APPLICATION FOR ADVISORY COMMITTEE inserted in subject line to *NHQJBEA@irs.gov.* See **SUPPLEMENTARY INFORMATION** for application requirements.

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at 202–317–3648 or *Elizabeth.j.vanosten@irs.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

To qualify for enrollment to perform actuarial services under ERISA, an applicant must satisfy certain experience and knowledge requirements, which are set forth in the Joint Board's regulations. An applicant may satisfy the knowledge requirement by successful completion of Joint Board examinations in basic actuarial mathematics and methodology and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, the Society of Actuaries, and the American Society of Pension Professionals & Actuaries jointly offer examinations acceptable to the Joint Board for enrollment purposes and acceptable to the other two actuarial organizations as part of their respective examination programs.

2. Scope of Advisory Committee Duties

The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations that enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The Advisory Committee's duties, which are strictly advisory, include (1) recommending topics for inclusion on the Joint Board examinations, (2) developing and reviewing examination questions, (3) recommending proposed examinations, (4) reviewing examination results and recommending passing scores, and (5) providing other recommendations and advice relative to the examinations, as requested by the Joint Board.

3. Member Terms and Responsibilities

Members are appointed for a 2-year term. The upcoming term will begin on March 1, 2021, and end on February 28, 2023. Members may seek reappointment for additional consecutive terms.

Members are expected to attend approximately 4 meetings each calendar year and are reimbursed for travel expenses in accordance with applicable government regulations. Due to the COVID–19 pandemic, meetings will be held by teleconference until travel restrictions are lifted and in-person meetings can be held safely. In general, members are expected to devote 125 to 175 hours, including meeting time, to the work of the Advisory Committee over the course of a year.

4. Member Selection

The Joint Board seeks to appoint an Advisory Committee that is fairly balanced in terms of points of view represented and functions to be performed. Every effort is made to ensure that most points of view extant in the enrolled actuary profession are represented on the Advisory Committee. To that end, the Joint Board seeks to appoint several members from each of the main practice areas of the enrolled actuary profession, including small employer plans, large employer plans, and multiemployer plans. In addition, to ensure diversity of points of view, the Joint Board limits the number of members affiliated with any one actuarial organization or employed with any one firm.

Membership normally will be limited to actuaries currently enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. Federally registered lobbyists and individuals affiliated with Joint Board enrollment examination preparation courses are not eligible to serve on the Advisory Committee.

5. Member Designation

Advisory Committee members are appointed as Special Government Employees (SGEs). As such, members are subject to certain ethical standards applicable to SGEs. Upon appointment, each member will be required to provide written confirmation that he/she does not have a financial interest in a Joint Board examination preparation course. In addition, each member will be required to attend annual ethics training.

6. Application Requirements

To receive consideration, an individual interested in serving on the Advisory Committee must submit (1) a signed, cover letter expressing interest in serving on the Advisory Committee and describing his/her professional qualifications, and (2) a resume and/or curriculum vitae. Applications must be submitted electronically to *NHQJBEA@irs.gov.* The transmittal email should include APPLICATION FOR ADVISORY COMMITTEE in the subject line. Applications must be received by December 4, 2020.

Dated: September 18, 2020.

Thomas V. Curtin, Jr.

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2020–21039 Filed 9–23–20; 8:45 am]

BILLING CODE 4830–01–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Renewal of Charter of Advisory Committee on Actuarial Examinations

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of renewal of advisory committee.

SUMMARY: The Joint Board for the Enrollment of Actuaries announces the renewal of the charter of the Advisory Committee on Actuarial Examinations.

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, at *Elizabeth.j.vanosten@irs.gov* or 202–317–3648.

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Committee on Examinations (Advisory Committee) is to advise the Joint Board for the Enrollment of Actuaries (Joint Board) on examinations in actuarial mathematics and methodology. The Joint Board administers such examinations in discharging its statutory mandate to enroll individuals who wish to perform actuarial services with respect to pension plans subject to the Employee Retirement Income Security Act of 1974. The Advisory Committee's functions include, but are not necessarily limited to, considering and recommending examination topics; developing examination questions; recommending proposed examinations; reviewing examination results and recommending pass marks; and as requested by the Joint Board, making recommendations relative to the examination program.

Dated: September 18, 2020.

Chester Andrzejewski,

Chairman, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2020–21048 Filed 9–23–20; 8:45 am]

BILLING CODE 4830–01–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Appellate Rules; Hearing of the Judicial Conference

AGENCY: Advisory Committee on the Federal Rules of Appellate Procedure, Judicial Conference of the United States.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The following remote public hearing on proposed amendments to the Federal Rules of Appellate Procedure has been canceled: Appellate Rules Hearing on October 19, 2020.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Telephone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

SUPPLEMENTARY INFORMATION: Announcements for this hearing were previously published in 85 FR 48562.

Authority: 28 U.S.C. 2073.

Dated: September 21, 2020.

Shelly L. Cox,

Rules Committee Staff.

[FR Doc. 2020–21115 Filed 9–23–20; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–724]

Importer of Controlled Substances Application: Fisher Clinical Services, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Fisher Clinical Services, Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before October 26, 2020. Such persons may also file a written request for a hearing on the application on or before October 26, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 31, 2020, Fisher Clinical Services, Inc., 700A–C Nestle Way, Breinigsville, Pennsylvania 18031–1522, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
Methylphenidate	1724	II
Levorphanol	9220	II
Noroxymorphone	9668	II
Tapentadol	9780	II

The company plans to import the listed controlled substances for clinical trials.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–21083 Filed 9–23–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

On September 17, 2020, the United States lodged a proposed Consent Decree with the United States District Court for the Western District of Kentucky in the lawsuit entitled *United States* v. *Goodrich Corporation, Westlake Vinyls, Inc., and PolyOne Corporation,* Civil Action No. 5:20–cv–00154–TBR.

The proposed Consent Decree resolves certain claims brought on behalf of the United States Environmental Protection Agency (''EPA'') under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, against Goodrich Corporation, Westlake Vinyls, Inc., and PolyOne Corporation (collectively ''Defendants'') for costs incurred and to be incurred at the B.F. Goodrich Site (''Site'') located in Calvert City, Marshall County, Kentucky. Under the proposed Consent Decree, the Defendants will implement the Remedial Action for the Site selected in EPA's Record of Decision, issued in September of 2018. Key elements of the remedy include the installation of a three-mile long sub-surface barrier wall around the perimeter of the onshore contamination; collection and treatment of groundwater within the containment area; recovery of non-aqueous phase liquid (''NAPL'') from accessible onshore areas; dredging of contaminated sediments from the barge slip; closure of two ponds; recovery of NAPL from beneath the Tennessee River; and treatment of the groundwater plume beneath the river. The estimated cost of the cleanup work to be performed by the Defendants pursuant to the Consent Decree is $97,000,000. Under the Consent Decree the Defendants have agreed to pay all of EPA's costs incurred in overseeing the construction of the Remedial Action.

The Settlement Agreement includes certain covenants not to sue under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, and Section 7003 of RCRA, 42 U.S.C. 6973, with respect to the Site. As provided by RCRA, a public meeting will be held on the proposed settlement if requested in writing by fifteen (15) days after the publication date of this notice. Requests for a public meeting may be made by contacting the EPA Remedial Project Manager, Brad Jackson by email at *Jackson.Brad@epa.gov.* If a public meeting is requested, information about the date and time of the meeting will be published in the local newspaper, and will be sent to persons on the EPA B.F. Goodrich Superfund Site mailing list.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *U.S.* v. *Goodrich, et al.,* D.J. Ref. No. 90–11–3–12205. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $14 for a copy of the Consent Decree without Exhibits or $133.75 for a copy of the Consent Decree with Exhibits (25 cents per page reproduction cost) payable to the United States Treasury.

Lori Jonas,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–21049 Filed 9–23–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Kentucky

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit period eligibility under the EB program for Kentucky.

The following changes has occurred since the publication of the last notice regarding the States' EB status:

Based on the data released by the Bureau of Labor Statistics on August 21, 2020, the seasonally-adjusted total unemployment rate for Kentucky fell below the 8.0% threshold necessary to remain ''on'' a high unemployment period in EB, and effective September 13, 2020, the maximum potential entitlement for claimants in Kentucky in the EB program will decrease from 20 weeks to 13 weeks.

The trigger notice covering state eligibility for the EB program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.as.*

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Thomas Stengle, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202) 693–2991 (this is not a toll-free number) or by email: *Stengle.Thomas@dol.gov.*

Signed in Washington, DC.

Amy Simon,

Deputy Assistant Secretary, Employment and Training Administration.

[FR Doc. 2020–21085 Filed 9–23–20; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 20–075]

Information Collection: NASA Universal Registration and Data Management System

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by October 26, 2020.

ADDRESSES: All comments should be addressed to Travis Kantz, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001 or call 281–792–7885.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Roger Kantz, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, at 281–792–7885 or email *travis.kantz@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA Universal Registration and Data Management System is a comprehensive tool designed to allow learners (*i.e.,* students and educators) to apply to NASA STEM engagement opportunities (*e.g.,* internships, fellowships, challenges, educator professional development, experiential learning activities, etc.) in a single location. NASA personnel manage the selection of applicants and implementation of engagement opportunities within the Universal Registration and Data Management System. Additionally, NASA can deploy evaluation surveys through the Universal Registration and Data Management System to collect short- and intermediate-outcome data by surveying learners (*i.e.,* students and educators) in NASA STEM engagement activities. Results from evaluation surveys information collected will be used by the NASA Office of STEM Engagement (OSTEM) to establish better defined goals, outcomes, and standards for measuring progress and also to evaluate the outcomes of NASA's STEM Engagement programs and activities. This process of improvement will enhance NASA's strategic planning, performance planning, and performance reporting efforts as required by the GPRA Modernization Act of 2010 and Evidence-Based Policymaking Act of 2018.

II. Methods of Collection

Online/Web-based

III. Data

Title: NASA Universal Registration and Data Management System.

OMB Number:

Type of review: New Collection.

Affected Public: Eligible students or educators, who may voluntarily complete an evaluation survey as a result of applying to or participating in a STEM engagement opportunity (*e.g.,* challenges, educator professional development, experiential learning activities, etc.).

Estimated Number of Respondents: 2,038.

Annual Responses: 81,500.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 27,167.

Estimated Total Annual Cost: $473,481.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Roger Kantz,

NASA PRA Clearance Officer.

[FR Doc. 2020–20632 Filed 9–23–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–20–0021; NARA–2020–064]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: NARA must receive comments by November 9, 2020.

ADDRESSES: You may submit comments by either of the following methods. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Records Appraisal and Agency Assistance (ACR); National Archives and Records Administration; 8601 Adelphi Road, College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov.* For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov,* by mail at the address above, or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Commerce, National Oceanic and Atmospheric Administration, Wage Mariner Pay Schedules (DAA–0370–2020–0003).
2. Department of Defense, Defense Counterintelligence and Security Agency, Certification Program Records (DAA–0446–2020–0004).
3. Department of Health and Human Services, Centers for Disease Control and Prevention, Select Agents and Toxins Records (DAA–0442–2019–0001).
4. Department of State, Bureau of International Security and Nonproliferation, Consolidated Schedule (DAA–0059–2019–0011).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2020–21052 Filed 9–23–20; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on National Science and Engineering Policy (SEP), 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 the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Thursday, October 1, 2020 at 12:00–12:30 p.m. EDT.

PLACE: This meeting will be held by videoconference through the National Science Foundation. A toll-free dial-in number will be available for the public. Contact the Board Office 24 hours before the teleconference to request the public dial-in number at *nationalsciencebrd@nsf.gov.*

STATUS: Open.

MATTERS TO BE CONSIDERED: Chair's opening remarks; discussion of the narrative outline for the SEI 2022 thematic report on scientific publications.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703–292–7000. To listen to this teleconference, members of the public must send an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference. The National Science Board Office will send requesters a toll-free dial-in number. Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.* Please refer to the National Science Board website *www.nsf.gov/nsb* for additional information.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020–21209 Filed 9–22–20; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on National Science and Engineering Policy (SEP), 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 the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Tuesday, September 29, 2020 at 4:30–5:00 p.m. EDT.

PLACE: This meeting will be held by videoconference through the National Science Foundation. A toll-free dial-in number will be available for the public. Contact the Board Office 24 hours before the teleconference to request the public dial-in number at *nationalsciencebrd@nsf.gov.*

STATUS: Open.

MATTERS TO BE CONSIDERED: Chair's opening remarks; discussion of the narrative outline for the SEI 2022 thematic report on higher education.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703–292–7000. To listen to this teleconference, members of the public must send an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference. The National Science Board Office will send requesters a toll-free dial-in number. Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.* Please refer to the National Science Board website *www.nsf.gov/nsb* for additional information.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020–21211 Filed 9–22–20; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. These meetings will primarily take place at NSF's headquarters, 2415 Eisenhower Avenue, Alexandria, VA 22314.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF website: *https://www.nsf.gov/events/advisory.jsp.* This information may also be requested by telephoning, 703/292–8687.

Dated: September 20, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–21058 Filed 9–23–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on National Science and Engineering Policy (SEP), 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 the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Friday, October 9, 2020 at 3:00–3:30 p.m. EDT.

PLACE: This meeting will be held by videoconference through the National Science Foundation. A toll-free dial-in number will be available for the public. Contact the Board Office 24 hours before the teleconference to request the public dial-in number at *nationalsciencebrd@nsf.gov.*

STATUS: Open.

MATTERS TO BE CONSIDERED: Chair's opening remarks; discussion of the narrative outline for the SEI 2022 thematic report on research & development trends.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703–292–7000. To listen to this teleconference, members of the public must send an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference. The National Science Board Office will send requesters a toll-free dial-in number. Meeting information and updates (time, place, subject matter or status of meeting) may

be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.* Please refer to the National Science Board website *www.nsf.gov/nsb* for additional information.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020–21221 Filed 9–22–20; 4:20 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on National Science and Engineering Policy (SEP), 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 the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Thursday, October 8, 2020 at 1:30–2:30 p.m. EDT.

PLACE: This meeting will be held by videoconference through the National Science Foundation. A toll-free dial-in number will be available for the public. Contact the Board Office 24 hours before the teleconference to request the public dial-in number at *nationalsciencebrd@nsf.gov.*

STATUS: Open.

MATTERS TO BE CONSIDERED: Chair's opening remarks; discussion of the narrative outlines for the SEI 2022 thematic reports on innovation and knowledge- and technology-intensive industries.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703–292–7000. To listen to this teleconference, members of the public must send an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference. The National Science Board Office will send requesters a toll-free dial-in number. Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.* Please refer to the National Science Board website *www.nsf.gov/nsb* for additional information.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020–21214 Filed 9–22–20; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0246]

Information Collection: Comprehensive Decommissioning Program Annual Site List and Point of Contact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget (OMB); request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a proposed collection of information to the Office of Management and Budget for review. The information collection is entitled, ''Comprehensive Decommissioning Program Annual Site List and Point of Contact.''

DATES: Submit comments by October 26, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0246 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 *https://www.regulations.gov* and search for Docket ID NRC–2019–0246. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2019–0246 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 *https://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 reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML20232A663. The supporting statement is available in ADAMS under Accession No. ML20232A665.
- *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 *https://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 proposed collection of information to OMB for review entitled, ''Comprehensive Decommissioning Program Annual Site List and Point of Contact.'' 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 June 19, 2020, 85 FR 37114.

1. *The title of the information collection:* Comprehensive Decommissioning Program Annual Site List and Point of Contact.

2. *OMB approval number:* 3150–0206.

3. *Type of submission:* Revision.

4. *The form number if applicable:* N/A.

5. *How often the collection is required or requested:* Annually.

6. *Who will be required or asked to respond:* All Agreement States who have signed Section 274(b) Agreements with the NRC.

7. *The estimated number of annual responses:* 39 (14 responses from Agreement States with sites of interest, 25 responses from Agreement States with no sites of interest).

8. *The estimated number of annual respondents:* 39 (14 responses from Agreement States with sites of interest, 25 responses from Agreement States with no sites of interest).

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 40.5 (28 hours from Agreement States with sites of interest, 12.5 hours from Agreement States with no sites of interest).

10. *Abstract:* Agreement States will be asked to provide a list of sites undergoing decommissioning, and a point of contact for information about uranium recovery and complex sites undergoing decommissioning that are regulated by the Agreement States. The information request will allow the NRC to compile, in a centralized location, a list of sites and points of contact who can provide information regarding Agreement State sites undergoing decommissioning in the United States. This does not apply to information, such as trade secrets and commercial or financial information provided by the Agreement States, that is considered privileged or confidential.

Dated: September 21, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–21067 Filed 9–23–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–251 and CP2020–281]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 28, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–251 and CP2020–281; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 72 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 18, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* September 28, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–21120 Filed 9–23–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89924; File No. SR–MEMX–2020–08]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Rule 13.4(a) To Add the Sources of Data for MIAX PEARL, LLC and Long-Term Stock Exchange, Inc.

September 18, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 11, 2020, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to update MEMX Rule 13.4(a) regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) Order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes to reflect the planned operation of MIAX PEARL, LLC (''MIAX PEARL'') as an equities exchange beginning on September 25, 2020[5] and the operation of Long-Term Stock Exchange, Inc. (''LTSE'') as a registered national securities exchange, which began on August 28, 2020.[6] The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update Rule 13.4(a) regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) Order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes to reflect the operation of MIAX PEARL as an equities exchange and LTSE as a registered national securities exchange.

On May 10, 2019, the Commission approved LTSE's application to register as a national securities exchange.[7] LTSE began its phase-in of production securities on August 28, 2020.[8] On August 14, 2020, the Commission approved MIAX PEARL's proposed rule change to establish rules governing the trading of equities securities.[9] MIAX PEARL announced that it plans to launch equities trading on September 25, 2020.[10] The Exchange, therefore, proposes to update Rule 13.4(a) regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) Order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes to reflect the operation of MIAX PEARL as an equities exchange beginning on September 25, 2020 and LTSE as a registered national securities exchange, which began on August 28, 2020. Specifically, the Exchange proposes to amend Rule 13.4(a) to include each of MIAX PEARL and LTSE by stating it will utilize MIAX PEARL's direct data feed for market data and LTSE market data from the Consolidated Quotation System (''CQS'')/UTP Quotation Data Feed (''UQDF''), for purposes of order handling, routing, execution, and related compliance processes. The Exchange will use CQS/UQDF as a secondary source for MIAX PEARL data. At this stage, no secondary source for LTSE market data will be used.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] 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 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.

The Exchange believes that its proposal to update MEMX Rule 13.4(a) to include each of MIAX PEARL and LTSE is consistent with the Act because it will ensure that the Rule correctly identifies and publicly states on a market-by-market basis all of the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. In particular, the Exchange receives and processes data feeds to facilitate compliance with the applicable requirements of Regulation NMS, including SEC Rule 611 (*i.e.,* the Order Protection Rule).[13] The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity, clarity and transparency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposal would enhance competition because including all of the exchanges enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A)

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4.

[5] *See* MIAX PEARL Equities—MIAX PEARL Receives Approval to Operate Equites Exchange; Launch Date Confirmed for September 25, 2020, dated August 18, 2020 (*https://miaxequities.com/alerts/2020/08/18/miax-pearl-receives-approval-operate-equities-exchange-launch-date-confirmed-0*) (stating that MIAX PEARL will begin equities trading on September 25, 2020).

[6] *See* LTSE Market Announcement: MA–2020–022—LTSE Production Securities Phase-in set for Friday, August 28, dated August 24, 2020 (*https://longtermstockexchange.com/market*) (stating that LTSE will begin phase-in of production securities on August 28, 2020).

[7] *See* Securities Exchange Act Release No. 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019).

[8] *See supra* note 6.

[9] *See* Securities Exchange Act Release No. 89563 (August 14, 2020), 85 FR 51510 (August 20, 2020) (SR–PEARL–2020–03).

[10] *See supra* note 5.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 242.611.

of the Act [14] and Rule 19b–4(f)(6) [15] thereunder.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. MEMX stated that the proposed rule change would provide clarity to market participants with respect to the specific network processor and proprietary data feeds that MEMX utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as doing so will ensure that the proposed rule change becomes operative by the date of MEMX's planned launch as a national securities exchange, September 21, 2020, which, in turn, will ensure that MEMX's rulebook accurately and clearly reflects the market data sources it utilizes for the above-specified functions from the date of its launch. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2020–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MEMX–2020–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2020–08 and should be submitted on or before October 15, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–21046 Filed 9–23–20; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12) and (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89925; File No. SR–NYSE–2020–75]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Commentary .02 to Rule 7.35

September 18, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 4, 2020, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Commentary .02 to Rule 7.35 to provide that, for a temporary period that begins on September 4, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on September 30, 2020, for a Direct Listing Auction, Rule 7.35(c)(3) will not be in effect, and the Exchange will disseminate Auction Imbalance Information if a security is a Direct Listing and has not had its Direct Listing Auction. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add Commentary .02 to Rule 7.35 to provide that, for a temporary period that begins on September 4, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on September 30, 2020, for a Direct Listing Auction, Rule 7.35(c)(3) will not be in effect, and the Exchange will disseminate Auction Imbalance Information if a security is a Direct Listing and has not had its Direct Listing Auction.

Background

To slow the spread of COVID–19 through social-distancing measures, on March 18, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.[4] On May 14, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) to reopen the Trading Floor on a limited basis on May 26, 2020 to a subset of Floor brokers, subject to safety measures designed to prevent the spread of COVID–19.[5] On June 15, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) to begin the second phase of the Trading Floor reopening by allowing DMMs to return on June 17, 2020, subject to safety measures designed to prevent the spread of COVID–19.[6] Consistent with these safety measures, both DMMs and Floor broker firms continue to operate with reduced staff on the Trading Floor.

On April 21, 2020, the Exchange added Commentary .01 to Rule 7.35, which has since been amended to provide:[7]

For a temporary period that begins on April 21, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, for an IPO Auction, paragraph (c)(3) of this Rule will not be in effect, and the Exchange will disseminate Auction Imbalance Information if a security is an IPO and has not had its IPO Auction. Such Auction Imbalance Information will be disseminated in the same manner that Auction Imbalance Information is disseminated for a Core Open Auction, as set forth in Rule 7.35A(e)(1)–(3), except that references to the term ''Consolidated Last Sale Price'' in Rule 7.35A(e)(3) and subparagraphs (A)–(C) of that Rule will be replaced with the term ''the security's offering price.''

Proposed Rule Change

The Exchange proposes to amend Rule 7.35 to add Commentary .02 to provide that, just as with IPO Auctions, for a temporary period that begins on September 4, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on September 30, 2020, the Exchange would disseminate Auction Imbalance Information for a Direct Listing Auction.

Rule 7.35(c)(3) provides that the Exchange will not disseminate Auction Imbalance Information if a security is an IPO or Direct Listing and has not had its IPO Auction or Direct Listing Auction. This Rule is based on a change that the Exchange made in 2015 to reflect that Exchange systems would not publish Order Imbalance Information for an IPO.[8] In 2015, the rationale provided for excluding IPOs from Order Imbalance Information was because Exchange systems at the time did not have access to interest represented in the crowd by Floor brokers. However, since the Exchange transitioned to Pillar in August 2019, all Floor broker interest intended for a Core Open Auction, IPO Auction, or Direct Listing Auction must be entered electronically and therefore Exchange systems would be able to include orders from Floor brokers for such Auctions in the Auction Imbalance Information.

The Auction Imbalance Information that the Exchange proposes to disseminate for a Direct Listing Auction would be the same information that is disseminated in advance of a Core Open Auction, as set forth in Rule 7.35A(e), except for how the Imbalance Reference Price would be determined. Rule 7.35A(e)(1) provides that the Exchange begins disseminating Auction Imbalance Information for a Core Open Auction at 8:00 a.m., and would do the same for a Direct Listing Auction. In addition, Rule 7.35A(e)(2) specifies the content of the Auction Imbalance Information that is disseminated in advance of a Core Open Auction, which would be the same content for a Direct Listing Auction.[9] Finally, Rule 7.35A(e)(3) specifies the Imbalance Reference Price, which for a Core Open Auction is the Consolidated Last Sale Price. The Exchange proposes that the Imbalance Reference Price for a Direct Listing would be the same as the security's Indication Reference Price, as determined pursuant to Rule 7.35A(d)(2)(A)(iv), and that such Imbalance Reference Price would be updated as provided for in Rule 7.35A(e)(3)(A)–(C).[10]

Proposed Commentary .02 to Rule 7.35 would provide:

For a temporary period that begins on September 4, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on September 30, 2020, for a Direct Listing Auction, paragraph (c)(3) of this Rule will not be in effect, and the Exchange will disseminate Auction Imbalance Information if a security is a Direct Listing and has not had its Direct Listing Auction. Such Auction Imbalance Information will be disseminated in the same manner that

[4] Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination. The Exchange's current rules establish how the Exchange will function fully-electronically. The CEO also closed the NYSE American Options Trading Floor, which is located at the same 11 Wall Street facilities, and the NYSE Arca Options Trading Floor, which is located in San Francisco, CA. *See* Press Release, dated March 18, 2020, available here: *https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110.*

[5] *See* Securities Exchange Act Release No. 88933 (May 22, 2020), 85 FR 32059 (May 28, 2020) (SR–NYSE–2020–47) (Notice of filing and immediate effectiveness of proposed rule change).

[6] *See* Securities Exchange Act Release No. 89086 (June 17, 2020) (SR–NYSE–2020–52) (Notice of filing and immediate effectiveness of proposed rule change).

[7] *See* Securities Exchange Act Release Nos. 88725 (April 22, 2020), 85 FR 23583 (April 28, 2020) (SR–NYSE–2020–37) (amending Rule 7.35 to add Commentary .01) *and* 89199 (June 30, 2020), 85 FR 40718 (July 7, 2020) (SR–NYSE–2020–56) (extending the temporary period for, among other rules, Commentary .01 to Rule 7.35).

[8] *See* Securities Exchange Act Release No. 74837 (April 29, 2015), 80 FR 25741 (May 5, 2015) (SR–NYSE–2015–19) (Notice of filing and immediate effectiveness of proposed rule change).

[9] For Core Open Auctions, the Exchange disseminates Total Imbalance, Side of Total Imbalance, Paired Quantity, and Continuous Book Clearing Price, as these terms are defined in Rule 7.35(a)(4).

[10] As provided for in Rule 7.35A(e)(3), the Imbalance Reference Price changes if a pre-opening indication has been published for such Auction. For example, if the security's Indication Reference Price as determined under Rule 7.35A(d)(2)(A)(iv) were lower than the bid price of a pre-opening indication, the Imbalance Reference Price for that Direct Listing Auction would be the pre-opening indication bid price, and not the security's Indication Reference Price. *See, e.g.,* Rule 7.35A(e)(3)(A).

Auction Imbalance Information is disseminated for a Core Open Auction, as set forth in Rule 7.35A(e)(1)–(3), except that with respect to a Direct Listing Auction, references to the term ''Consolidated Last Sale Price'' in Rule 7.35A(e)(3) and subparagraphs (A)–(C) of that Rule will be replaced with the term ''the security's Indication Reference Price as determined under Rule 7.35A(d)(2)(A)(iv).''

The Exchange also proposes to make a non-substantive change to Commentary .01 to Rule 7.35 to specify that the change to how the Imbalance Reference Price would be determined under that Commentary would be specific to an IPO Auction.

The Exchange has tested the ability to disseminate such Auction Imbalance Information on the day of Direct Listing Auction. In addition, because such Auction Imbalance is already disseminated on a daily basis in connection with Core Open Auctions, the Exchange believes that member organizations that subscribe to such proprietary data feeds would be able to receive, read, and respond to Auction Imbalance Information for a Direct Listing Auction without needing to make any changes. Accordingly, the Exchange would be able to implement the proposed rule change immediately upon effectiveness of this filing.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] 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 a national market system.

To reduce the spread of COVID–19, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading. On May 14, 2020, the CEO made a determination under Rule 7.1(c)(3) that, beginning May 26, 2020, the Trading Floor would be partially reopened to allow a subset of Floor brokers to return to the Trading Floor. On June 15, 2020, the CEO made a determination under Rule 7.1(c)(3) that, beginning June 17, 2020, DMM units may choose to return a subset of staff to the Trading Floor. Consistent with these safety measures, both DMMs and Floor broker firms continue to operate with reduced staff on the Trading Floor.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because, during a temporary period when both Floor broker firms and DMMs are operating with reduced staff on the Trading Floor, it would promote fair and orderly Direct Listing Auctions for the Exchange to disseminate Auction Imbalance Information on the same terms that such information is disseminated for a Core Open Auction. Because of reduced Floor broker staff, there are fewer individuals on the Trading Floor who would have access to imbalance information for a Direct Listing Auction to provide to customers. Moreover, such Auction Imbalance Information would include Floor broker interest eligible to participate in such Direct Listing Auction. The Exchange therefore believes that the Auction Imbalance Information would provide more granular information in advance of a Direct Listing Auction than would otherwise be available during this temporary period when there is reduced staff on the Trading Floor. As described above, the Auction Imbalance Information disseminated via the proprietary data feeds would begin being published at 8:00 a.m. ET, would be published every second, and would include Total Imbalance, Side of Total Imbalance, Paired Quantity, and Continuous Book Clearing Price information. The Exchange therefore believes that proposed rule change would promote transparency in advance of a Direct Listing Auction, which would benefit investors and the public.

The Exchange believes that, by clearly stating that this relief will be in effect through the earlier of a full reopening of the Trading Floor facilities to DMMs or the close of the Exchange on September 30, 2020, market participants will have advance notice that the Exchange would disseminate Auction Imbalance Information for a Direct Listing Auction that may occur during that period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed, during a temporary period when both Floor broker firms and DMMs are operating with reduced staff on the Trading Floor, to ensure fair and orderly Direct Listing Auctions by providing that the Exchange would disseminate Auction Imbalance Information for such auctions via its proprietary data feeds during a temporary period.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay.[17] The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange believes that a number of member organizations that currently subscribe to the Exchange's proprietary data feeds are technologically prepared to receive, read, and respond to Auction Imbalance Information for a Direct Listing. The Exchange further states that two companies recently filed registration

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] 17 CFR 240.19b–4(f)(6)(iii).

statements with the Commission and could potentially list their securities on the Exchange via a Direct Listing within 30 days from the date of this filing. The Commission believes that dissemination of Auction Imbalance Information as proposed is reasonably designed to promote transparency in advance of a Direct Listing Auction and to benefit investors and the public. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[18]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–75 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–75. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–75 and should be submitted on or before October 15, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–21047 Filed 9–23–20; 8:45 am]

BILLING CODE 8011–01–P

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16674 and #16675; Alabama Disaster Number AL–00111]

Presidential Declaration of a Major Disaster for the State of Alabama

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–4563–DR), dated 09/20/2020.

Incident: Hurricane Sally.

Incident Period: 09/14/2020 and continuing.

DATES: Issued on 09/20/2020.

Physical Loan Application Deadline Date: 11/19/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 06/21/2021.

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 09/20/2020, applications for disaster loans may be filed 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 (Physical Damage and Economic Injury Loans): Baldwin, Escambia, Mobile.

Contiguous Counties (Economic Injury Loans Only):

Alabama: Clarke, Conecuh, Covington, Monroe, Washington.

Florida: Escambia, Okaloosa, Santa Rosa.

Mississippi: George, Greene, Jackson.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	2.375
Homeowners Without Credit Available Elsewhere	1.188
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	3.000
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 166748 and for economic injury is 166750.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–21110 Filed 9–23–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 11213]

Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: ''Rubens: Picturing Antiquity'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that one object being imported from abroad pursuant to an agreement with the foreign owner or custodian for temporary display in the exhibition ''Rubens: Picturing Antiquity'' at The J. Paul Getty Museum at the Getty Villa, Pacific Palisades, California, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–21062 Filed 9–23–20; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36435]

Cattaraugus Local Development Corp.—Acquisition Exemption—Rail Line in Cattaraugus County, NY

Cattaraugus Local Development Corp. (CLDC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire approximately 12.14 miles of rail line extending from milepost 426.5, in the Town of New Albion, to the city line of the City of Salamanca in the Town of Salamanca, which is near milepost 414.1,[1] in Cattaraugus County, NY (the Line).

CLDC states that Cattaraugus County Industrial Development Agency (IDA) acquired the Line from the Trustees of the Erie Lackawanna Railway Company in 1980. CLDC further states that IDA transferred the Line to CLDC on or about August 2000 and that, since 2005, the Line has been used as a recreational trail known as the Senator Pat McGee Trail. CLDC now seeks after-the-fact Board authorization for its 2000 acquisition.[2]

CLDC certifies that its annual revenues as a consequence of the transaction are not projected to exceed $5 million and will not result in CLDC becoming a Class I or a Class II rail carrier. CLDC also certifies that the acquisition does not involve any provisions or agreements that would limit future interchange with a third-party connecting carrier.

The transaction will become effective on October 8, 2020 (30 days after the verified notice of exemption was filed).[3]

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than October 1, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36435, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on CLDC's representative, Robert J. McLaughlin, McLaughlin Law, P.C., 90 State Street, Suite 700, Albany, NY 12207.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: September 18, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2020–21063 Filed 9–23–20; 8:45 am]

BILLING CODE 4915–01–P

[1] The verified notice states that the Line extends ''to the City line of the City of Salamanca in the Town of Salamanca (near milepost 414.1).'' In a supplement filed on September 8, 2020, CLDC states that milepost 414.1 is the closest mile marker to the southern boundary of the Line but ''the actual [m]ilepost, if it existed,'' would be milepost 414.36.

[2] In a related proceeding currently held in abeyance, CLDC is seeking authorization to abandon the Line. *See Cattaraugus Local Dev. Corp.—Aban. Exemption—in Cattaraugus Cnty., N.Y.,* AB 1300X et al. (STB served Aug. 5, 2020).

[3] Although CLDC initially submitted its verified notice on September 1, 2020, the date of its supplement is considered the filing date and the basis for all dates in this notice.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on a Land Release Request at Malden Regional Airport & Industrial Park (MAW), Malden, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release of airport land.

SUMMARY: The FAA proposes to rule and invites public comment on the request to release and sell a 0.73 acre parcel and a 12.72 acre parcel of federally obligated airport property at the Malden Regional Airport & Industrial Park (MAW), Malden, Missouri.

DATES: Comments must be received on or before October 26, 2020.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust, Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: David Blalock, Airport Manager, City of Malden Regional Airport & Industrial Park, 3077 Mitchell Drive, P.O. Box 411, Malden, MO 63863–0411, (573) 276–2279.

FOR FURTHER INFORMATION CONTACT: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust, Room 364, Kansas City, MO 64106, (816) 329–2603, *amy.walter@faa.gov.* The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release a 0.73 acre parcel and a 12.72 acre parcel of airport property at the Malden Regional Airport & Industrial Park (MAW) under the provisions of 49 U.S.C. 47107(h)(2). This is a Surplus Property Airport. The City of Malden requested a release from the FAA to sell the two parcels to Aycorp, LLC which proposes residential duplex

development of the 0.73 acre parcel and industrial development of the 12.72 acre parcel. The FAA determined this request to release and sell property at the Malden Regional Airport & Industrial Park (MAW) submitted by the Sponsor meets the procedural requirements of the FAA and the release and sale of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

The following is a brief overview of the request:

The Malden Regional Airport & Industrial Park (MAW) is proposing the release and sale of two parcels of airport property containing 0.73 acres and 12.72 acres. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Malden Regional Airport & Industrial Park (M) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances in order to sell the land. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation use.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may request an appointment to inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Malden City Hall.

Issued in Kansas City, MO, on September 16, 2020.

Jim A. Johnson,

Director, FAA Central Region, Airports Division.

[FR Doc. 2020–21036 Filed 9–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Risk-Based Capital Standards

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning renewal of its information collection titled, ''Risk-Based Capital Standards.''

DATES: Comments must be submitted by November 23, 2020.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0318, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0318'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection [1] by the following method:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0318'' or ''Risk-Based Capital Standards.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include 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, the OCC is publishing notice of the renewal of the collection of information set forth in this document.

Title: Risk-Based Capital Standards.

OMB Control No.: 1557–0318.

Affected Public: Businesses or other for-profit.

Type of Review: Regular.

Abstract: The OCC is seeking to renew the emergency approval granted for an addition to the OCC's Risk-Based Capital information collection. The addition was made necessary by an

[1] Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period.

interim final rule that introduced a new notice opt-in requirement and a requirement for prior approval for distributions.[2] A national bank or Federal savings association, when calculating on-balance sheet assets as of each day of a reporting quarter for purposes of determining the national bank's or Federal savings association's total leverage exposure, may (on a temporary basis) exclude the balance sheet carrying value of U.S. Treasury securities and funds on deposit at a Federal Reserve Bank. Before applying this relief, a national bank or Federal savings association must first notify the OCC. During the calendar quarter beginning on July 1, 2020 and continuing until March 31, 2021, no national bank or Federal savings association that has opted into this relief may make a distribution, or create an obligation to make such a distribution, without prior OCC approval.

Burden Estimates:

Estimated Number of Respondents: 2.

Estimated Annual Burden: 24 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2020–21072 Filed 9–23–20; 8:45 am]

BILLING CODE 4810–33–P

[2] Regulatory Capital Rule: Temporary Exclusion of U.S. Treasury Securities and Deposits at Federal Reserve Banks from the Supplementary Leverage Ratio for Depository Institutions, 85 FR 32980 (June 1, 2020).

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 one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on the determination by the Secretary of State, in consultation with the heads of relevant agencies, 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 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; or the Assistant Director for Licensing, tel.: 202–622–2480.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

Notice of OFAC Actions

The Secretary of State has determined that the persons listed below have knowingly, on or after November 5, 2018, engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran. The Secretary of State, in consultation with the Secretary of the Treasury and heads of other relevant agencies, has selected certain sanctions to be imposed upon the persons listed below, pursuant to which the property and interests in property subject to U.S. jurisdiction of the persons listed below are blocked. The Secretary of State's determination is effective September 3, 2020.

BILLING CODE 4810–AL–P

Entities

1. SINO ENERGY SHIPPING HONGKONG LIMITED (Chinese Traditional: 中能航運 香港 有限公司; Chinese Simplified: 中能航运 香港 有限公司) (a.k.a. SINO ENERGY SHIPPING (HONG KONG) LTD; a.k.a. SINO ENERGY SHIPPING HONG KONG), Kowloon Bay, Kowloon, Hong Kong; Pudong Xinqu, Shanghai 200121, China; Executive Order 13846 information: LOANS FROM UNITED STATES FINANCIAL INSTITUTIONS. Sec. 5(a)(i); alt. Executive Order 13846 information: FOREIGN EXCHANGE. Sec. 5(a)(ii); alt. Executive Order 13846 information: BANKING TRANSACTIONS. Sec. 5(a)(iii); alt. Executive Order 13846 information: BLOCKING PROPERTY AND INTERESTS IN PROPERTY. Sec. 5(a)(iv); alt. Executive Order 13846 information: BAN ON INVESTMENT IN EQUITY OR DEBT OF SANCTIONED PERSON. Sec. 5(a)(v); alt. Executive Order 13846 information: IMPORT SANCTIONS. Sec. 5(a)(vi); alt. Executive Order 13846 information: SANCTIONS ON PRINCIPAL EXECUTIVE OFFICERS. Sec. 5(a)(vii); Identification Number IMO 5706291; Business Registration Number 1796668 (Hong Kong) [IRAN-EO13846].

   Designated pursuant to section 3(a)(ii) of Executive Order 13846 of August 6, 2018, 83 FR 38939, 3 CFR, 2019 Comp., p. 854, for having knowingly engaged, on or after November 5, 2018, in a significant transaction for the transport of petroleum products from Iran.

2. CHEMTRANS PETROCHEMICALS TRADING LLC (Arabic: كيمترانس لتجارة و كيماويا ش ذ.م.م), Office 21-Bur Dubai, Trade Center 1, Dubai, United Arab Emirates; P.O. Box 4131548, Dubai, United Arab Emirates; Executive Order 13846 information: LOANS FROM UNITED STATES FINANCIAL INSTITUTIONS. Sec. 5(a)(i); alt. Executive Order 13846

information: FOREIGN EXCHANGE. Sec. 5(a)(ii); alt. Executive Order 13846 information: BANKING TRANSACTIONS. Sec. 5(a)(iii); alt. Executive Order 13846 information: BLOCKING PROPERTY AND INTERESTS IN PROPERTY. Sec. 5(a)(iv); alt. Executive Order 13846 information: BAN ON INVESTMENT IN EQUITY OR DEBT OF SANCTIONED PERSON. Sec. 5(a)(v); alt. Executive Order 13846 information: IMPORT SANCTIONS. Sec. 5(a)(vi); alt. Executive Order 13846 information: SANCTIONS ON PRINCIPAL EXECUTIVE OFFICERS. Sec. 5(a)(vii); Trade License No. 1954371 (United Arab Emirates); License 798536 (United Arab Emirates) [IRAN-EO13846].

Designated pursuant to section 3(a)(ii) of Executive Order 13846 of August 6, 2018, 83 FR 38939, 3 CFR, 2019 Comp., p. 854, for having knowingly engaged, on or after November 5, 2018, in a significant transaction for the transport of petroleum products from Iran.

3. ABADAN OIL REFINING COMPANY (Arabic: شركت پالايش نفت آبادان) (a.k.a. ABADAN OIL REFINING COMPANY PRIVATE JOINT STOCK (Arabic: شركت پلايش نفت آبادن سهامى عام); a.k.a. PALAYESH NAFT ABADAN (Arabic: پالايش نفت آبادان); a.k.a. "AORC"), Breym, Abadan, Khuzestan 6316915651, Iran; P.O. Box 555, Abadan, Khuzestan, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Executive Order 13846 information: LOANS FROM UNITED STATES FINANCIAL INSTITUTIONS. Sec. 5(a)(i); alt. Executive Order 13846 information: FOREIGN EXCHANGE. Sec. 5(a)(ii); alt. Executive Order 13846 information: BANKING TRANSACTIONS. Sec. 5(a)(iii); alt. Executive Order 13846 information: BLOCKING PROPERTY AND INTERESTS IN PROPERTY. Sec. 5(a)(iv); alt. Executive Order 13846 information: BAN ON INVESTMENT IN EQUITY OR DEBT OF SANCTIONED PERSON. Sec. 5(a)(v); alt. Executive Order 13846 information: IMPORT SANCTIONS. Sec. 5(a)(vi); alt. Executive Order 13846 information: SANCTIONS ON PRINCIPAL EXECUTIVE OFFICERS. Sec. 5(a)(vii); National ID No. 14003570909 (Iran); Registration Number 1690 (Iran) [IRAN-EO13846].

Designated pursuant to section 3(a)(ii) of Executive Order 13846 of August 6, 2018, 83 FR 38939, 3 CFR, 2019 Comp., p. 854, for having knowingly engaged, on or after November 5, 2018, in a significant transaction for the transport of petroleum products from Iran.

4. NEW FAR INTERNATIONAL LOGISTICS LIMITED (Chinese Traditional: 新達國際物流有限公司) (a.k.a. NEW FAR INTERNATIONAL LOGISTICS LTD; a.k.a. "NEW FAR INTERNATIONAL"), Wan Chai, Hong Kong; Executive Order 13846 information: LOANS FROM UNITED STATES FINANCIAL INSTITUTIONS. Sec. 5(a)(i); alt. Executive Order 13846 information: FOREIGN EXCHANGE. Sec. 5(a)(ii); alt. Executive Order 13846 information: BANKING TRANSACTIONS. Sec. 5(a)(iii); alt. Executive Order 13846 information: BLOCKING PROPERTY AND INTERESTS IN PROPERTY. Sec. 5(a)(iv); alt. Executive Order 13846 information: BAN ON INVESTMENT IN EQUITY OR DEBT OF SANCTIONED PERSON. Sec. 5(a)(v); alt. Executive Order 13846 information: IMPORT SANCTIONS. Sec. 5(a)(vi); alt. Executive Order 13846 information: SANCTIONS ON PRINCIPAL EXECUTIVE OFFICERS. Sec. 5(a)(vii); Identification Number IMO 6075135; Business Registration Number 2758016 (Hong Kong) [IRAN-EO13846].

Designated pursuant to section 3(a)(ii) of Executive Order 13846 of August 6, 2018, 83 FR 38939, 3 CFR, 2019 Comp., p. 854, for having knowingly engaged, on or after November 5, 2018, in a significant transaction for the transport of petroleum products from Iran.

5. ZHIHANG SHIP MANAGEMENT SHANGHAI CO LTD (Chinese Simplified: 上海智航船舶管理有限公司) (a.k.a. SHANGHAI ZHIHANG SHIP MANAGEMENT CO., LTD.; a.k.a. ZHIHANG SHIP MANAGEMENT), Pudong Nanlu, Pudong Xinqu, Shanghai 200120, China; Room 328, 3/F., Unit 2, No. 231 Shibocun Road, China (Shanghai) Pilot Free-Trade Zone, China; Executive Order 13846 information: LOANS FROM UNITED STATES FINANCIAL INSTITUTIONS. Sec. 5(a)(i); alt. Executive Order 13846 information: FOREIGN EXCHANGE. Sec. 5(a)(ii); alt. Executive Order 13846 information: BANKING TRANSACTIONS. Sec. 5(a)(iii); alt. Executive Order 13846 information: BLOCKING PROPERTY AND INTERESTS IN PROPERTY. Sec. 5(a)(iv); alt. Executive Order 13846 information: BAN ON INVESTMENT IN EQUITY OR DEBT OF SANCTIONED PERSON. Sec. 5(a)(v); alt. Executive Order 13846 information: IMPORT SANCTIONS. Sec. 5(a)(vi); alt. Executive Order 13846 information: SANCTIONS ON PRINCIPAL EXECUTIVE OFFICERS. Sec. 5(a)(vii); Identification Number IMO 6114218; Registration Number 310141000551704 (China); Unified Social Credit Code (USCC) 91310115MA1K4DLAXM (China) [IRAN-EO13846].

Designated pursuant to section 3(a)(ii) of Executive Order 13846 of August 6, 2018, 83 FR 38939, 3 CFR, 2019 Comp., p. 854, for having knowingly engaged, on or after November 5, 2018, in a significant transaction for the transport of petroleum products from Iran.</EXTRACT>

Individuals

1. LIN, Zuoyou (Chinese Simplified: 林作友), Jinxing Village, Shitang Town, Wenling City, Zhejiang, China; No. 445, Xia Hu, Che Guan Village, Shitang Town, Wenling City, Zhejiang, China; DOB 10 Apr 1975; POB Wenling County, Taizhou District, Zhejiang Province, China; nationality China; Gender Male; Executive Order 13846 information: FOREIGN EXCHANGE. Sec. 5(a)(ii); alt. Executive Order 13846 information: BANKING TRANSACTIONS. Sec. 5(a)(iii); alt. Executive Order 13846 information: BLOCKING PROPERTY AND INTERESTS IN PROPERTY. Sec. 5(a)(iv); alt. Executive Order 13846 information: IMPORT SANCTIONS. Sec. 5(a)(vi); Residency Number 332623197504107459 (China); Director (individual) [IRAN-EO13846] (Linked To: SINO ENERGY SHIPPING HONGKONG LIMITED).

Designated pursuant to section 3(a)(ii) of Executive Order 13846 of August 6, 2018, 83 FR 38939, 3 CFR, 2019 Comp., p. 854, for being (i) a corporate officer or principal of the aforementioned entities for purposes of Section 4(e) of E.O.13846, and (ii) a principal executive officer of the aforementioned entities, or performs similar functions and with similar authorities as a principal executive officer, for purposes of Section 5(a)(vii) of E.O.13846.

2. AMIN, Alireza (Arabic: علیرضا امین); DOB 1965; alt. DOB 1966; POB Darab, Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Executive Order 13846 information: FOREIGN EXCHANGE. Sec. 5(a)(ii); alt. Executive Order 13846 information: BANKING TRANSACTIONS. Sec. 5(a)(iii); alt. Executive Order 13846 information: BLOCKING PROPERTY AND INTERESTS IN PROPERTY. Sec. 5(a)(iv); alt. Executive Order 13846 information: IMPORT SANCTIONS. Sec. 5(a)(vi); National ID No. 6549531071 (Iran); Managing Director (individual) [IRAN-EO13846] (Linked To: ABADAN OIL REFINING COMPANY).

   Designated pursuant to section 3(a)(ii) of Executive Order 13846 of August 6, 2018, 83 FR 38939, 3 CFR, 2019 Comp., p. 854, for being (i) a corporate officer or principal of the aforementioned entities for purposes of Section 4(e) of E.O.13846, and (ii) a principal executive officer of the aforementioned entities, or performs similar functions and with similar authorities as a principal executive officer, for purposes of Section 5(a)(vii) of E.O.13846.

3. SHI, Min (Chinese Simplified: 石敏), Longhua Town, Xuhui District, Shanghai City, China; DOB 20 May 1979; POB Xuhui District, Shanghai, China; nationality China; Gender Male; Executive Order 13846 information: FOREIGN EXCHANGE. Sec. 5(a)(ii); alt. Executive Order 13846 information: BANKING TRANSACTIONS. Sec. 5(a)(iii); alt. Executive Order 13846 information: BLOCKING PROPERTY AND INTERESTS IN PROPERTY. Sec. 5(a)(iv); alt. Executive Order 13846 information: IMPORT SANCTIONS. Sec. 5(a)(vi); Residency Number 310104197905203618 (China); Director (individual) [IRAN-EO13846] (Linked To: NEW FAR INTERNATIONAL LOGISTICS LIMITED).

   Designated pursuant to section 3(a)(ii) of Executive Order 13846 of August 6, 2018, 83 FR 38939, 3 CFR, 2019 Comp., p. 854, for being (i) a corporate officer or principal of the aforementioned entities for purposes of Section 4(e) of E.O.13846, and (ii) a principal executive officer of the aforementioned entities, or performs similar functions and with similar authorities as a principal executive officer, for purposes of Section 5(a)(vii) of E.O.13846.

Dated: September 3, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

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Part II

Department of Housing and Urban Development

24 CFR Part 100

HUD's Implementation of the Fair Housing Act's Disparate Impact Standard; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 100

[Docket No. FR–6111–F–03]

RIN 2529–AA98

HUD's Implementation of the Fair Housing Act's Disparate Impact Standard

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: HUD has long interpreted the Fair Housing Act (''the Act'') to create liability for practices with an unjustified discriminatory effect, even if those practices were not motivated by discriminatory intent. This rule amends HUD's 2013 disparate impact standard regulation to better reflect the Supreme Court's 2015 ruling in *Texas Department of Housing and Community Affairs* v. *Inclusive Communities Project, Inc.* and to provide clarification regarding the application of the standard to State laws governing the business of insurance. This rule revises the burden-shifting test for determining whether a given practice has an unjustified discriminatory effect and adds to illustrations of discriminatory housing practices found in HUD's Fair Housing Act regulations. This Final rule also establishes a uniform standard for determining when a housing policy or practice with a discriminatory effect violates the Fair Housing Act and provides greater clarity of the law for individuals, litigants, regulators, and industry professionals.

DATES: *Effective Date:* October 26, 2020.

FOR FURTHER INFORMATION CONTACT: David H. Enzel, Deputy Assistant Secretary for Enforcement Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW, Room 5204, Washington, DC 20410, telephone number 202–402–5557 (this is not a toll-free number). Individuals with hearing or speech impediments may access this number via TTY by calling the Federal Relay during working hours at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Fair Housing Act prohibits discriminatory housing practices on the basis of race, color, religion, sex, disability, familial status, or national origin. HUD has the authority and responsibility for administering and enforcing the Act, including the authority to conduct formal adjudications of Fair Housing Act complaints and the power to promulgate rules to interpret and carry out the Act.[1] Consistent with this responsibility, on February 15, 2013, HUD published a Final Rule entitled ''Implementation of the Fair Housing Act's Discriminatory Effects Standard'' (''the 2013 Rule'').[2] The 2013 Rule formalized HUD's longstanding interpretation that disparate impact liability is available under the Act.[3] The 2013 Rule also codified a burden-shifting framework for analyzing disparate impact claims under the Fair Housing Act, relying in part on existing case law under the Fair Housing Act, decisions by HUD's administrative law judges, and Title VII of the Civil Rights Act of 1964 (prohibiting employment discrimination).[4]

In 2015, the Supreme Court held that disparate impact claims are cognizable under the Fair Housing Act in *Texas Department of Housing and Community Affairs* v. *Inclusive Communities Project, Inc.,* (*Inclusive Communities*).[5] *Inclusive Communities* recognized the availability of disparate impact claims under the Fair Housing Act independent of the 2013 Rule. The Court's opinion referenced the 2013 Rule, but the Court did not rely on it for its holding. Rather, the Court undertook its own analysis of the Fair Housing Act and engaged in a discussion of standards for disparate impact claims as well as cognizable constitutional limitations to such claims.

Following the *Inclusive Communities* decision, on May 15, 2017, HUD published a **Federal Register** notice that invited public comment to assist HUD in identifying existing regulations that may be outdated, ineffective, or excessively burdensome, pursuant to Executive Orders 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' and 13777, ''Enforcing the Regulatory Reform Agenda.''[6] In response, HUD received significant feedback concerning the 2013 Rule, with many commenters citing the Court's decision in *Inclusive Communities.* Additionally, in October 2017, the Secretary of the Treasury issued a report which explicitly recommended that HUD reconsider applications of the 2013 Rule, especially in the context of the insurance industry.[7] In response to these suggestions and the Court's decision in *Inclusive Communities,* HUD published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on June 20, 2018, inviting comments on possible amendments to the 2013 Rule.[8]

II. The August 19, 2019, Proposed Rule

On August 19, 2019, HUD published a Proposed Rule in the **Federal Register** to replace HUD's disparate impact standard at § 100.500 with a new standard and incorporate minor amendments to §§ 100.5, 100.7, 100.70 and 100.120.[9] The proposed revisions included defenses that a defendant could utilize to rebut the plaintiff's case, by showing that the defendant's discretion was materially limited, that the defendant's use of a risk assessment algorithm was non-discriminatory, or that the plaintiff had failed to plead a prima facie case. Further, the Proposed Rule incorporated the 'artificial, arbitrary, and unnecessary' standard as discussed in *Inclusive Communities.* Specifically, the Proposed Rule explained that defendants may show that a challenged policy or practice advances a valid interest and is therefore not artificial, arbitrary, and unnecessary. Plaintiffs would then rebut this showing by proving that a less discriminatory policy or practice exists that would serve that interest. The proposed revisions also included an interpretation of the Fair Housing Act when in conflict with state laws regulating the business of insurance; clarification of vicarious liability; the provision and clarification of examples of acts that constitute discriminatory practices under disparate impact; and implementation of a burden-shifting framework that more closely aligns with the Court's decision in *Inclusive Communities.* For more information about HUD's Proposed Rule, see 84 FR 42854.

[1] *See* 42 U.S.C. 3608(a) and 42 U.S.C. 3614a.

[2] 78 FR 11460.

[3] *See* 24 CFR 100.5(b), 100.70(d)(5), 100.120(b), 100.130(b), and 100.500.

[4] *See* 24 CFR 100.500(c). In 2016, HUD also published a notice that supplemented its responses to certain comments made by the insurance industry during the rulemaking. *See* ''Application of the Fair Housing Act's Discriminatory Effects Standard to Insurance,'' 81 FR 69012 (Oct. 5, 2016).

[5] 135 S. Ct. 2507 (2015).

[6] *See* 82 FR 22344.

[7] *See* Steven T. Mnuchin and Craig S. Phillips, *U.S. Department of the Treasury Report: A Financial System That Creates Economic Opportunities, Asset Management and Insurance, Treasury.gov* (Oct. 26, 2017), *https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-That-Creates-Economic-Opportunities-Asset_Management-Insurance.pdf.*

[8] 83 FR 28560. HUD received and reviewed all 1,923 comments in promulgating HUD's August 19, 2019 Disparate Impact Proposed Rule.

[9] 84 FR 42854.

HUD received 45,758 comments on the Proposed Rule, which were considered and are discussed in Section IV of this preamble.

III. Changes Made at the Final Rule Stage

In response to public comments, a discussion of which is presented in Section IV, and in further consideration of issues addressed at the proposed rule stage, HUD is publishing this Final Rule. This Final Rule implements the limitations discussed in *Inclusive Communities* and HUD furthers the goal of the Fair Housing Act by exercising its discretion to interpret the Fair Housing Act's disparate impact standard. HUD is therefore adopting the August 19, 2019 Proposed Rule with the following changes:

A. Section 100.5 Unlawful Housing Discrimination Illustration

The Final Rule makes minor clarifying changes to proposed paragraph (b) to clarify the language in paragraph (b) regarding illustrations and allegations of unlawful housing discrimination. The Final Rule also adds a sentence at the end of paragraph (b) to align with the requirements in Executive Order 13891 that agency guidance documents and other actions are consistent with law and the agency's regulations.

The Final Rule maintains paragraph (d), which provides that this part does not require or encourage the collection of data, but removes the proposed second sentence of paragraph (d) because HUD determined that the first sentence of paragraph (d) is sufficiently clear. HUD also understands that there may be cases where collecting data may be required by laws outside this rule, and the second sentence created uncertainty and confusion.

B. Section 100.7 Liability for Discriminatory Housing Practices

After considering and reviewing public comments, HUD decided not to adopt the proposed changes to § 100.7 and is not adopting as final the proposed clarifying changes to paragraph (b) on vicarious liability or paragraph (c) on remedies in administrative proceedings. However, HUD has moved and amended proposed paragraph (c) into § 100.500 paragraph (f). The new paragraph is discussed below.

C. Section 100.120 Discrimination in the Making of Loans

The Final Rule does not include the example proposed in paragraph (b)(1). The Proposed Rule would have amended the first example in paragraph (b)(1) and added a clause to the end of paragraph (b)(1) regarding information related to an individual's particular circumstances. HUD's proposed changes were meant to clarify that, in accordance with the guidance in *Inclusive Communities,* informational disparities must be material in order to violate the Fair Housing Act. HUD believes that the Final Rule's § 100.500 provides for that requirement and therefore the proposed example in paragraph (b)(1) is unnecessary.

D. Section 100.500 Discriminatory Effect Prohibited Standard

Paragraph (b)—Pleading Stage

The Final Rule revises paragraph (b) of the Proposed Rule to clarify that the paragraph discusses the pleading stage and not the prima facie burden. The prima facie burden is the burden that the plaintiff must prove before the defendant is obligated to advance a valid interest or provide some other defense. At the pleading stage, the plaintiff must allege facts that state a plausible disparate impact claim.[10] Paragraph (b) of the Final Rule, therefore, lays out the elements that must be sufficiently pled to survive the pleading stage.

Paragraph (b)(1) is changed to make the phrase ''artificial, arbitrary, and unnecessary'' consistent with the language in *Inclusive Communities.* The order of paragraphs (b)(2) and (b)(3) is reversed because HUD finds it is clearer to state the requirement that an adverse effect must be shown before stating the requirement that the adverse effect be the direct cause. HUD notes that both of these elements require that the plaintiff show that the challenged policy or practice has an adverse effect on a protected class. However, paragraph (b)(2) requires this adverse effect to disproportionately affect protected class members, whereas paragraph (b)(3) requires that the causal link between the challenged policy or practice and the adverse effect be robust. New paragraph (b)(2), formerly paragraph (b)(3), is revised to be consistent with this order, and to add the word ''disproportionately,'' to clarify that the plaintiff must show that protected class members are disproportionately more likely to be affected than individuals outside the protected class. New paragraph (b)(3), formerly paragraph (b)(2), is revised to be consistent with the change in order, and to clarify that HUD intends ''robust causal link'' to be the same standard as ''direct cause.'' Paragraph (b)(4) remains unchanged from the Proposed Rule. Paragraph (b)(5) is revised to more closely adhere to the language of *Bank of Am. Corp.* v. *City of Miami,*[11] which it is intended to codify.

Paragraph (c)—Burden Shifting

Paragraph (c) of the Proposed Rule provided defendants with affirmative defenses which would necessarily show that the plaintiff had not or could not successfully bring a prima facie case. Paragraph (d) of the Proposed Rule listed the burdens of proof and production throughout a disparate impact case and divided these burdens by plaintiff and defendant. While paragraph (d) included a burden shifting framework, this division did not show the three steps consecutively. For clarity, this Final Rule uses a structure that is more similar to § 100.500(c) of the 2013 Rule and codifies the burden shifting approach in § 100.500 (c) of this Final Rule. This section now flows logically from paragraph (b), which outlines the necessary elements of a pleading, to paragraph (c)(1), which states that the first step after the pleading stage is for the plaintiff to prove the elements provided in paragraph (b), which make up the prima facie case (elements 2–5). Paragraph (c)(2) then provides the defendant with the opportunity to advance any valid interest, and paragraph (c)(3) requires the plaintiff to advance a less discriminatory alternative to address any valid interest raised. Paragraph (c)(2) articulates the same standard for the defendant's valid interest that was implied but not explicitly stated in paragraph (d)(1)(ii) of the Proposed Rule. Paragraph (c)(3) is substantively identical to the burden on plaintiffs in paragraph (d)(1)(ii) of the Proposed Rule.

Paragraph (d)—Defenses

Paragraph (d) of the Final Rule now covers only defenses available to the defendant, and it articulates what defenses are available depending on the stage of litigation. It is largely based on paragraph (c) of the Proposed Rule.

Paragraph (d)(1) identifies defenses that a defendant may raise at the pleading stage by relying on the plaintiff's complaint or on any other material that would ordinarily be admissible at the pleading stage under the applicable rules of procedure. Defendants at this stage may argue that the plaintiff has failed to sufficiently plead one of the elements of the prima

[10] *See, e.g., Ashcroft* v. *Iqbal,* 556 U.S. 662 (2009); *Bell Atlantic Corp.* v. *Twombly,* 550 U.S. 544 (2007).

[11] 137 S. Ct. 1296 (2017).

facie case. Defendants may also argue that the policy or practice is reasonably necessary to comply with a third-party requirement which limits the defendant's discretion. HUD believes that this is an appropriate defense at the pleading stage where the defendant can show, as a matter of law, that the plaintiff's case should not proceed beyond the pleading stage when considered in light of a binding authority which limits the defendant's discretion in a manner which shows that the defendant's discretion could not have plausibly been the direct cause of the disparity.

The Final Rule adds paragraph (d)(1)(iii), which was not in the Proposed Rule, to account for binding requirements promulgated by an agency. This may include agency guidance because HUD recognizes, consistent with Executive Order 13891, that a defendant may be obligated to follow agency guidance when it is so binding, or guidance was incorporated into a binding authority, such as a contract. To that end, HUD has also added at this Final Rule stage that the defendant must show that the policy or practice is reasonably necessary to comply with a binding authority. The defendant should not be required to show that its policy is the only possible way to comply with the third party requirement, so long as its policy is reasonably necessary. Similarly, paragraph (d)(1)(iii) of this Final Rule adds that this defense requires the defendant to show that challenged action was reasonably necessary to comply with the restricting law or order, meaning that there may be other reasons the defendant may have chosen the course of action, and there may have been other ways of complying with the restricting law or order, as long as the challenged action was reasonably necessary to comply with the restricting law or order.

Paragraph (d)(2) of the Final Rule provides defenses that are available using evidence appropriate for the stage of litigation. Paragraph (d)(2)(i) supplements paragraph (c)(2) regarding valid interests advanced by the defendant. HUD notes that practices that predict outcomes, such as risk analysis, may lead to a result that appears, without taking into account external factors, to have a disparate impact because, due to factors outside the defendant's control, members of a protected class are disproportionately associated with a particular outcome, such as a higher risk pool. A defendant may show that the predictive analysis accurately assessed risk, which is a valid interest. A defendant may also show that a predictive model is accurate by showing that it is not overly restrictive on members of the protected class. If, for example, a plaintiff alleges that a lender rejects members of a protected class at higher rates than non-members, then the logical conclusion of such claim would be that members of the protected class who were approved, having been required to meet an unnecessarily restrictive standard, would default at a lower rate than individuals outside the protected class. Therefore, if the defendant shows that default risk assessment leads to less loans being made to members of a protected class, but similar members of the protected class who did receive loans actually default more or just as often as similarly situated individuals outside the protected class, then the defendant could show that the predictive model was not overly restrictive.

HUD considers this defense to be an alternative for the algorithm defenses in paragraph (c)(2) of the Proposed Rule. Those algorithm defenses were each intended, in different ways, to provide methods for the defendant to show that an algorithm did not cause a disparate impact. HUD has concluded that these defenses would likely have been unnecessarily broad in their effect, and HUD has determined this alternative would provide some defendants the opportunity to justify predictive models. HUD expects that there will be further development in the law in the emerging technology area of algorithms, artificial intelligence, machine learning and similar concepts. Thus, it is premature at this time to more directly address algorithms.

Paragraph (d)(2)(ii) of the Final Rule provides the defendant the opportunity to show that the plaintiff has failed to prove the prima facie case and replaces paragraph (d)(2)(ii) of the Proposed Rule. Paragraph (d)(2)(iii) mirrors the language in paragraph (d)(1) regarding limited discretion and is repeated here because, while the defendant may bring this defense at the pleading stage, the defendant may also bring this defense with evidence at later stages in the litigation.

Paragraph (f)—Remedies in Discriminatory Effect Cases

Paragraph (f), added in the Final Rule, replaces proposed § 100.7(c) regarding damages. Rather than restricting administrative law judges, paragraph (f) is limited to restricting HUD itself in the types of damages HUD will seek where HUD is the party bringing a discriminatory effects case. The Final Rule also adds an exception that allows HUD to seek civil money penalties in discriminatory effects cases where the defendant has a history of intentional housing discrimination.

Paragraph (g)—Severability

The Final Rule also adds paragraph (g), which reflects HUD's intent that § 100.500 is severable and each part of the section is independently applicable.

IV. Public Comments

The public comment period for the August 19, 2019, Proposed Rule closed on October 18, 2019. HUD received and reviewed 45,758 comments on the Proposed Rule from a wide variety of interested entities, including individuals, fair housing and legal aid organizations, state and local fair housing agencies, state attorneys general, state housing finance agencies, public housing agencies, insurance companies, insurance trade associations, mortgage lenders, credit unions, banking trade associations, real estate agents, and law firms.[12] This section of the preamble addresses significant issues raised by the public comments and is organized by Proposed Rule section, with summaries of the issues followed by HUD's responses. There were also numerous comments received both in support of and opposition to the Proposed Rule generally, as well as comments that did not specifically address one specific section of the Proposed Rule. Those comments are organized into general categories and responded to accordingly.

Following are the issues raised by the public comments and HUD's responses.

General Support

HUD received comments expressing general support for the Proposed Rule. HUD also received comments that supported the Proposed Rule but wrote that HUD could further revise the Proposed Rule to be in line with *Inclusive Communities.* Commenters stated that the Proposed Rule would increase access to fair and affordable housing. One commenter thought that, if implemented, the Proposed Rule would take HUD one step closer to making communities a better place. Commenters also stated the Proposed Rule is effective in uncovering discrimination and ensuring disparate impact cases can be brought forward, while still being consistent with the Act. Commenters stated that the Proposed Rule would specifically incentivize

[12] All public comments on this rule can be found at *www.regulations.gov,* specifically at: *https://www.regulations.gov/docketBrowser?rpp=50&po=0&D=HUD-2019-0067.*

parties to work together and may reduce frivolous and arbitrary claims without creating a material burden on those who have legitimate claims.

Some commenters stated the Proposed Rule would help local governments that face challenges in protecting their citizens and implementing zoning laws, but also ensures that local governments are complying with all applicable state and federal laws; noting that sometimes it is hard to know what is or is not discrimination, especially when an act by government or private individuals appears neutral on its face. One commenter noted that the Proposed Rule appropriately considered changing technology. Other commenters supported the proposition in the Proposed Rule's preamble that neutral decision-making criteria should not lead to regulatory sanction due to disparate impact. Another commenter stated the Proposed Rule promotes the free market system and removes impediments to increased lending in needy communities.

Commenters also noted that the Proposed Rule is consistent with the Supreme Court's *Inclusive Communities* ruling, and that the current regulation is inconsistent with its limitations. Another commenter stated that both *Inclusive Communities* and the Proposed Rule strike a reasonable balance by enforcing fair housing rights without improperly second-guessing otherwise legitimate decisions by public and private entities. One commenter stated that the current regulation is legally inconsistent with case law and congressional intent, and that the 1991 Civil Rights Act amendments superseding *Wards Cove* [13] only applied to Title VII, not the Fair Housing Act; the Proposed Rule corrects this error. Another commenter supporting the Proposed Rule stated that arguably all cases brought since *Inclusive Communities* have been aligned with the Supreme Court's binding precedent in that case, and cases brought that did not meet its standard, or that were based on the 2013 Rule's 3-part test, have been dismissed.

Some commenters stated that courts have erroneously suggested that the 2013 Rule and *Inclusive Communities'* framework are the same, and conforming HUD's rule to *Inclusive Communities* will reduce confusion. Commenters cited differences between the rules, including that the 2013 Rule did not require plaintiffs to prove robust causality, nor did it require that a challenged policy be ''arbitrary, artificial, and unnecessary'' to achieving a valid objective, which can include practical business and profitability. Commenters also stated that the Proposed Rule would be consistent with the limitations articulated in *Inclusive Communities* on disparate impact claims by including safeguards for defendants to prevent abusive use of disparate impact liability.

Commenters supported the change to the burden shifting framework. One commenter noted that the change is fair to all claimants and will permit and protect practical business choices and profit-related decisions. Commenters also supported HUD's revisions to the burden of proof necessary to prove a prima facie disparate impact case and to the affirmative defenses. Many commenters supported the proposed standard for proving a prima facie case, stating it would ensure that defendants are not sued for disparities that they did not create. Commenters also stated that the current HUD standard creates morally and legally untenable circumstances when seeking to determine actual discriminatory behavior, which the Proposed Rule would address. Some commenters wrote that disparate impact policies are currently used to require the consideration of race and perpetuate the theory that minorities are all poor and in need of housing. The commenters wrote that the 2013 Rule forced landlords, lenders and others involved in the housing industry to incorporate race into their decision-making processes to avoid disparate impact charges.

Other commenters supported the Proposed Rule, stating that without the Proposed Rule, parties would be forced to adopt or pursue policies under very different standards regarding what constitutes actionable discrimination, thus increasing uncertainty and leaving resolution exclusively to the courts. Commenters noted that the Proposed Rule would alleviate burden on industry having to manage two different standards. Other commenters stated the Proposed Rule appears to be an effective way to decrease the costs to affected parties litigating claims. Another commenter stated that the amendments help to safeguard assistance providers, because without additional protections, plaintiffs may claim discrimination effects that are caused by ripple effects too distant to link the injury to the defendant.

Commenters stated that they support provisions in the Proposed Rule that ensure valid disparate impact claims may not be based on statistical disparities alone. One commenter wrote that parties should not be liable for statistical coincidences. Another commenter stated that the Proposed Rule would ensure that plaintiffs asserting claims against lenders must show that the program as a whole causes the disparate impact as opposed to a program's element. Another commenter stated the Proposed Rule would provide cost savings and more options to consumers.

Commenters stated that the Proposed Rule will reduce barriers for community and small banks so they can focus on lending and homebuying, and the Proposed Rule removes barriers generally for banks in the mortgage business. One commenter said the Proposed Rule is essential for smaller banks that do not have the resources to defend costly legal challenges that could drive banks out of the lending market. A commenter said that quantifying costs and benefits is difficult due to differing business plans of banks, but that a growing number of banks are exiting the mortgage business.

Other commenters stated that the proposed changes are a step towards fairness for property owners, and that they protect the rights of landlords and tenants. One commenter expressed that the current regulation creates too much risk for small landlords, making it tempting to exit the real estate business, and clearer standards would make it easier to hire, train, and retain real estate professionals, leading to a better experience for all parties. Some commenters stated that making business choices based on credit and economic factors is not inherently discriminatory and homeowners should be able to make rental decisions without fear of litigation. Another commenter stated that they have seen an increase in the number of threatened or actual claims by tenants or advocacy groups arguing that lease enforcement or business practices could be discriminatory due to a small possible correlation between a protected group and a harmful impact of that practice. Multiple commenters stated the Proposed Rule would provide greater clarity, predictability and certainty to processes and provide some assurance that the screening policies they develop are both fair and compliant with applicable law.

Commenters also supported HUD's changes to §§ 100.5, 100.7 and 100.120. One commenter noted that the change to § 100.5 would provide much needed balance and serve an important gate keeping function. Commenters also supported the changes to remedies in § 100.7, stating that the Proposed Rule properly focuses on eliminating the

[13] *Wards Cove Packing Co.* v. *Atonio,* 490 U.S. 642 (1989).

offending practice, rather than money damages or penalties. As for § 100.120, one commenter stated that the proposed change would allow lenders to focus their compliance efforts on avoiding and preventing substantive inaccuracies rather than scrutinizing communications for complete uniformity across potential borrowers. The commenter also supported the clarification added to § 100.120(b)(1), which would allow lenders to provide accurate information to customer inquiries related to their individual situations without fear of triggering a regulatory violation.

Lastly, commenters supported the new language addressing insurance. Some commenters, while supporting the change, requested HUD provide further protections for the insurance industry, homeowners insurance, and commercial habitational insurance. Commenters supported the Proposed Rule's preservation of the state-led insurance regulation system. Commenters wrote that allowing plaintiffs to bring disparate impact claims against insurers serves to undermine the functioning state regulatory system, thereby leading to uncertainty in the marketplace, unnecessary litigation, and increases in premiums nationwide.

Commenters stated that the robust causal link element is consistent with Supreme Court disparate impact precedence and *Inclusive Communities,* and the Proposed Rule corrects the exclusion of this language from the 2013 Rule; it also protects defendants from liability when disparities exist that they didn't create, and disallows statistical disparities alone, that are not connected to the defendant's policy, to support a claim. Other commenters said the robust causality element rectifies conflict between the 2013 Rule and cases brought since *Inclusive Communities.*

HUD Response: HUD appreciates the comments in support of the Proposed Rule changes. HUD agrees that adopting the proposed changes as final will bring clarity to litigants and further the Fair Housing Act's purpose. HUD also agrees that it will benefit banks and landlords, while ensuring that disparate impact cases can continue consistent with Supreme Court precedent. HUD especially appreciates and agrees that clarity given existing case law is needed to assist both plaintiffs and defendants. Lastly, HUD agrees with the comments that supported the change to § 100.5 and § 100.500(e) dealing with insurance.

General Opposition

Comment: HUD's Proposed Rule weakens the 2013 Rule, which protects vulnerable communities, sets a balanced standard, and should not be changed.

Many commenters stated they believed the Proposed Rule would increase discrimination or segregation by removing the 2013 Rule, which commenters stated has been a valuable tool in fighting housing discrimination and is a sufficient and clear causation standard. Some commenters stated that HUD's Proposed Rule creates unwarranted loopholes to the Fair Housing Act that are likely to undermine, rather than advance, access to fair housing and the basic rights of all Americans. Several commenters suggested that the 2013 Rule should not be changed, with one commenter specifically stating that the 2013 Rule's flexibility allowed continued improvement and would allow communities to build on common understandings. Commenters stated further that choosing not to amend the 2013 Rule would have no impact on the status quo because *Inclusive Communities* did not disrupt the current regulation. Another commenter noted that the very nature of case law jurisprudence is that it is constantly growing and changing, to meet altered conditions on the ground and the nuances of impacted parties, entities and stakeholders, and not amending the 2013 Rule allows the law since *Inclusive Communities* to continue to develop in real world conditions, without HUD's interference and negative impact. One commenter stated that not enough time has passed since the Supreme Court's decision and the Proposed Rule. A commenter stated that the Proposed Rule would nearly obliterate disparate impact liability by shifting the burden to plaintiffs, limiting defendants' liability, and removing the ''discriminatory effects'' definition. Some commenters noted that all but one post-*Inclusive Communities* circuit court decision has recognized that the ''robust causality requirement'' was simply the long-standing requirement codified in the 2013 Rule. Commenters stated that given the absence of any directive from the Supreme Court to modify the burden-shifting test, several lower courts have interpreted *Inclusive Communities* as, at most, emphasizing the need to robustly evaluate plaintiffs' existing prima facie burden. One federal district court has disapprovingly characterized defendants as ''strain[ing] to turn the Court's decision to their advantage, insisting that although it affirmed that such claims are cognizable, [the Supreme Court] established 'rigorous, pleading-stage requirements.' '' [14]

Commenters also cited cases showing that the defendant does not need to be responsible for the underlying disparity to be responsible for a disparate impact based on that disparity. Commenters noted that the standards used by *Inclusive Communities* were the same as those in *Wards Cove,* cited by *Inclusive Communities,* and are generally accepted standards.[15] Commenters stated that the existing doctrine is that a plaintiff who is able to identify a policy or practice and marshal a showing of causation has identified a robust cause of their alleged harm. Commenters stated the robust causality requirement refers only to the existence of a causal connection between the defendant's policy and a statistical disparity. Commenters stated that the Court's use of the word ''robust'' in ''robust causal link'' was a modification of the word ''requirement.'' Commenters cited *Cty. of Cook* v. *Bank of Am. Corp.,* which found that *Inclusive Communities* was consistent with the circuit court's past causality analysis.[16]

Commenters stated that the Proposed Rule amounted to cutting off statistics-based claims altogether, by requiring the dispositive statistical analysis be performed before the relevant data can be gathered. Commenters also stated that requiring a robust causal link would create an additional, onerous obstacle for plaintiffs. Commenters stated that *National Fair Housing Alliance* v. *Travelers Indemnity Co.* concluded that plaintiffs continue to meet well-established pleading standards by pleading the existence of statistical evidence demonstrating a causal connection between the challenged policy and the disparities.[17] Commenters also noted the court in *Cty. Of Cook* v. *Bank of Am. Corp.* found a cognizable disparate impact claim where the complainants articulate both a statistical race-based disparity and a specific, multifaceted policy with a robust causal connection to that disparity and stated that the defendants have not shown that *Inclusive Communities* required more.[18]

Many commenters recommended that HUD, rather than implement the Proposed Rule, focus its efforts on enforcing the 2013 Rule, prohibiting housing discrimination, enforcing the ADA, expanding access to affordable

[14] *City of Cook* v. *Bank of Am. Corp.,* 2018 U.S. Dist. LEXIS 55138, at *25 (N.D. Ill. Mar. 30, 2018).

[15] *Tex. Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.,* 135 S. Ct. 2507, 2523 (2015).

[16] 2018 U.S. Dist. LEXIS 55138.

[17] 261 F. Supp. 3d. 20, 31–34 (D.D.C. 2017).

[18] *Id.* at *29.

housing, and more robust fair housing education. Another commenter mentioned that HUD has a direct responsibility to ensure equal opportunity and freedom from discrimination, even if that discrimination is subtle or covert. Several commenters contended that disparate impact liability under the Fair Housing Act is critical for this end, and the 2013 Rule provides clear standards for assessing this responsibility in the market. Commenters stated that the current regulation strikes an appropriate balance or has been effective while other commenters mentioned the effects of policies, rather than intent, in supporting the current regulation. Commenters also suggested that HUD and DOJ amend its November 2016 Joint Statement to include the other types of discriminatory actions that restrict manufactured housing.

Commenters stated that disparate impact liability was vital for handling housing cases after natural disasters such as Hurricanes Katrina and Rita and led to more affordable rental housing in Louisiana and families receiving relief from discriminatory recovery policies. Commenters provided the following examples of the types of alleged discrimination or societal problems which would be harder to challenge or solve under the Proposed Rule: Landlords imposing unfair requirements in their properties; gentrification leading to demolition of properties and eviction of low income families of color; neighborhoods having unaddressed high crime rates and underfunded schools; unfair distribution of city services, parks, and maintenance; zoning rules that keep lower income families out of better funded neighborhoods and communities; facially neutral policies by banks and lending institutions which limit the availability of home mortgage products based on the value of the home being purchased, which disproportionately exclude minorities from access to mortgages; landlords who refuse to rent to those who use housing choice vouchers or who receive disability benefits; financial and real estate institutions adopting policies that result in the blight and deterioration of foreclosed homes in communities of color; segregation of protected classes; the growing wealth gap; decreasing home-ownership rates for minority populations; redlining; and unreasonable lease restrictions imposed by landlords. Another commenter suggested that the Proposed Rule would negatively impact federal, state, and local government budgets by increasing housing instability.

A commenter stated the Proposed Rule would impact public schools, which are dependent on community funding, creating disparities among schools. Some commenters opposed the Proposed Rule because they believe it could negatively impact the health and safety of people reliant on affordable housing, increase housing instability, harm the overall economy, and reduce access to better neighborhoods and schools.

One commenter stated that the proposed changes will bring uncertainty to the credit industry and put innovation at risk. Another commenter stated that the Proposed Rule threatened challenges to discriminatory zoning and land use planning decisions involving manufactured housing. The commenter stated that the 2013 Rule served a vital role in educating communities, including public officials, about the unintended consequences of local zoning and land use decisions, which can prohibit the availability of affordable housing, and was concerned that the Proposed Rule would deny the educational aspects that the 2013 Rule provides.

Some commenters provided statistical evidence of their claims, including data relating to housing displacement. One commenter stated that research has shown that housing interventions for low-income individuals improve health outcomes and reduce health care costs while families and children experiencing housing instability, including homelessness, have a greater risk of suffering detrimental physical and mental health effects, which increases with the frequency of instability. Commenters further stated that the Proposed Rule might specifically harm Housing Choice Voucher participants by limiting where they can live, which would increase reliance on public welfare and place an undue burden on states/localities to meet federal child welfare requirements. Other commenters believed that the Proposed Rule could allow landlords to exclude all veterans, exclude veterans who do not hold full-time jobs, or charge veterans fees not charged to other residents.

Commenters remarked that the Proposed Rule would only serve to make more people homeless when the administration is constantly speaking about the homeless epidemic. One commenter noted that the Proposed Rule would result in individuals losing their housing, which could in turn lead to increased homelessness and that excluding them from their original safety nets will not benefit society.

Commenters expressed concern for the ability of specific populations to maintain affordable housing, such as seniors, people living in low vacancy areas, individuals without access to stable housing, and individuals living in rural areas. One commenter wrote the Proposed Rule could allow landlords to exclude seniors who don't hold full-time jobs. Another commenter cited a study showing that 76% of adults age 50+ prefer to stay in their current homes and noted the aging population faces discrimination often closely related to the likelihood of their acquiring disabilities. Another commenter mentioned that it would be too burdensome for the elderly to prove they need basic accommodations, such as a grab bar in the bathroom. Another commenter pointed out that senior homelessness in their city has risen in the past year and policies basing occupancy on employment status can exacerbate this trend, which the Proposed Rule will not be effective to fight.

Some commenters expressed concern about the Proposed Rule's impact on housing opportunities for LGBTQ individuals and queer people of color because without disparate impact it would be extremely difficult to prove sexual orientation discrimination and that LGBTQ people are disproportionately likely to experience housing discrimination. One commenter cited HUD's research regarding discrimination against LGBTQ individuals. One commenter expressed concern that religious exemptions would allow federal insurance contractors to discriminate against LGBTQ people who are not protected by the Civil Rights Act.

Commenters also objected to the Proposed Rule because religious discrimination in housing provisions often come through facially neutral policies. One commenter remarked that the Proposed Rule undermines the path for legal redress for those in the Jewish community. Another commenter cited an example where an apartment management company required pool dress code compliance based on practices of the Orthodox Jewish community and a complaint against a homeowner's association that normally prohibited outdoor lights and decorations but allowed winter holiday decorations.

Commenters remarked that the Proposed Rule will also make it harder for individuals to avoid falling victim to discrimination based on sex. Commenters worry that communities composed largely of low-income people of color will experience more inequities,

such as less well-maintained roads and litter cleanup, as a result of the Proposed Rule. Another commenter remarked that low-income Americans receiving government benefits do not often receive their checks on the first of the month, which makes them late in paying their rents and vulnerable to evictions in cases where Landlords use neutral policies that all rent be paid on the first of the month.

Commenters stated that the Proposed Rule would increase harms to domestic violence survivors, and HUD fails to address the Proposed Rule's consequences regarding policies such as emergency transfer requirements, crime-free policies, nuisance ordinances, unjust tenant-screening policies, and source-of-income discrimination.

Commenters highlighted that HUD has recognized the 2013 Rule's applicability to discrimination against survivors of domestic violence, dating violence, sexual assault, and stalking face in ''HUD Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, April 4, 2016'', and ''HUD Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services, September 13, 2016.'' [19]

A commenter stated that the 2013 Rule has been used to protect non-English speakers' equal access to housing. Commenters stated that the Proposed Rule would harm people from a different national origin. One commenter noted that they have used the 2013 Rule to stop policies that blocked legal refugees from renting homes. Other commenters used the 2013 Rule to force cities to reconsider development policies that displaced immigrants. A commenter remarked that the Proposed Rule has unintended negative effects on persons like foreign university students and persons on fellowships, even fellows funded by the U.S. government, who end up making risky housing decisions to afford their stay.

Some commenters expressed concern that the Proposed Rule would make it more difficult for people with disabilities to request reasonable accommodations in order to use and enjoy housing and that it would make policy challenges, such as against a homeowner's association, more difficult to bring for people with disabilities. A commenter stated that the 2013 Rule has provided people with disabilities with recourse in the face of pervasive discrimination and barriers to accessible, equitable housing. According to a commenter, HUD has failed to analyze and disclose the consequences of curtailing disparate impact liability on people with disabilities that would arise under the Proposed Rule.

A commenter stated that the effect of the Proposed Rule would be to further isolate people with disabilities from family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment and stigmatize them as incapable or unworthy of participating in community life. One commenter remarked that people with disabilities, including people with mobility impairments, blindness, and deafness, already face barriers finding housing that is accessible and that the Proposed Rule would be yet another barrier. One commenter suggested that the Proposed Rule would allow lenders to discriminate based on borrowers' Social Security Disability Income. Another commenter stated housing providers hide behind insurance policies that have animal or breed restrictions to deny access to people with emotional support animals. Several commenters suggested that the Proposed Rule could allow landlords to exclude people with disabilities who do not hold full-time jobs. Commenters observed that the Proposed Rule would undermine the integration mandate in the Supreme Court's decision in *Olmstead* and implementation of the Americans with Disabilities Act (ADA).[20]

Commenters remarked that people in recovery from drug addiction and alcoholism are protected as people with disabilities under the Fair Housing Act. Some commenters remarked that in many cases, local governments use facially neutral but discriminatory zoning and land use tactics that prevent people with substance abuse disorders from being able to live in the supportive environment of a recovery home. Commenters believed the Proposed Rule would make it significantly harder to prove discrimination in housing for policies that seem neutral, but in practice unfairly exclude certain groups of people or segregate certain communities and further limit access to a critical recovery support.

Commenters stated that the intersection of protected classes compounds the negative impacts of the Proposed Rule, as often a person in one protected class belongs to another protected class, such as women who are victims of domestic violence. One commenter remarked that the intersection of race and gender is the most reliable factor in predicting eviction in Philadelphia (out of the Philadelphians that have evictions, 70% are women of color). Commenters believe that the Proposed Rule would exacerbate existing discriminatory outcomes for women of color since it would allow housing providers to evade awareness of the impact of their own discriminatory practices.

One commenter stated that the Proposed Rule could protect banks with tiered interest rate policies even though such policies may have a disparate impact on homebuyers in predominately minority neighborhoods with lower home values. Some commenters argued that the Proposed Rule would be financially burdensome or make compliance more difficult for small businesses. One commenter said the Proposed Rule undermines fair market competition because smaller companies or new entrants to the marketplace that cannot assert that they also establish industry standards will face a steep, potentially insurmountable barrier to compete in this space.

Commenters remarked that the Proposed Rule would make it more difficult for individuals with criminal records to obtain housing, because housing providers could have admissions policies such as blanket bans on people with criminal records, or with arrests and convictions that arise from the criminalization of homelessness and do not pose a safety concern. One commenter provided an example of how someone with a minor charge or misdemeanor that they had from 20+ years ago can impact their housing access. Another commenter cited statistics regarding the number of minorities incarcerated in Illinois and recidivism rates in support of the argument that stable housing is necessary for former offenders. A commenter noted that Cook County recently passed the Just Housing

[19] U.S. Department of Housing and Urban Development, *HUD Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services, HUD.gov* (Sept. 13, 2016), *https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF; HUD Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, HUD.gov* (April 4, 2016), *https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.*

[20] 42 U.S.C. 12101 *et seq.; Olmstead* v. *L.C. by Zimring,* 527 U.S. 581 (1999).

Ordinance,[21] which acknowledges that background check policies have a discriminatory and disparate impact on Black and Latinx communities, as well as people with disabilities. The commenter believed this ordinance is an example of a local government dedicating its resources to the principles of the 2013 Rule and proposes HUD keep the 2013 Rule since it strengthens communities by allowing victims of all types of systemic discrimination to seek recourse and change policies. A commenter remarked that the Proposed Rule would limit the ability of advocates to negotiate with landlords to adopt more inclusive background policies. A commenter remarked that barriers to housing based on an individual's criminal record can also arise from children with criminal records, a disproportionate number of whom are children of color, which similarly affects families' ability to stay united in adequate housing. Another commenter observed that men of color are incarcerated at a higher rate, they disproportionately face more obstacles to housing than their white counterparts, and thus disparate impact is what currently protects them from the effect of institutionalized racism.

One commenter noted that the 2013 Rule and HUD guidance was instrumental in adopting a fair housing ordinance related to the use of criminal records in housing decisions. One commenter wrote that disparate impact theory is extremely important in small cities and rural areas as a viable means of enforcing fair housing rights, especially for protected classes. Another commenter specifically addressed the impact of the Proposed Rule on manufactured housing, related to disparate impacts from state actions on property used for manufactured housing. The comment cited HUD's role in the White House Council on Eliminating Barriers to Affordable Housing, and HUD's recent housing finance reform proposal,[22] which includes a section on eliminating such barriers to the use of manufactured housing as affordable housing. The commenter argued that HUD has broad preemption authority with respect to zoning and land use planning, which negatively impacts the availability of affordable housing that goes together with preemption authority over disparate impact. The commenter encourages HUD to revise the Proposed Rule as it relates to discriminatory zoning and land use requirements, to preserve the ability of plaintiffs to pursue legitimate disparate impact cases in these instances, including where it affects the availability of manufactured housing.

Commenters wrote that the 2013 Rule's disparate impact analysis helps defend protected classes and those who are being discriminated against, ensuring equality in society and fair housing policy by using data-driven approaches to modify facially neutral yet discriminatory policies that impose unnecessary barriers to housing. Commenters noted that the 2013 Rule has been a valuable tool for victims, communities, fair housing practitioners, and the housing industry, to challenge structural inequalities, in holding potential defendants accountable for unintentional and intentional discrimination, as well as combating implicit bias, and has been instrumental in helping to remedy or alleviate discriminatory practices, including historical patterns of segregation. Some commenters provided examples of cases where the 2013 Rule protected tenants from discriminatory housing practices, specifically shielding tenants who receive housing subsidies from being subjected to rental increases or denied insurance. Other commenters used personal and historic examples to highlight the effectiveness of the 2013 Rule in combatting discrimination.

One commenter stated that HUD is allowing public money to fund discrimination in violation of law and another commenter stated that the Proposed Rule constitutes a human rights violation. Another commenter stated the Proposed Rule would result in fewer investigations by HUD's Office of Fair Housing and Equal Opportunity (FHEO). Commenters stated that HUD should not adopt the Proposed Rule because the 2013 Rule is consistent with HUD's mission, including the statutory requirement to affirmatively further fair housing under the Fair Housing Act, the U.S. Constitution, and historic precedent interpreting disparate impact under the Fair Housing Act.

Some commenters cited the societal benefits of the 2013 Rule, including health equity, healthy families, a healthy environment, educational achievements, long-term earnings, and community integration of individuals with disabilities. In spite of the Fair Housing Act's passage and this national policy, one commenter stated that there are over 4 million instances per year of discrimination impeding people's ability to secure affordable insurance products, access quality credit, rent affordable and safe housing, and obtain accessible housing units, which many commenters argued were able to be combated by the uniform standard of the 2013 Rule. These commenters also stated that the 2013 Rule is supported by the *Inclusive Communities* decision and furthers fair housing and fair lending. Several commenters highlighted the positive impact the 2013 Rule had on families with children, such as challenging restrictions on the number of occupants in a unit, as well as restrictions on the use of amenities, where discriminatory intent may not be shown. Another commenter cited data showing that there were 2,675 familial status discrimination complaints filed in 2017, the majority pertaining to rental market discrimination. Other commenters feel that without the 2013 Rule's legal remedies, the country is in danger of returning to the pre-1988 conditions in which one-quarter of rental housing was restricted against families with children. Commenters also stated that by making disparate impact cases harder to bring, the Proposed Rule would have an adverse effect on those impacted by historic patterns of segregation, which are still present today.

One commenter also noted that under the Act, HUD is currently tasked with determining the reasonableness of an occupancy standard considering factors such as size of bedroom and age of children, and that with the Proposed Rule, municipalities would not be required to explain how restrictions on bedroom occupancy related to a legitimate government objective. Another commenter supported the 2013 Rule because it allowed civil rights ''watchdogs'' to hold housing providers and others accountable, including a 2018 federal lawsuit that challenged a property management company's policy that was having a disparate impact on African Americans in Chicago. Other commenters stated that the 2013 Rule is balanced by providing a well-tailored pleading standard, a defense to disparate impact claims, and a three-step, burden-shifting process which addresses discrimination while preventing frivolous lawsuits. Another commenter stated that the 2013 Rule is critical in negotiations with housing providers even before any official complaint is filed.

Commenters stated that there is no need for the Proposed Rule to shift the balance of interest for parties to make cases more difficult to bring, as the

[21] Cook County Government, *Just Housing Amendment to the Human Rights Ordinance, cookcountyil.gov, https://www.cookcountyil.gov/content/just-housing-amendment-human-rights-ordinance.*

[22] Exec. Order No. 13,878, 84 FR 30853 (June 25, 2019); U.S. Department of Housing and Urban Development, *Housing Finance Reform Plan, HUD.gov* (Sept. 2019), *https://www.hud.gov/sites/dfiles/Main/documents/Housing-Finance-Reform-Plan0919.pdf.*

current regulations have not led to an increase in unwarranted Fair Housing Act litigation or compliance costs. With the exception of a lawsuit filed by insurance trade groups, commenters stated that none of the wide array of entities regulated by the 2013 Rule challenged its legality.

Some commenters believed that the Proposed Rule sought to legalize housing discrimination and segregation or seek to reframe disparate impact as classic disparate treatment. Another commenter stated that HUD has failed to ask how the Proposed Rule might increase or decrease housing inequality or segregation. In this world of rapid societal change, the standards for proving disparate impact under the Fair Housing Act should stay the same so that the Act's remedial purpose can be effectuated, and the 2013 Rule should not be changed. A commenter added that there has been less litigation because of *Inclusive Communities* and the 2013 Rule. The commenter stated that the 2013 Rule's clarity allows parties to make informed decisions about how policies or practices are impacting protected classes and cases are resolved quicker and more efficiently.

Commenters noted that the current and Proposed Rules are both too complicated and proposed HUD make Fair Housing Act regulations simpler so that individuals might have a chance to bring a successful claim. Examples suggested included simplified and clearer guidelines with examples for evidence required.

One commenter suggested that HUD's questions were soliciting positive responses from banks, landlords, or other similar defendants who welcome a rule drafted heavily in their favor, whereas the Proposed Rule would have a significant negative economic impact on protected class households as they will incur greater costs when seeking housing, loans and insurance, and such households will be unable to surmount the barriers created by the Proposed Rule. One commenter said both *Inclusive Communities* and the Proposed Rule make disparate impact claims more difficult and complicated, and therefore more expensive, and may discourage such claims because they appear to increase burdens and costs for complainants, shifting those costs from respondents. Another commenter asserted plaintiffs may review the Proposed Rule and not bring cases due to the conclusion that their claim against an insurance company will not be successful, which will greatly decrease litigation costs and risk of litigation cost to insurance companies; however, it will do nothing to solve the real-world discrimination wrought by unfair and potentially discriminatory policies insurance companies use to perpetuate housing segregation.

HUD Response: HUD appreciates the insights provided. HUD disagrees that the Proposed Rule deviates from the agency's mission or the Fair Housing Act's purpose, or that it allows discrimination. HUD thoughtfully considered these comments and made several changes to provisions of the Proposed Rule in response, as discussed in more detail elsewhere. Further, HUD will continue its efforts to enforce the Fair Housing Act and other civil rights statutes within its purview. As discussed in HUD's Proposed Rule, the Supreme Court did not rule specifically on the validity of the 2013 Rule when it decided *Inclusive Communities,* but only on the issue of whether disparate impact theory is cognizable under the Fair Housing Act. As discussed further below, the Court's reference to HUD's 2013 Rule was only in passing. The changes being made by the Proposed and Final Rules are within HUD's discretion to interpret the Fair Housing Act, and are consistent with the direction of *Inclusive Communities* to ensure that the constitutional concerns raised by the Court are fully addressed. The Final Rule will afford the use of data-driven approaches to modify facially neutral yet discriminatory policies, while at the same time providing clarity to members of the public seeking to comply with the Fair Housing Act or bring a claim for disparate impact that meets the constitutional requirements outlined in *Inclusive Communities.* The changes made will also ensure a balanced approach to disparate impact litigation by providing a roadmap for plaintiffs and protecting against frivolous lawsuits while still allowing disparate impact liability to be used to hold violators accountable. The changes also provide guidance for litigants to assist in navigating the limitations that courts have placed on such claims.

HUD acknowledges commenters' concerns regarding changes being made to the 2013 Rule but notes that the Final Rule still recognizes disparate impact as a viable theory of discrimination, which can be used to hold violators accountable for discriminatory policies and practices. The Final Rule also allows municipalities and local governments to implement ordinances and laws that reflect the needs of their distinct communities while providing a tool to challenge policies that have a disparate impact on protected classes. HUD believes that the Final Rule will better serve the 2013 Rule's purposes, including educating the public regarding the purpose and scope of disparate impact law, as it builds upon it by clarifying provisions in light of *Inclusive Communities.* It is important to note that with regard to commenters' statements surrounding the importance of disparate impact as a theory, the Final Rule does not remove the availability of disparate impact claims to address Fair Housing Act violations, and does not change the societal benefits of HUD's implementation of the Fair Housing Act. Rather, the Final Rule provides greater clarity on the use of disparate impact to address alleged violations in a manner that increases the rule's effectiveness so as to best eliminate discriminatory practices.

HUD's interpretation is consistent with *Inclusive Communities'* clarification that *Gallagher* v. *Magner* was ''decided without the cautionary standards announced in this opinion[.]'' [23] *Gallagher* argued that a Fair Housing Act violation can ''arise from a statistical link between income and race[.]'' [24] This standard is clearly inconsistent with the robust causality standard articulated in *Inclusive Communities.* In HUD's view, the 2013 Rule presents only a brief explanation of the requirements for prevailing on a disparate impact claim, and therefore invites speculation and does not provide sufficient clarity about the standard used by the courts.

This Final Rule, however, is clear and consistent with the language used in *Inclusive Communities.* It does not set a higher standard than the one currently used by most courts. The Final Rule aligns with *Inclusive Communities,* which stated that liability in disparate impact cases cannot be ''imposed based solely on a showing of a statistical disparity.'' [25] The suggestion that ''robust'' was intended to modify the word ''requirement'' does not change HUD's conclusion that plaintiffs are required to show a robust causal link; for the causal link to serve as a robust requirement, it must itself be robust.

Further, as several commenters stated in support of the Proposed Rule, the clarification provided by the Final Rule provides a balanced approach to protect small banks, businesses and landlords while still providing a mechanism for addressing inequality and discrimination, including zoning and land use issues. HUD does not believe the Final Rule will have the suggested

[23] *Tex. Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.,* 135 S. Ct. 2507, 2524 (2015).

[24] 619 F. 3d 823, 836 (8th Cir. 2010).

[25] *Inclusive Communities,* at 2512.

negative effects on the various constituencies and institutions cited in the comments because, as discussed throughout this preamble, HUD believes that this Final Rule still allows disparate impact claims to be brought when appropriate under law, and, therefore, these constituencies and institutions will still have disparate impact claims as a basis for relief under the disparate impact doctrine.

As to the comment regarding soliciting positive comments, HUD has submitted this Proposed Rule for public comments in good faith, has welcomed all comments and given all comments serious consideration. HUD made significant changes in this Final Rule in light of comments, such as removing the defense based on the existence of a model or algorithm.

HUD believes this Final Rule provides greater clarity, in the wake of *Inclusive Communities,* regarding the requirements for bringing and defending against disparate impact claims. This Final Rule is designed to clarify what evidence is needed in order to successfully challenge a policy or practice, which HUD believes will lead to a greater percentage of successful disparate impact claims while reducing the number of claims that are not appropriate under the disparate impact theory.

Further, as noted above, nothing in this Final Rule alters the myriad other mechanisms for protecting individuals against intentional housing discrimination.

This Rule does not alter the rights and protections available under the Fair Housing Act. For example, housing providers must make reasonable accommodations to policies or practices that interfere with the ability of a persons with a disability to have an equal opportunity for the full enjoyment of housing under that Act. This Rule does not change those protections. Further, a policy with widespread effect could still be successfully challenged under this Rule.

With regard to issues of sexual orientation and domestic violence, this Final Rule leaves unchanged HUD's regulatory protections, which are separate from the Fair Housing Act.[26]

With regard to lending and insurance practices, this Final Rule removes the proposed defense solely based on the defendant following a risk-assessment model or algorithm that had acceptable characteristics, thereby leaving such cases to be examined under the general framework, with the same defenses available in other types of disparate impact cases.

With regard to age, legal protections under the Age Discrimination Act of 1975, for example, remain unaffected. The civil rights laws and authorities that apply to HUD programs are listed here: *https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_and_related_law.*

As to the complexity of the Proposed Rule, disparate impact claims often require the resolution of inherently complex matters. HUD's Final Rule clarifies the legal standards and procedures and aligns them with *Inclusive Communities,* the seminal Supreme Court ruling in this area.

HUD also notes that statistics-based claims, like all other claims, would be required to meet pleading standards under the FRCP. HUD recognizes that plaintiffs may not have access to statistical data needed to prove a claim. However, plaintiffs who are relying on statistical data to make a claim must be able to sufficiently plead the existence of statistics sufficient to meet pleading standards.

Comment: The Proposed Rule contradicts HUD's prior findings and other relevant authorities.

Some commenters stated that the Proposed Rule contradicted HUD's previous statements, including previous guidance regarding cognizable disparate impact claims related to criminal record screening and HUD's determination that exemptions and safe harbors undermine the Fair Housing Act's remedial purpose. One commenter specifically noted that in 2013, HUD found that regulated entities have successfully followed the existing rules since at least 1994, and the existing rules have permitted them to ''conduct consistent self-testing and compliance reviews, document their substantial, legitimate nondiscriminatory interests, and resolve potential issues so as to prevent future litigation.''

One commenter noted that the Proposed Rule did not account for existing case law or HUD's own prior positions, and HUD, therefore, did not rely on the administrative knowledge and experience which largely account for the presumption that Congress delegates interpretive lawmaking power to the agency. The commenters wrote that HUD is, therefore, not within the scope of HUD's delegated authority. Additionally, several commenters stated that, through the Proposed Rule, HUD is improperly substituting its judgment for that of Congress and the judiciary. Some commenters stated that HUD lacked the authority to make many of the changes in the Proposed Rule because Congress ratified the Act in 1988 without disturbing disparate impact precedent and the current 3-step burden shifting framework. Commenters stated further that this rules out use of *Chevron* deference. Commenters noted that as HUD acknowledged in the 2013 Rule, HUD does not have the power to create disparate impact law.

Some commenters opposed the Proposed Rule because they stated that it ignores and is inconsistent with existing agency guidance dating back to 1993, such as the 1994 Joint Policy Statement on Discrimination in Lending, signed by HUD, the Department of Justice, and nine other federal regulatory and enforcement agencies.[27] That Statement applies to lending discrimination under both the Act and Equal Credit Opportunity Act (''ECOA'')[28] and describes general principles that these agencies would consider in identifying lending discrimination. Moreover, commenters stated the Proposed Rule deviates from the Statement in various ways—for example, by imposing a requirement to plead that a policy is artificial, arbitrary, and unnecessary; by deleting the requirement that a justification cannot be hypothetical or speculative; and by creating exemptions for the use of models. Commenters suggested that lending institutions subject both to ECOA and the Act would be left to reconcile two conflicting regimes and inconsistent agency positions, while the 2013 Rule was drafted explicitly to acknowledge and avoid this unnecessary burden. Another commenter stated that the Proposed Rule conflicts with the Consumer Financial Protection Bureau and federal regulators' guidance on disparate impact claims under ECOA, as well as with Title VII precedent (regarding the prohibition of employment discrimination).

HUD Response: HUD appreciates the comments regarding the interplay of the Proposed Rule and other HUD guidance, jurisprudence and findings, but generally believes that the changes from the 2013 Rule are in line with binding authorities and otherwise within HUD's discretion to make for the reasons set forth herein. We note that sub-regulatory guidance is generally not binding. As discussed by commenters supporting the changes, this Final Rule provides greater clarity to all parties

[26] *See, e.g.,* Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, 81 FR 80724.

[27] *Policy Statement on Discrimination in Lending,* 59 FR 18266 (April 15, 1994), available at: *https://www.govinfo.gov/content/pkg/FR-1994-04-15/html/94-9214.htm.*

[28] 15 U.S.C. 1691 *et seq.*

involved in housing transactions regarding disparate impact liability. Further, HUD, as the agency charged with administering the Fair Housing Act,[29] has extensive experience administering the Fair Housing Act and in investigating and adjudicating claims arising under the Act, which provides it with the expertise to modify and create rules interpreting it. In addition, HUD has specific legal authority to issue rules and regulations to carry out the Fair Housing Act.[30] HUD disagrees that the Proposed Rule was designed to restrict the scope of judicial review on Fair Housing Act claims; HUD sought to clarify for all parties the burdens involved in bringing or defending against a disparate impact claim under the Act.

Where HUD departs from past authoritative positions, it does so consistent with the Supreme Court's opinion in *Inclusive Communitie*s, as discussed further elsewhere in these responses, and consistent with the position that disparate impact claims are cognizable under the Act. As to guidance for disparate impact claims under ECOA and Title VII, while those were relevant models at the time of the 2013 Rule, further consideration as well as the issuance of the Supreme Court's opinion in *Inclusive Communities* has led HUD to determine that it should use its discretion in interpreting Title VIII disparate impact law to change its regulations in a way that HUD believes will best advance the purpose of the Fair Housing Act.

Comment: The Proposed Rule is not compliant with Inclusive Communities.

Several commenters provided arguments regarding the scope and breadth of the Supreme Court's decision in *Inclusive Communities.* A commenter suggested that HUD contradicted itself when stating that the Proposed Rule will enable parties to understand their responsibilities without the need to research and compile case law since *Inclusive Communities,* while also admitting that the 2013 Rule codified then-prevailing case law for bringing a discriminatory effect claim and the 2013 Rule provided clarity to all parties involved in a case. Another commenter opposed the Proposed Rule because the Supreme Court held that the Fair Housing Act recognized disparate-impact liability and approved the framework for establishing that liability in HUD's 2013 Rule. Longstanding judicial and agency interpretation—and Congress's reaffirmation of that interpretation in the 1988 amendments to the Fair Housing Act—were a central reason for the Supreme Court's recognition of disparate impact liability in *Inclusive Communities.*[31] The Court emphasized the continued importance to ''residents and policymakers [who] have come to rely on the availability of disparate-impact claims'' and quoted a brief filed by a number of states arguing that ''[w]ithout disparate impact claims, States and others will be left with fewer crucial tools to combat the kinds of systemic discrimination that the Fair Housing Act was intended to address.'' [32]

One commenter stated that the 2013 Rule, *Inclusive Communities,* and subsequent case law align in that they all recognize the validity of disparate impact claims, but the Proposed Rule does not because it requires more burdensome standards for valid disparate impact claims than those imposed by the Supreme Court. The commenter recommended that HUD use the standards announced by the Court and be neither more nor less restrictive. One commenter wrote further that *Inclusive Communities* adopted the construction of the 2013 Rule, based on statutory interpretation and four decades of Federal jurisprudence. Commenters cited a brief filed by HUD in 2016 to note that *Inclusive Communities* was consistent with the 2013 Rule. Commenters stated that most circuit courts who have considered disparate impact in fair housing or other types of cases have relied on *Inclusive Communities,* and the 2nd and 10th Circuits have relied on HUD's interpretation or applied their own standards. A commenter continued by arguing that there are no recent cases that are inconsistent with either *Inclusive Communities* or the 2013 Rule.

Commenters stated further that the Supreme Court in *Inclusive Communities* discussed the 2013 Rule—including its requirements for making out a prima facie case and burden-shifting—without suggesting that the 2013 Rule required revision.[33] A commenter stated that the petitioner in *Inclusive Communities* was only granted certiorari on the question of whether the Fair Housing Act permits disparate-impact claims, and not what the standards and burdens are for adjudicating such claims. Thus, the Court specifically declined to assert jurisdiction over questions regarding the appropriate standards and burdens.[34] Therefore, parties and the many amici who briefed the case spent little time contesting what the burdens and standards are in disparate-impact litigation.

A commenter also noted that *Inclusive Communities* referred to Title VII as an interpretive touchstone, but Title VII is not referenced in HUD's Proposed Rule. Later courts generally agree that *Inclusive Communities* dictates continuing reliance on preexisting Fair Housing Act and Title VII law in resolving granular questions about disparate impact liability.[35] Commenters provided examples in support of the contention that district courts have encountered no problems in continuing to apply the 2013 Rule and long-standing doctrine post-*Inclusive Communities,* including citations to 36 district court cases that have cited the 2013 Rule since *Inclusive Communities.*

Another commenter suggested that any agency guidance deviating from *Inclusive Communities* is not entitled to deference because the Supreme Court did not rely on the current regulation for its holding in *Inclusive Communities;* the Court undertook its own analysis of the Fair Housing Act and HUD has only limited authority to deviate from circuit precedent when ambiguous statutory provisions are at issue. Commenters suggested that the Proposed Rule goes beyond that authority and would raise constitutional concerns if followed, while the 2013 Rule is a cognizable theory under the Fair Housing Act and constitutional under the Fourteenth Amendment.

HUD Response: HUD notes and agrees with commenters who contend that *Inclusive Communities* primarily discussed whether disparate impact is cognizable under the Fair Housing Act; however, given the Court's fulsome explication of the constitutional limitations on disparate impact liability, HUD believes the 2013 Rule should be modified to provide further clarity in light of the explanation provided in *Inclusive Communities,* and to better reflect HUD's interpretation of the Fair Housing Act. HUD agrees with comments that the Final Rule

[29] *See* 42 U.S.C. 3608(a).

[30] *See* 42 U.S.C. 3614a.

[31] *Inclusive Communities,* at 2525.

[32] *Id.*

[33] *See, e.g., id.* at 2514–15 (describing prima facie case and burden-shifting in the 2013 Rule); *id.* at 2522–23 (describing defendants' burden ''to state and explain the valid interest served by their policies'' and HUD's decision in 2013 Rule not to use term ''business necessity'' in formulating defendant's burden); *id.* at 2523 (after describing concerns raised by specific claim at issue in case, observing with approval that HUD's 2013 Rule ''does not mandate that affordable housing be located in neighborhoods with any particular characteristic'') (quoting 78 FR 11476)

[34] See Sup. Ct. Rule 14(1)(a).

[35] *See de Reyes* v. *Waples Mobile Home Park L.P.,* 903 F.3d 415 (4th Cir. 2018); *Wetzel* v. *Glen St. Andrew Living Cmty., LLC,* 901 F.3d 856 (7th Cir. 2018); and *Nat'l Fair Hous. Alliance* v. *Travelers Indem. Co.,* 261 F. Supp. 3d 20 (D.D.C. 2017).

implements standards consistent with those articulated by the Court. HUD also agrees with commenters, as discussed elsewhere, that Title VII continues to aid in understanding disparate impact liability under the Fair Housing Act but notes that the different subject matter necessarily requires distinctions between the areas of law, as recognized in *Inclusive Communities* itself. HUD notes that while courts may continue to cite to the 2013 Rule as guidance or to provide a framework for disparate impact law, that does not necessarily mean that the 2013 Rule is the only permissible interpretation of disparate impact liability under the FHA. As noted, one court of appeals has concluded that the 2013 Rule is in fact inconsistent with *Inclusive Communities,* because *Inclusive Communities* ''announce[d] a more demanding test than that set forth in the [2013] rule.'' [36]

HUD's past positions in litigation briefs are not binding on HUD in rulemaking. HUD issued an ANPR soliciting comments on whether HUD's 2013 Rule is inconsistent with *Inclusive Communities.*[37] HUD received numerous comments in response concerning the 2013 Rule and *Inclusive Communities.* Additionally, in October 2017, the Secretary of the Treasury issued a report that explicitly recommended that HUD reconsider applications of the 2013 Rule, especially in the context of the insurance industry.[38] Based on these comments, HUD concluded that the 2013 Rule did not adequately align with *Inclusive Communities* and did not properly reflect HUD's interpretation of Title VIII disparate impact law. Therefore, HUD issued the proposed disparate impact rule.

This conclusion is borne out by *Inclusive Communities'* three references to HUD's 2013 Rule. First, the Court summarized the burden-shifting test in HUD's 2013 Rule as part of its statement of the case's history and the basis of the Fifth Circuit's decision. Next, the Court referred to the ''leeway to state and explain the valid interest served by their policies,'' referring to this phase as analogous to the business necessity defense under Title VII of the Civil Rights Act and noted that HUD did not use the term ''business necessity'' because that phrase would not be understood to cover the full scope of activities covered by the Fair Housing Act. The Court's third reference to the 2013 Rule notes that ''HUD itself recognized [that] disparate-impact liability does not mandate that affordable housing be located in neighborhoods with any particular characteristic,'' referring to the preamble of the 2013 Final Rule.[39] Outside of these references, *Inclusive Communities* nowhere mentions the 2013 Rule in connection with discussing the necessary limitations to disparate impact liability. In support of their argument that HUD's 2013 Rule contained the necessary limitations to disparate impact liability, some commenters pointed out that *Inclusive Communities* argued that ''disparate-impact liability has always been properly limited in key respects that avoid serious constitutional questions. . .'' [40] For these commenters, the phrase ''always'' implies that *Inclusive Communities* did not need to invent new limitations to disparate impact, but instead recognized limitations that were always there. HUD disagrees. *Inclusive Communities* recognized that limitations to disparate impact liability already existed, but elaborated on these restrictions, showing that such limitations are still subject to further development. Further, HUD, as the agency responsible for interpreting and enforcing fair housing law, has significant discretion to interpret ambiguities in Title VIII disparate impact liability. HUD has taken into consideration the factors discussed in *Inclusive Communities,* as well as other factors HUD has observed using its expertise in fair housing law, and has determined that disparate impact liability is properly considered through the lens of the restrictions articulated in this Final Rule.

Regardless, the fact that disparate impact liability has always been limited does not answer whether, in HUD's view and discretion, the 2013 Rule's scope of disparate impact liability was appropriate. HUD believes that a better way to evaluate the meaning of this phrase is to view it in terms of the broader context of the limitations outlined by *Inclusive Communities,* compared to the limitations contained in HUD's 2013 Rule. For example, *Inclusive Communities* elaborates that ''[d]isparate-impact liability mandates the 'removal of artificial, arbitrary, and unnecessary barriers,' not the displacement of valid governmental policies'' [41] and that ''[a]n important and appropriate means of ensuring that disparate-impact liability is properly limited is to give housing authorities and private developers leeway to state and explain the valid interest served by their policies.'' [42] HUD believes that neither the ''artificial, arbitrary, and unnecessary'' protections nor the ''valid interest'' protections are included in HUD's 2013 Rule.

In response to the suggestion that HUD should not rely on dicta in *Inclusive Communities,* HUD believes that the Court's discussion in *Inclusive Communities* of the limitations to disparate impact is an inherent part of the opinion and thus is not dicta. Dicta is generally ''a statement in a judicial opinion that could have been deleted without seriously impairing the analytical foundations of the holding.'' [43] In *Inclusive Communities,* a discussion of the limitations to disparate impact formed the analytical foundations of the Court's holding. The Supreme Court cited *Griggs* v. *Duke Power Co.*[44] and *Smith* v. *City of Jackson*,[45] which, respectively, ruled that disparate impact liability was authorized under Title VII of the Civil Rights Act of 1964 and under the Age Discrimination in Employment Act. The Supreme Court included these citations both to support the existence of disparate impact liability under the Fair Housing Act and to discuss necessary limitations on disparate impact liability, stating that ''these cases provide essential knowledge and instruction in the case at issue.'' [46] The Court stated in *Inclusive Communities* both that disparate impact liability is important in uncovering discrimination and that disparate impact liability is properly limited in key respects so as to avoid constitutional questions that might arise, ''*e.g.,* if such liability were imposed based solely on a showing of a statistical disparity.'' [47]

The discussion of limits to disparate impact liability is essential to discussing whether a statute authorizes such liability for at least two reasons. First, inherent to defining a cause of action is

[36] *Inclusive Cmtys. Project* v. *Lincoln Prop. Co.,* 920 F.3d 890, 902 (5th Cir. 2019); *see also Fair Housing Act—Segregative-Effect Claims,* 133 Harv. L. Rev. 1476, 1483 (2020).

[37] 83 FR 28560 (June 20, 2018).

[38] *See* Steven T. Mnuchin and Craig S. Phillips, *U.S. Department of the Treasury Report: A Financial System That Creates Economic Opportunities, Asset Management and Insurance, Treasury.gov* (Oct. 26, 2017), *https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-That-Creates-Economic-Opportunities-Asset_Management-Insurance.pdf.*

[39] 78 FR 11476 (Feb. 15, 2013).

[40] *Tex. Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.,* 135 S. Ct. 2507, 2522 (2015).

[41] *Id.* at 2522 (quoting *Griggs* at 431).

[42] *Id.* at 2522.

[43] *Coleman* v. *Greene,* 845 F.3d 73, 76 (3d Cir. 2017) (citing *United States* v. *Mallory,* 765 F.3d 373, 381 (3d Cir. 2014).

[44] 401 U.S. 424 (1971).

[45] 544 U.S. 228 (2005).

[46] *Inclusive Communities,* at 2511.

[47] *Inclusive Communities,* at 2511–2512.

defining the general contours of what a cause of action should look like. Second, the Fair Housing Act itself explains that its purpose is to provide for fair housing ''within constitutional limitations'' [48] and the Court in *Inclusive Communities* noted that constitutional issues could arise if disparate impact liability were not properly limited. Thus, HUD believes that the question of limitations to disparate impact is ''fairly included'' in the question at issue in *Inclusive Communities.* Further, it seems unlikely that the disparate impact protections were mere dicta when the Court characterized this opinion as having ''announced'' ''cautionary [disparate impact] standards.'' [49] Indeed, it appears that the Court predicated its narrow decision in *Inclusive Communities* upon the assumption of ''adequate safeguards.'' Further, even if the applicable language *were* dicta, HUD believes it is appropriate to seriously consider statements made by the Court when exercising its discretion in interpreting Title VIII disparate impact law, instead of ''idly ignor[ing] considered statements the Supreme Court makes in dicta.'' [50]

Comment: A change under these circumstances without better explanation is arbitrary and capricious and will lead to increased costs.

Commenters stated that the Proposed Rule would be arbitrary and capricious under the Administrative Procedure Act [51] (APA) because HUD offers no explanation for why the changes in the Proposed Rule are desirable, fails to acknowledge that it is changing long-standing practice at all, fails to identify any real-world problems or policy outcomes addressed by the changes, fails to consider adverse consequences and evidence of discrimination, and does not recognize that the Proposed Rule would have implications or costs for federal programs and the entities that administer them. *Inclusive Communities* does not mandate a new policy.

A commenter noted that Supreme Court precedent holds that while agencies may change existing rules, there must be a reasoned explanation for disregarding facts and circumstances that underlay or were engendered by the prior policy, as well as that this is especially difficult when a rule reflects longstanding practice of the agency and the courts. According to the commenter, the 2013 Rule has been found to meet the objectives of Congress and thus the proposed abandonment of the agency's prior position results in a rule that cannot carry the force of law under *Encino Motors.* [52]

Commenters wrote the Proposed Rule would infringe on core judicial functions, including courts' discretion to consider the unique facts of each case, especially with regard to land use, lending and insurance claims. One commenter noted that in *Inclusive Communities,* the court said ''no dire consequences have resulted from several decades of disparate impact cases,'' while another commenter stated that HUD's argument that entities may resort to racial quotas to avoid disparate impact liability under the 2013 Rule is not supported by any evidence. Other commenters opposed the Proposed Rule, asserting that because the 2013 Rule considered and rejected many of the very changes that the Proposed Rule now would make and, unlike the Proposed Rule, explained its reasoning in doing so. Commenters provided numerous examples, such as HUD's rejection of a suggestion that HUD delete ''perpetuation of segregation'' as a recognized discriminatory effect, reasoning that ''the elimination of segregation is central to why the Fair Housing Act was enacted'' and that ''every federal court of appeals to have addressed the issue has agreed.'' [53] The commenters said that the Proposed Rule failed to explain, acknowledge, or identify these prior determinations. These commenters wrote that the Proposed Rule makes no attempt to justify any of its changes as good policy or as better interpretations of the law as it existed in 2013.

HUD Response: HUD acknowledges and appreciates these commenters' perspectives but disagrees and believes that in *Inclusive Communities,* the Supreme Court outlined its view of disparate impact litigation under the Fair Housing Act, and the Final Rule appropriately updates and clarifies all parties' burdens during disparate impact litigation consistent with *Inclusive Communities.* HUD provided detailed and reasoned responses in the Proposed Rule's preamble and has provided further details in this Final Rule. HUD is issuing this rule not because of the results of disparate impact cases over the prior decades or racial quotas but, because it believes clarification is appropriate following the Supreme Court's decision. Where HUD is making changes to the 2013 Rule, HUD is doing so in light of developments since 2013 and upon further review of disparate impact case law under the Fair Housing Act. HUD analyzed the cost of this Final Rule and determined that the Final Rule would provide decreased costs through clarity and detailed explanation of a prima facie case, and that any costs or increased difficulty in bringing litigation are the result of the tightened standard in *Inclusive Communities,* and not due to HUD's rule. See HUD's Regulatory Impact analysis discussion of costs and benefits.

Comment: HUD should eliminate the concept of disparate impact entirely.

One commenter urged HUD to do away with the disparate impact theory altogether. Another commenter stated that disparate impact is a specious and unsupportable theory that relies on false logic because coincidence does not equal causation and discrimination does not occur every time outcomes are not equal.

HUD Response: HUD finds these positions to be inconsistent with *Inclusive Communities* and inconsistent with HUD's interpretation of the Fair Housing Act.

Section 100.5 Scope

Comment: Change to language in § 100.5(b).

One commenter stated that HUD's use of the language ''defenses and rebuttals to such allegations may be made'' in the Proposed Rule demonstrates that HUD is proposing to support defendants against disparate impact claims by tying the safe harbor provision to the scope of the entire rule. Several commenters discussed how the proposed changes in § 100.5 might protect defendants and burden plaintiffs. Similarly, another commenter stated that when read alongside § 100.5(d), § 100.500(b)(2) imposes a legally impermissible undue burden on the plaintiff. Another commenter contended that if § 100.5(b) were adopted, it would extend HUD's proposed defenses for discriminatory effects cases to cases alleging discriminatory intent as well. Methods of proving discriminatory intent were well established in cases such as *McDonnell Douglas* and *Arlington Heights.* HUD cannot create a new method to prove intent cases. Another commenter stated that HUD should refrain from adding language that is redundant, confusing, or unnecessary.

Commenters suggested revising § 100.5(b) to read: ''Liability for unlawful housing discrimination under this part may be established by a

[48] 42 U.S.C. 3601.

[49] *Id.* at 2524.

[50] *Coleman* v. *Greene,* 845 F.3d 73, 77 (3d Cir. 2017) (citing *In re McDonald,* 205 F.3d 606, 612 (3d Cir. 2000)).

[51] *See* 5 U.S.C. 706.

[52] *Encino Motorcars, LLC* v. *Navarro,* 136 S. Ct. 2117, 2125, 2137 (2016) (quoting *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 516 (2009)).

[53] 78 FR 11469 (Feb. 15, 2013).

practice's discriminatory effect, even if not motivated by discriminatory intent, and defenses and rebuttals to such allegations may be made, consistent with the standards outlined in § 100.500.''

HUD Response: HUD has revised the language of § 100.500(b) to make clear that it only applies to discriminatory effects. As discussed in HUD's Proposed Rule, HUD is not creating a safe harbor by its reference in § 100.5, but was pointing the public to the rule section that establishes the framework for litigating disparate impact claims consistent with *Inclusive Communities.* See the explanation of changes in Section III above.

Comment: Support for proposed change to § 100.5(d).

Several commenters supported the proposed change to § 100.5(d) and noted that collecting demographic data on all customers may indirectly lead to more civil rights violations and also alienate customers. Commenters also stated that collecting demographic information would be overly burdensome, increase liability for privacy risk and information theft, be unnecessary, and have a negative impact on business. Some commenters also noted that data collection may increase costs due to a greater need for new systems to manage and safeguard personal information as well as increased time and staff required to gather and store data. One commenter argued that the increased burden posed by greater information-gathering may increase underwriting costs and impact premiums paid by consumers.

Commenters argued more specifically that if insurance companies were required to collect demographic information it would be invasive to consumers. Commenters related personal experiences explaining that when clients are asked for personal information there is often a negative customer response, including customers becoming upset at the request and refusal by customers to provide information, which increases costs and liability for businesses. Some commenters argued that demographic information is irrelevant and unnecessary to obtaining home insurance, unrelated to risk, and has never affected a claim. Other commenters argued that overly burdensome data maintenance requirements can stifle a healthy real estate market. One commenter supported the Proposed Rule, noting that State agencies have systems in place to regulate the local insurance industry without additional Federally mandated data collection.

HUD Response: HUD appreciates the support from commenters and agrees that business and other requirements by state agencies are already in place to require information collection when relevant to businesses. HUD's Final Rule does not change or require information collection.

Comment: HUD provides no reason for change in § 100.5(d).

A commenter stated that HUD provides no explanation for § 100.5(d), which appears to have no purpose other than to assist corporate entities in obscuring the discriminatory impacts of their practices.

HUD Response: HUD's request for comments in the 2018 NPRM on its reduction of regulatory barriers indicated that the public sought clarification as to whether the new disparate impact standard in § 100.500 required data collection.[54] In addition, this change is consistent with *Inclusive Communities,* to make clear that disparate impact theory itself does not require data collection.

Comment: Proposed Rule disincentivizes potential defendants from collecting information.

Commenters contended that the Proposed Rule has the effect of discouraging data collection, which will inhibit the ability of housing providers, lenders, and local governments to demonstrate that their programs, policies and practices do not have a disparate impact or a discriminatory effect, and it disincentivizes them from voluntarily improving practices that may otherwise leave them vulnerable to litigation and greater liability. One commenter wrote that statistical evidence that shows the outputs of a decision-making process that disproportionately exclude a race or gender should be enough to shift the burden of explanation on the decision-maker. Some commenters also noted that the proposed language would generate confusion and hinder enforcement efforts due to the broad assertion regarding adverse inferences. A commenter stated that HUD needs to explain why discouraging demographic data collection would prevent the use of remedial orders that impose racial targets or quotas.

Commenters stated further that the Proposed Rule, by disincentivizing demographic data collection by housing providers and lenders, hampers Fair Housing Act enforcement by allowing the loss of access to critical evidence of discrimination and undermining its 'discriminatory effect' provisions. Commenters also noted that data is a critical tool to demonstrate the impact of housing practices on protected groups, and failure to gather this data will obscure discriminatory impacts of housing practices, especially with the increased use of algorithms by housing providers or lenders and lack of access to algorithm data by monitors and concerned parties.

Commenters also noted that *Inclusive Communities* only discusses racial quotas, but this proposed section extends the data collection to include all protected classes, which disincentivizes data collection. Other commenters similarly stated that while the Supreme Court's decision discouraged collection of protected class information for fear that it would lead to quotas, it also acknowledged that awareness of race can help local housing authorities foster diversity and combat racial isolation with race-neutral tools and help entities design policies to ensure all groups have a fair opportunity to participate in programs. A commenter also stated that in *Wards Cove,*[55] the Supreme Court upheld data collection and noted that some employers maintain records disclosing the impact of selection procedures on opportunities by race, sex, or ethnic group, and the Court approved the use of such records by plaintiffs in litigation. This commenter further noted that while quotas are mentioned by the Court, neither *Inclusive Communities* nor *Wards Cove* include concerns that the collection of protected class information was relevant to the establishment of such quotas. One commenter noted that the Proposed Rule does not explain why data collection is equated with the establishment of racial quotas, since Federal data collection has been in place for decades and has not led to such quotas.[56]

HUD Response: The Final Rule does not contain a provision that discourages or prohibits covered parties from collecting data. The language retained from the Proposed Rule makes clear that there is no requirement in HUD's Fair Housing regulations, 24 CFR part 5, that specifically requires data collection. This is not a change from current practice and would not hinder the existing collection of data or the use of such data for either plaintiffs or defendants. In *Inclusive Communities,* the Supreme Court made clear that mere statistical evidence of disparities is not

[54] 84 FR 64549 (Nov. 22, 2019).

[55] *Wards Cove Packing Co.* v. *Atonio,* 490 U.S. 642 (1989).

[56] *See* U.S. Equal Employment Opportunity Commission, Employer Information Report EEO–1, *EEOC.gov, https://www.eeoc.gov/employers/eeo1survey/.*

sufficient to state a prima facie claim. Thus, commenters' statements about data in itself being sufficient to shift a burden to a defendant is misplaced. Finally, the Supreme Court also has clearly indicated that quotas are unconstitutional. Thus, HUD does not believe that adverse consequences should exist merely for failing to collect data. The Final Rule has eliminated language from the Proposed Rule stating that no adverse inference should be drawn if a party does not collect data to ensure that the Final Rule is unambiguously neutral about whether a party collects data.

Comment: Proposed rule inconsistent with other data collection requirements.

Commenters stated the Proposed Rule is inconsistent with current HUD requirements regarding the collection and public reporting on data, as well as other Federal requirements, such as the Home Mortgage Disclosure Act's Regulation C, the ECOA's Regulation B, the Fair Housing Act's Incentives for Self-Testing and Self-Correction (42 U.S.C. 3614–1), the Community Development Block Grant (CDBG) program's demographic data collection requirement, and the Housing and Economic Reform Act of 2008, which required state housing finance agencies to collect and report demographic data.

Commenters stated that the Federal Rules of Evidence addresses admissibility of evidence and HUD's proposed § 100.5(d) would infringe upon it. A commenter stated that it raised constitutional concerns regarding the creation of permanent irrebuttable presumptions that conflict with the Due Process Clause of the U.S. Constitution's Fifth and Fourteenth Amendments. A commenter noted that a defendant failing to collect data about a protected class in violation of *some other* law, policy, or practice—apart from HUD's disparate impact rules—could result in an adverse inference. One commenter suggested that HUD should clarify in the Final Rule that nothing in this rule affects other existing legal requirements to collect data.

HUD Response: Many commenters interpreted HUD's language broader than drafted. The language in § 100.5(d) is limited to 24 CFR part 100 of the regulations and, as discussed above, clarifies that part 100 itself is not requiring or encouraging data collection. HUD is clarifying in this Final Rule, that neither § 100.500 nor any other provision in part 100 creates such requirement. However, nothing in this rule affects other existing legal requirements to collect data. As for the reference to the Fair Housing Act collection of information, that burden is on HUD, and not the entities regulated by this rule, to collect information to ensure conformity with the Fair Housing Act.

HUD's Final Rule does not impact evidentiary rules, consistent with a ''neutral'' stance on data collection in the rule. Modification to the Final Rule makes this clear. Separately, data is collected in many other circumstances, as noted in several public comments, and such data could be used in litigation. HUD's Final Rule merely clarifies that the rule itself does not encourage or require collection of such data. Therefore, the regulatory language does not conflict with the Federal Rules of Civil Procedure (''FRCP'') or any other law.

Comment: Opposition to required collection of personal and private demographic information.

Several commenters opposed the Proposed Rule because they argued it required the collection of personal and private demographic information from home insurance customers that is not currently collected. These commenters argued requiring the collection of demographic information could lead to lawsuits; increase premiums and business costs, which could be detrimental to small businesses; and lead to loss of business from individuals who do not want to provide personal demographic information. Commenters specifically noted asking about an individual's religion was irrelevant to home insurance.

HUD Response: These comments misperceived the Proposed Rule. HUD appreciates the comments but, as discussed above, nothing in the Proposed Rule nor this Final Rule requires collection of personal and private demographic data, thus, the inclusion of such language in § 100.5(d).

Comment: Proposed revisions to § 100.5(d).

One commenter recommended that HUD revise § 100.5(d) to clarify that while defendants are not required to collect such data, data may be necessary for a plaintiff to prove a prima facie case. Some comments suggest alternatives related to data collection. One such comment suggested the Final Rule should specify that data collection is not required, and the absence of such collection will not result in an adverse inference against a party engaged in housing related business activity.

Other commenters stated that HUD should incentivize, encourage, or require providers to collect demographic data to promote the goals of the Fair Housing Act and for use by organizations ensuring compliance with the Fair Housing Act. Another commenter added that where it is not required but legally permissible, HUD should encourage entities to monitor their practices for discriminatory effects and explore less discriminatory alternatives to mitigate impacts.

HUD Response: While HUD understands that requiring potential defendants to maintain data may be helpful for plaintiffs bringing a case, this Final Rule is intended to provide a legal framework for litigation. This rule provides that data collection is not required or encouraged as a result of this rule. However, the Final Rule does not preclude doing so and, as noted above, in some instances is required by other laws. As for the commenters who requested HUD require data collection, requiring data collection is outside the scope of this rulemaking. Neither the Fair Housing Act nor the *Inclusive Communities* decision supports tying a data collection requirement to HUD's discriminatory effects rule. Further, HUD believes that such requirement would be burdensome, especially on small organizations who do not possess the resources to collect such data. Additionally, such data collecting requirements would be duplicative in light of other data gathering requirements.

Paragraph (b) Vicarious Liability

Comment: Change is unnecessary and unlawful.

Some commenters stated the proposed change to § 100.7(b) would be unnecessary and without justification and would result in inadequate compliance and compensation. Commenters wrote that § 100.7(b) in the 2013 Rule was clear and consistent with long-established law governing vicarious liability under the Act. Some commenters stated that the proposed revision is inconsistent with more than four decades of case law, including Supreme Court case law characterizing Fair Housing Act cases as statutory torts, in *Curtis* v. *Loether*[57] and applying traditional agency principles in determining questions of vicarious liability, in *Meyer* v. *Holley*.[58]

Commenters objected to proposed § 100.7(b)'s omission of the reference to ''agency law.'' Many commenters stated that this change will create confusion, because although vicarious liability most commonly arises out of the ''principal-agent relationship,'' agency law can expand vicarious liability beyond that specific relationship or to certain circumstances where an agent is acting outside the course and scope of

[57] 415 U.S. 189 (1974).

[58] 537 U.S. 280 (2003).

her duties. Commenters also stated that if HUD intends to limit vicarious liability to ''principal-agent relationships,'' rejecting other bases for vicarious liability, then it should explicitly state that purpose so that it may be reviewed by the courts.

Commenters noted that HUD previously stated in its Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act rule preamble that ''under traditional principles of agency law, a housing provider may be held vicariously liable for: The discriminatory acts, of an employee or agent regardless of whether the housing provider knew of or intended the discriminatory conduct where the employee was acting within scope of his or her agency, or where the [discrimination] was aided by the agency relationship.'' [59] Commenters stated that the proposed revisions to § 100.7(b) contradicted its other preamble.

Several commenters expressed concern regarding the principal-agent relationship and liability, as well as potential forum shopping. Commenters stated that HUD amending the vicarious liability provision will create unnecessary confusion on whether its 2016 explanation of vicarious liability principles still applies, as *Meyer* will apply regardless of HUD's regulations and any amendment. Commenters also stated that HUD should explain the purpose of the change in the definition of ''vicarious liability'' because the definition appears to be identical to a deleted version. Other commenters stated that the vicarious liability should not be addressed in the Proposed Rule because HUD rules already adequately address needed liability issues.

Several commenters objected to the proposed § 100.7(b) omission of text imposing liability regardless of whether a defendant knew or should have known of the conduct that resulted in a discriminatory housing practice. Several commenters stated that this change incentivizes housing providers to remain willfully ignorant of legal requirements and what their employees are doing and to not be involved with the oversight and maintenance of their properties. Commenters also stated that the change seems to repudiate the proposition that, consistent with agency law, vicarious liability may still be imposed.

HUD Response: HUD appreciates these comments. The proposed changes were intended only to provide clarification. After reviewing these comments, HUD has determined that the proposed change confused rather than clarified the issue. Therefore, HUD has decided not to make the proposed changes to this section.

Paragraph (c) Remedies in Administrative Proceedings

Comment: Availability of punitive or exemplary damages.

Commenters objected to prohibiting punitive or exemplary damages as a remedy in disparate impact cases. Commenters stated that both types of damages are appropriate when a defendant drags out litigation, rather than working to solve the problem. Commenters continued by stating that punitive damages should be available when a defendant clearly knows that their actions will harm a protected class and engages in them anyway, or in cases of reckless indifference. Commenters also said that defendants should be subject to punitive damages if the defendant does not make any effort to look for another way to accomplish legitimate business needs, while exemplary damages should be applied when there are unjust profits made in the process of discriminating against protected classes. Other commenters echoed the idea that punitive damages are necessary to deter future conduct and opined that the Proposed Rule eliminates effective tools that are necessary to cure vestiges of discrimination.

Commenters also stated that punitive and exemplary damages should be available in administrative pleadings and that all litigation costs should be covered for plaintiffs in administrative and judicial proceedings so that discrimination challenges are not cost prohibitive. Commenters additionally stated that HUD lacks the authority to bar punitive damages without other authorization.

Some commenters were supportive of the changes regarding punitive damages. Some commenters said that the Final Rule should clearly state that civil penalties are not an available remedy for disparate treatment cases, even when pursued in courts. Commenters stated that punitive damages should only apply to intentional discrimination and agreed with the Proposed Rule's statement that punitive damages are not authorized and are inappropriate in disparate impact cases because it aligns with Supreme Court precedent. Other commenters stated that it is inappropriate to impose punitive damages or award attorney's fees because disparate impact liability is built on the idea of unintentional wrongdoing. Several commenters supported the proposed amendment to § 100.7 because they felt that punitive or exemplary damages have no place in disparate impact litigation, as any remedy for disparate impact claims should focus on eliminating the practice that is having an impermissible discriminatory effect. These commenters said that *Inclusive Communities* answered this question and stated specifically that remedial rather than punitive measures are appropriate due to the absence of intent in discriminatory effect cases.

Some commenters disagreed with the idea of punitive and exemplary damages being awarded in disparate impact cases. These commenters stated that, by definition, disparate impact claims involve unintentional torts, so defendants should not face punitive or exemplary damages in the absence of actual discriminatory intent, but rather that the remedy for a disparate impact violation should be correcting the practice rather than punishment. The application of such damages would undermine *Inclusive Communities,* which advises that businesses must be free to make practical business choices. Commenters suggested that HUD revise the Proposed Rule to bar such damages in administrative proceedings and make it clear that such damages are also unavailable in other litigation under the Act.

HUD Response: HUD revised the Final Rule, moving paragraph (c) in § 100.7 to paragraph (f) in § 100.500, and changing the language to explain the circumstances under which HUD, as a matter of policy, may request non-equitable damages, such as civil money penalties. This Final Rule does not, and could not, make changes to the statutory language of the Fair Housing Act with regard to the availability of punitive damages as a potential remedy in civil actions or civil money penalties in administrative proceedings.

This Final Rule also does not address in any manner remedies available in disparate treatment claims, regardless of the forum. Punitive damages are not authorized in administrative proceedings, but an administrative law judge may assess a civil penalty under certain circumstances.[60]

HUD reviewed comments and made changes to this Final Rule regarding damages in order to clarify that HUD is merely restating the Supreme Court's direction in *Inclusive Communities* regarding remedies and is explaining when HUD will itself request non-equitable remedies. These changes

[59] 81 FR 63054, 63065 (Sept. 14, 2016).

[60] *See* 42 U.S.C. 3612(g)(3).

reflect HUD's understanding that relief in disparate impact cases should be focused on equitable remedies, such as eliminating or reforming a discriminatory practice, rather than monetary punishment, unless circumstances out of the ordinary warrant such.

With regard to commenters requesting that the defendant provide litigation costs to plaintiffs, the Fair Housing Act allows attorney's fees and costs to be awarded to the prevailing party in administrative proceedings or civil actions, per the discretion of the Administrative Law Judge (ALJ) or court.[61] This Final Rule does not change this, and HUD defers to the courts for determining if such an award is appropriate. Further, HUD acknowledges commenters' position that punitive and exemplary damages are typically used by courts to deter future violations; however, HUD notes, as other commenters have also pointed out, that a finding of disparate impact liability does not require proof of discriminatory intent. In this context, HUD is clarifying that the goal of disparate impact liability is to eliminate or modify a facially neutral policy or practice because it has a discriminatory effect on members of one or more protected classes. As explained in more detail in response to other comments, HUD may still pursue civil money penalties in administrative proceedings if the particular circumstances warrant it.

In response to commenters who requested that HUD remove the availability of certain types of damages completely, HUD notes that the text of the Fair Housing Act explicitly lists remedies that are available for administrative law judges and courts to order, in their discretion, in cases in front of them. By this Final Rule, HUD is not modifying or challenging that judicial discretion, but merely stating Supreme Court direction and clarifying the types of damages HUD will prioritize in disparate impact cases.

Regarding commenters who argued that punitive damages should be available when a defendant knowingly acts in a manner that discriminates, HUD notes that this type of scenario would involve intentional discrimination rather than disparate impact, which does not involve intent but rather a discriminatory effect without a showing of intentional or targeted discrimination. This Final Rule does not affect how disparate treatment allegations are adjudicated under the Fair Housing Act.

[61] *See* 42 U.S.C. 3612(p).

Comment: Issues with the proposed remedies language in general.

Several commenters discussed the language used in the remedies section generally, some supporting and some opposing the language. Commenters suggested that HUD should impose more substantial penalties against actors responsible for policies that impact disabled individuals' ability to obtain or maintain housing. Commenters recommended that the Proposed Rule not limit individual liability because it leaves no incentive to comply with the Fair Housing Act.

Commenters stated that the new remedies language added into the Proposed Rule is too confusing and restrictive because it does not allow for addressing disparate impact that affects members of protected classes that are not included in the complaint. They also asserted that the language needs clarification of the difference between ''neutral'' and ''non-neutral'' means. Commenters stated that § 100.7(c) substantially narrows remedies available to victims of discrimination by allowing only pecuniary and out-of-pocket expenses, which is inconsistent with the APA and well-established case law.

Commenters stated that remedies should focus on eliminating the disparate impact and not allow for other remedies that simply reform practices.

HUD Response: In response to commenters who requested that HUD remove certain types of damages completely, HUD notes that the text of the Fair Housing Act explicitly lists the remedies available for administrative law judges and courts to impose, in their discretion, in cases in front of them. As previously noted, HUD is not modifying or challenging that judicial discretion, but merely stating Supreme Court direction and clarifying the types of damages HUD will prioritize in disparate impact cases. Regarding the comment stating that the Proposed Rule would not allow relief for individuals in protected classes outside those listed in a complaint, HUD acknowledges the commenter's position, but notes that any complaint brought under the Fair Housing Act must contain allegations of discrimination that are sufficient to plead a prima facie case; this requires that the plaintiff specify which protected class(es) are impacted by a challenged policy or practice. HUD notes that the Fair Housing Act allows a complaint to be ''reasonably and fairly amended'' at any time. This Final Rule does not alter that provision.

Finally, as stated above, because the goal of disparate impact liability is to ameliorate a policy or practice that has a discriminatory effect on members of protected classes; removal of such a policy is a benefit to all individuals who are negatively affected by it regardless of whether they were specifically named in the complaint. HUD appreciates comments that expressed confusion regarding the specification that the remedy must be ''neutral'' and has concluded that such a distinction is unnecessary. Therefore, HUD has removed the phrase ''through neutral means'' from the Final Rule stage.

Comment: Change is unnecessary and confusing.

A commenter objected to proposed § 100.7(c) because it states unnecessarily that punitive damages are not available as a remedy in an administrative proceeding. Commenters also requested that HUD clarify what is meant when referring to administrative cases.

HUD Response: HUD agrees with comments stating that punitive damages are not authorized in administrative proceedings per the language found in the Fair Housing Act;[62] however, this Rule clarifies HUD's position on when it will seek civil penalties in discriminatory effects cases. As for the question on administrative cases, this refers to those cases that are filed with and heard by an administrative law judge, rather than via a civil action in a court of general jurisdiction. Administrative law is the law that governs the organization and powers of government agencies. As an example, these include complaints filed with HUD's Office of Fair Housing and Equal Opportunity under 42 U.S.C. 3610(a)(1)(A)(i) by members of the public, but also can include Secretary Initiated Complaints, which may lead to a hearing with and decision by an administrative law judge.

Comment: Restricting Punitive Damages Contradicts the Fair Housing Act.

Commenters objected to proposed § 100.7(c), arguing that it directly contradicts the Fair Housing Act, which provides that if a court finds that a discriminatory housing practice has occurred ''the court may award to the plaintiff actual and punitive damages.''[63] Commenters noted that although punitive damages will be rarer where the initial actor was a third party, the Act prohibits the agency from making that determination wholesale, rather than leaving it to be decided in individual cases.

HUD Response: As stated previously in response to commenters, the changes made by this Final Rule are to clarify

[62] 42 U.S.C. 3612 and 3613.

[63] 42 U.S.C. 3613(c)(1).

circumstances under which HUD intends to request non-equitable damages, such as civil money penalties. This Final Rule does not, and could not, make changes to the statutory language of the Fair Housing Act with regard to the availability of punitive damages as a potential remedy in civil actions or civil money penalties in administrative proceedings.

Comment: Proposed Rule would drive more cases to Article III courts and damage tenant-landlord relations.

Some commenters stated that not having punitive damages available in administrative proceedings would force plaintiffs to file in civil court in egregious cases, which is more time-consuming, expensive, and complicated. Commenters further wrote that problems that typically could be resolved through the administrative process, including conciliation or other settlement discussions, would be rendered less effective without the possibility of punitive damages. Commenters said that this would dissuade low-income individuals from pursuing relief, as well as place a greater burden on lower-income defendants. Because of HUD's relative expertise regarding fair housing, commenters stated that it is beneficial to all parties to go through HUD first instead of through the courts. Commenters also stated that the section would also lead to worse landlord-tenant relations.

HUD Response: HUD appreciates these comments but notes that punitive damages are not authorized in administrative proceedings by the Fair Housing Act.[64] This Final Rule does not alter the remedies that may be awarded by administrative law judges in administrative proceedings, including civil money penalties, but merely clarifies that HUD generally will seek equitable remedies in disparate impact cases, in line with the Supreme Court's decision in *Inclusive Communities.*

Comment: Paragraph (c) is mis-codified.

A commenter stated that § 100.7(c) is mis-codified: If ''administrative discriminatory effect case'' applies to proceedings under §§ 3610–3612, then this subsection should be placed in § 180.670, which governs remedies in cases decided by HUD's administrative law judges.

HUD Response: HUD agrees that § 100.7(c) could be included in § 180.670 but disagrees that it is miscodified. Paragraph (c) provides for parties reading 24 CFR part 100, Discriminatory Conduct Under the Fair Housing Act, that liabilities in administrative proceedings should concentrate on eliminating or reforming the discriminatory practice. This language does not conflict with the language in § 180.670 and speaks to the scope of liability addressed in § 100.7. However, HUD does agree that some clarification could be helpful and is moving this paragraph into § 100.500(f) of the Final Rule.

Section 100.120(b)(1) Discrimination in the Making of Loans and in the Provision of Other Financial Assistance

A commenter stated that the Proposed Rule's amendment to the list of generally applicable examples of prohibited lending discrimination would allow lenders to engage in certain types of intentional discrimination. For example, a lender could admit to intentionally giving a borrower inaccurate information due to the borrower's race, sex, or gender, and face no liability unless the victim could prove the information was material. A commenter stated the current lending discrimination rule does not have a materiality requirement or a safe harbor because it recognizes that conduct that violates the Fair Housing Act can be subtle, and suggested that at the application stage, for example, differential treatment may result as much from a failure to provide information or spend time with or coach a credit applicant as it occurs due to inaccurate information.

A commenter also asserted that persistent lending discrimination occurs in part because of the structural segmentation of the mortgage market, where loan originations are divided within the industry between: A low-cost prime sector serving mainly white borrowers, a sector insured by the Federal Housing Administration and disproportionately serving borrowers of color, and a subprime sector ''that facilitated the frequent placement of black and Latino borrowers into higher-cost, higher-risk loans than white borrowers with similar characteristics.'' A commenter stated that limiting information about available credit types may violate the Fair Housing Act, Privacy Act, or ECOA. One commenter stressed that the protection set forth in the 2013 Rule which prohibits all differing or inaccurate information is necessary because there are numerous situations in which differing information may be dispersed in a manner that has a disparate impact.

Commenters wrote that the Proposed Rule gives defendants too much discretion to decide which information is materially different or inaccurate. Another commenter wrote that there is no source supporting that ''immaterially'' inaccurate or different requirements are resulting in litigation or costly risk prevention programs that make this change necessary.

Commenters stated that, in contrast to what is stated in the Proposed Rule, *Inclusive Communities* makes no reference to either lending or informational disparities; the Proposed Rule does not explain the purpose of the addition of or its basis in *Inclusive Communities* or any other case law or legal authority; and the revisions are not in keeping with the opinion's guidance. One commenter wrote that the proposed change departs from *Inclusive Communities* and weakened the requirement to provide accurate information as required by the Fair Housing Act.

Commenters wrote that the language was too broad. One commenter noted that a bank providing borrower-specific information to similarly situated borrowers regardless of race does not reflect disparate treatment. In other words, variability is permitted based on relevant factors (of which race is not one). On the other hand, the exemption does not explicitly state variability is permitted based on relevant factors other than race (which is, obviously, part of ''an individual's particular circumstances''). Commenters also noted that § 100.120(b)(1) would apply to disparate treatment cases, which *Inclusive Communities* did not address, and where the materiality inquiry is irrelevant and contrary to law, because if a mortgage creditor admitted that it intentionally provided inaccurate information (however relatively minor) to black applicants because of their race, no one would disagree that discrimination in violation of the Fair Housing Act had occurred. A commenter opposed the proposed changes to § 100.120(b)(1) because they would increase, rather than mitigate, confusion. The existing provision makes clear that it is illegal to provide information that is inaccurate or different from that provided others, because of a protected class.

Commenters also wrote that the Proposed Rule needs to clarify ''materially'' inaccurate or different information and what it means by ''accurate'' or ''related to an individual's particular circumstances.'' The section would unnecessarily invite debates over the meaning of ambiguous regulatory text, causing confusion and an increase in burdens on litigants, courts, and entities. Another commenter requested examples or guidance regarding ''materially inaccurate or materially different'', stating that the lack of

[64] *See* 46 U.S.C. 3612.

guidance invites litigation or administrative review, which slows down the overall process. Another commenter stated that such statements would violate the APA and contravene the Act, which prohibits discrimination. One commenter suggested introducing the word ''material'' in describing disparities in information provided to different potential tenants, buyers, or lenders, and will leave a grey area in defining ''material.''

HUD Response: HUD does not believe that the proposed change would have permitted discrimination. HUD's addition of ''materially inaccurate or materially different from that provided others'' was meant to clarify, in accordance with the guidance in *Inclusive Communities,*[65] that informational disparities that are inconsequential do not violate the Fair Housing Act. In response to comments that materiality would matter only in discriminatory effect cases and concerns that the addition made things less clear, HUD has decided not to adopt the proposed change in the Final Rule. HUD still believes that disparities that are not material do not violate the Fair Housing Act, but HUD, in response to confusion by the public, agrees that the proposed change in § 100.120(b)(1) is not necessary.

Section 100.500—Discriminatory Effect Prohibited

(a) General

Comment: HUD's proposed removal of references to segregation is not an 'update' and goes against the Fair Housing Act.

Commenters objected to removing ''perpetuation of segregation'' from the definition of discriminatory effect in § 100.500(a). Some commenters stated that the removal of ''perpetuation of segregation'' is counter to the Supreme Court's ruling in *Inclusive Communities* and congressional intent and, without adequate explanation, is in violation of the APA. Commenters stated that its removal is an attempt to limit liability under the perpetuation of segregation theory, would increase burdens on plaintiffs, and marks a retreat from HUD's obligation to meaningfully combat segregation and a return to the ''separate but equal'' doctrine. Commenters stated that its absence will make it more difficult to combat increasing segregation.

Commenters stated that this change raises the question of whether, going forward, disparate impact analysis would even apply to policies that perpetuate segregation. A commenter wrote that considering the longstanding and undisputed authorities both before and after the decision in *Inclusive Communities,* there can be no legitimate justification for reading the concept of perpetuation of segregation out of the Proposed Rule. The absence of any basis for deleting references to perpetuation of segregation is reason enough to withdraw the Proposed Rule, they contended. Commenters also stated that ''practical business'' and ''profit'' should be removed as examples of ''valid interest'' regarding the Proposed Rule, but references to perpetuation of segregation from § 100.500 should not be removed without explanation or discussion.

Commenters asserted that courts have uniformly recognized that practices leading to the ''perpetuation of segregation'' violate the Fair Housing Act,[66] including cases since *Inclusive Communities,*[67] and that the Supreme Court itself affirmed that the Second Circuit properly found disparate impact when a town's practices ''significantly perpetuated segregation in the Town.''[68] A commenter asserted further that the Supreme Court cited these opinions favorably in *Inclusive Communities,* and explicitly recognized ''perpetuating segregation'' as a basis for liability under the Fair Housing Act.[69]

Commenters also asserted that *Inclusive Communities* made clear that ending the perpetuation of segregation—which harms society as a whole, not just individuals—is a core goal of the Fair Housing Act. They quoted the Supreme Court statement that ''the [Fair Housing Act] aims to ensure that those [legitimate] priorities can be achieved without arbitrarily creating discriminatory effects *or* perpetuating segregation.''[70] Commenters asserted that HUD provides no justification for removing language regarding segregation from the definition of discriminatory effects.

HUD Response: HUD does not agree that removal of the phrase ''perpetuates segregated housing patterns'' modifies any obligation under the Fair Housing Act. Specifically, HUD's removal of this phrase was part of HUD's streamlining of the regulation and is not meant to imply that perpetuation of segregation could never be a harm prohibited by disparate impact liability. A plaintiff need only prove in a case brought under disparate impact theory that a policy or practice has led to the perpetuation of segregation, which has a discriminatory effect on members of a protected class, in order for that policy or practice to be prohibited under this rule. More generally, HUD views ''perpetuation of segregation'' as a possible harmful result of unlawful behavior under the disparate impact standard.[71]

Comment: HUD removes ''predictably'' without explanation, despite past HUD findings, and case law.

Commenters noted that the proposed revision in § 100.500(a) deletes the portion of the 2013 Rule stating that a practice has a discriminatory effect ''where it actually *or predictably* results'' in a disparate impact. Some stated that HUD does not acknowledge this change, despite the fact that in promulgating the 2013 Rule, HUD explicitly found that actions that ''predictably'' result in discriminatory effects should be covered. Commenters noted that one case concerning a predictable result of perpetuating segregation—*United States* v. *City of Black Jack*—was described in *Inclusive Communities* as a ''heartland'' case.[72] Some commenters questioned whether the revision would prevent disparate impact cases for future harms.

HUD Response: HUD does not feel that any change to the proposed regulatory text is needed here. HUD recognizes that a claim based on a predictable disparate impact may succeed. This Rule's language does not

[65] *Tex. Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.,* 135 S. Ct. 2507, 2524 (2015).

[66] *See, e.g., United States* v. *City of Black Jack,* 508 F.2d 1179, 1186 (8th Cir. 1974).

[67] *See, e.g, MHANY Management,* 819 F.3d 581, 620 (2d. Cir. 2016) (finding a zoning decision may violate the Fair Housing Act because it perpetuates segregation generally). Other courts have similarly acknowledged perpetuation of segregation as a continued basis for Fair Housing Act liability after *Inclusive Communities. See, e.g., Avenue 6E Invs.* v. *City of Yuma,* 818 F.3d 493, 503 (9th Cir. 2016) (''[A]s the Supreme Court recently reaffirmed [in *ICP*], the [Fair Housing Act] also encompasses a second distinct claim of discrimination, disparate impact, that forbids actions by private or governmental bodies that create a discriminatory effect upon a protected class or perpetuate housing segregation without any concomitant legitimate reason.''); *Nat'l Fair Hous. All.* v. *Bank of America, NA.,* ____ F. Supp. 3d ____, 2019 WL 3241126, at *15 (D. Md. July 18, 2019) (allowing claim to proceed past motion to dismiss where plaintiff pleaded facts sufficient to allege that defendant's policy ''forestall housing integration and freeze existing racial segregation patterns''); *Nat'l Fair Hous. Alliance* v. *Travelers Indemnity Co.,* 261 F. Supp. 3d 20, 34 (D.D.C. 2017) (allowing claim to proceed past motion to dismiss where plaintiff pleaded facts sufficient to allege that defendant's policy ''will exacerbate racial and sex-based disparities by having a disproportionate impact on African-American residents and members of women-headed households'').

[68] *Town of Huntington, N.Y.* v. *Huntington Branch, N.A.A.C.P.,* 488 U.S. 15 (1988) (quoting 844 F.2d 926, 938 (2d Cir. 1988)).

[69] *Inclusive Communities,* at 2522.

[70] *Id.* at 2522 (emphasis added).

[71] *Id.*

[72] *Inclusive Communities,* at 2525 (citing 508 F.2d 1179, 1184 (8th Cir. 1974)).

preclude such a claim, it merely does not recognize this specific type of claim. While *Inclusive Communities* does use the phrase ''caused or predictably will cause a discriminatory effect'' when discussing the prima facie burden for discriminatory effect plaintiffs, the Court was reciting HUD's 2013 Rule, not a separate authority. Further, the Court stated that disparate impact claims ''relying on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity. A robust causality requirement is important in ensuring that defendants do not resort to the use of racial quotas.''

Inclusive Communities' citation of *Black Jack* as a heartland case does not mean that *Black Jack's* description of disparate impact doctrine is a complete picture of when disparate impact should apply, particularly since *Inclusive Communities* was the first time that the Supreme Court recognized disparate impact liability and articulated constitutional and prudential standards for when it should apply. Further, HUD is not aware of any reason why the scenario outlined under *Black Jack* would not also be subject to disparate impact liability under HUD's new disparate impact regulations. Finally, while *Black Jack* did include a ''predictability'' standard, the holding in *Black Jack* itself did not depend upon the ''predictability'' standard. Instead, the court found that it was ''established that the ordinance [at issue] had a discriminatory effect.''

Comment: Proposed rule does not allow for underlying pattern of discrimination to support allegation of discriminatory effect.

Commenters objected to the proposed standing requirements and asserted that a pattern of results that indicates an underlying pattern of discrimination should be a permissible way to show discrimination. Commenters stated that a plaintiff should not have to show a specific, identifiable cause if there is an underlying pattern with a discriminatory effect, but that the burden should be shifted to the defendant, because there may not be an identifiable ''arbitrary, artificial, and unnecessary'' practice or policy, but a culture with many factors that produce a discriminatory effect.

HUD Response: HUD disagrees that a plaintiff should be able to bring a discriminatory effects claim without alleging a specific, identifiable cause of the discrimination. It is not enough to allege a general culture of discrimination; rather, to sufficiently plead the existence of a discriminatory effect, a plaintiff must pinpoint the specific policy or practice that is alleged to lead to a discriminatory effect. As put by the Court in *Inclusive Communities,* requiring a plaintiff to point to a specific policy (or policies) causing disparity protects defendants from being held liable for racial disparities they did not create.[73]

Comment: HUD uses undefined and unclear terms.

Commenters stated that HUD's Proposed Rule uses vague language throughout § 100.500, allowing courts and defendants to find fault within the plaintiff's complaint. Commenters specifically questioned HUD's change from the term ''specific policy'' to the term ''a practice.'' Commenters also opposed the proposed deletion of the definition of ''discriminatory effect'' from § 100.500(a) because it injects uncertainty into the rule, particularly as to what a plaintiff must show to proceed. Commenters noted that both the 2013 Rule and the Proposed Rule require the plaintiff to demonstrate a causal relationship between the challenged practice and a ''discriminatory effect.'' However, ''discriminatory effect'' is defined in the 2013 Rule, while the Proposed Rule removes the regulatory definition.

HUD Response: HUD made several terminology changes to make the Final Rule more consistent with *Inclusive Communities* and with HUD's interpretation of disparate impact liability under Title VIII more generally. The reference to ''specific policy'' in § 100.500 is meant to include the practice or policy that forms the basis of a disparate impact claim. As a result, HUD believes that ''specific policy'' is an appropriate term to describe the breadth of disparate impact claims. However, HUD does not believe that there is a practical effect to adding the term ''policy'' in addition to the term ''practice.'' Plaintiffs will still have to show that the harm they are alleging is the result of a policy or practice, rather than a one-time action not part of a policy or practice.[74]

HUD does not believe that it is proper to define every term in the regulation, as doing so would result in a rigid regulation that does not leave room for courts to exercise their discretion based on the facts before them. Specifically, when it comes to ''discriminatory effect,'' HUD recognizes that harm can occur in a variety of ways and does not believe it is necessary to impose a definition on a fact-specific finding.

(b) Prima Facie Burden (General)

Comment: Higher burden for administrative proceedings is unlawful.

Commenters stated that HUD may not impose stricter standards for pleading the same claim in its administrative process than apply in federal court and must abide by the FRCP in administrative cases or it will violate congressional intent. Further, commenters noted that HUD's proposed pleading standard is inconsistent with HUD's regulations for administrative Fair Housing Act cases, which do not require the plaintiff to make out a *prima facie* case at the pleading stage.[75] Commenters also stated that the Proposed Rule's pleading requirements likely violate due process and equal protection because it places an impossible burden on person deprived of fair housing by requiring one to prove detailed, specific facts at the pleading stage. Commenters stated that HUD does not have the ability to reinterpret the contours of disparate impact liability previously established by the Supreme Court in *Bell Atl. Corp.* v. *Twombly*[76] and other cases. Commenters stated that the Supreme Court has explained that the question of what is required to plead a discrimination claim is controlled by FRCP 8(a)(2) and HUD does not have the authority to reinterpret these regulations. A commenter noted that this raises federalism issues because the Proposed Rule does not limit its reach to questions of pleading or inferences in federal court.

HUD Response: HUD is codifying in regulation the necessary requirements to prove a claim of discriminatory effect. This is no different from HUD's decision in the 2013 Rule to codify HUD's interpretation of disparate impact law at that time. It is within HUD's expertise given its role in implementing the Fair Housing Act. This necessarily overlaps with the duties of a plaintiff to bring a case under the FRCP. FRCP 8(a)(2) establishes the general rules of pleading, but the elements that a plaintiff is required to plead in the complaint are governed by the standards established by law, including regarding the proper scope of discriminatory effects liability. HUD's rule is consistent with the FRCP. Further, HUD is mindful of the Supreme Court's admonition that ''prompt resolution of those cases is important.''[77] HUD also notes that factual allegations are required at the pleading stage and proof at a later stage.

[73] *Id.* at 2507, 2523.

[74] *Id.* at 2523.

[75] See 42 U.S.C. 3610(1)(a)(i); 3610(g)(1); 3610(g)(2)(B)(i); 24 CFR 103.25; 103.400(a); 100.405(a)(1); and 103.400(a).

[76] 550 U.S. 544 (2007).

[77] 135 S. Ct. at 2512.

HUD does not intend to establish a standard which contradicts the FRCP.

Comment: Prima facie burden will increase the difficulty of bringing a case.

Several commenters noted that the multiple requirements of a prima facie case would increase the burden of establishing a prima facie case. A commenter claimed HUD ignored the importance of using statistics necessary to provide a prima facie case and stated that the new requirements would not even be met using Home Mortgage Disclosure Act (HMDA) data. Commenters stated that the Proposed Rule would permit banks to have facially neutral policies even if those policies had a clear discriminatory effect.

Commenters stated that the Proposed Rule's heightened burden of proof would make it difficult to challenge policies such as zero tolerance for crime policies, which commenters state disproportionally harm victims of domestic violence and communities of color, low-income households, and people with disabilities. Commenters noted that such a pleading burden is particularly difficult to meet when the defendant generally has in its sole possession the evidence relevant to whether its discriminatory policy is necessary to meet a legitimate purpose while the plaintiff can only speculate as to why the policy is necessary. Commenters cited cases in which only documents and depositions during discovery uncovered the arbitrary, artificial, and unnecessary policy causing the discriminatory effect, or where the defendant was unable to prove that their policy or practice was necessary.

Commenters suggested that HUD and the courts treat the Proposed Rule with flexibility and allow plaintiffs to await discovery to establish some of the elements in the proposed prima facie case. Other commenters suggested the burden should be shifted to the defendant to be more equitable, and that the defendant should have the same evidentiary standards as the plaintiff.

HUD Response: HUD appreciates these comments, but notes that the prima facie burden is a requirement of discriminatory effects law generally and HUD's codification of the prima facie burden does not itself result in a higher standard than what is required under *Inclusive Communities.* Please also see Section III above regarding changes to § 100.500(b), which are intended to clarify the requirements at the prima facie stage and further align the language with existing obligations. HUD also notes, as discussed further under (b)(1), that the pleading stage, when a plaintiff does not yet have access to discovery, requires only that the plaintiff ''sufficiently plead facts to support the prima facie case, and thus, the requirement to plead facts supporting a prima facie case is lower than some commenters suggested.

Comment: Courts have incorrectly applied Inclusive Communities.

Commenters suggested that courts following *Inclusive Communities* have misapplied the ''robust causality'' requirement, noting that cases have hinged on whether Plaintiffs could show a direct link between the statistical disparity and the Defendants' policy in cases such as *Inclusive Communities.* Commenters noted that the success rate of plaintiffs in disparate impact cases reaching the appellate level has plummeted over the years. One commenter stated that in circuit courts that have applied the 'robust causality' requirement at the pleading stage, plaintiffs' success, at least at the appellate level, generally does not appear to be significantly affected, although the number of cases is too small to draw sweeping conclusions.

HUD Response: Inclusive Communities' explanation of discriminatory effects liability expressly provided for a requirement of robust causality. Therefore, HUD believes that cases applying *Inclusive Communities* are correct to require a showing of ''robust causality.''.

Comment: Prima facie burden is unnecessary, complicated, and vague.

Commenters stated that the prima facie burden was unnecessarily complicated and vague. Commenters stated that this ambiguity and complication would cause unnecessary litigation and lead to unfair or unjustified dismissal of cases and would lead to inconsistent results in the courts. Commenters also stated that HUD made no attempt to justify the prima facie requirements but merely suggests that *Inclusive Communities* requires this change.

HUD Response: HUD appreciates these comments and notes that HUD has edited § 100.500(b) for clarity. HUD disagrees that this burden is ambiguous, and notes that the prima facie burden must necessarily be explained in general terms because application of the burden is extremely fact-specific and therefore dependent on the circumstances of each case. Alignment with *Inclusive Communities* and other controlling law is sufficient reason for HUD to use its discretion to adopt this regulation. HUD also agrees with other comments that the Supreme Court directs lower courts considering the sufficiency of allegations at the pleading stage to ''begin by taking note of the elements a plaintiff must plead to state a claim.'' [78] Section 100.500(b) provides parties with a list of such requirements.

Comment: HUD improperly cited Wards Cove.

Commenters said HUD improperly cites *Wards Cove,* a Title VII disparate impact case, to require an ''actual cause'' when *Wards Cove* did not use or rely on the phrase, and the Supreme Court noted that Title VII framework may not transfer to the fair housing context. Commenters noted that *Wards Cove* is a thirty-year old case.

HUD Response: HUD cited *Wards Cove* for the proposition that a disparate impact claim is not adequately pled where the alleged disparity is the result of factors outside the defendant's control and does not support the assertion that the defendant's policy itself is the cause of the disparity. *Wards Cove* held that the plaintiff is responsible for ''isolating and identifying the specific employment practices that are allegedly responsible for any observed statistical disparities.'' [79] HUD equates being ''responsible'' for observed statistical disparities with being the actual cause of those disparities. HUD also notes that while *Wards Cove* is an old case, it remains persuasive authority, specifically with respect to the Fair Housing Act, which, unlike Title VII, has not had intervening amendments.

Comment: The Proposed Rule's prima facie elements are consistent with Inclusive Communities.

Commenters stated the 2013 Rule incorrectly allocates burdens because it uses the 1991 standard set by Congress for Title VII, which is not applicable to the Fair Housing Act. Other commenters expressed support for the ''robust causality'' requirement, the ''legitimate business interest'' standard, and ''less discriminatory alternative or equally effective manner'' element, and commenters stated their support for the proposed burden-shifting framework overall. Another commenter stated defendants should be allowed to provide evidence to support the reasons for their policies, defenses, and rebuttals. Another commenter stated § 100.500(b)(2) and (5) are consistent with proximate cause analysis under the Fair Housing Act and *Bank of America* v. *City of Miami.*[80]

HUD Response: HUD appreciates these comments.

[78] *Ashcroft* v. *Iqbal,* 556 U.S. 662, 675 (2009).

[79] *Wards Cove Packing Co.* v. *Atonio,* 490 U.S. 642, 656, (1989).

[80] 137 S. Ct. 1296 (2017).

Comment: HUD makes an unsupported claim about failing to identify a ''specific, identifiable practice.''

A commenter stated that although HUD claims ''many parties'' have failed to identify a ''specific, identifiable practice,'' HUD cites only a single, ''unpublished, unprecedential'' opinion to support this proposition.

HUD Response: HUD's Proposed Rule noted the failure of many parties to identify a specific, identifiable practice, only to warn potential plaintiffs of the requirement under *Inclusive Communities.* The following are additional cases in which the court found that the plaintiff failed to identify a specific policy or practice. These cases are provided only to show additional examples of courts finding plaintiffs failed to fulfill this element of the prima facie case. *See also Ellis* v. *City of Minneapolis,* 860 F.3d 1106, 1113 (8th Cir. 2017); *Carson* v. *Hernandez,* No. 3:17–CV–1493–L–BK, 2018 U.S. Dist. LEXIS 185782, at *6 (N.D. Tex. July 26, 2018); *Merritt* v. *Countrywide Fin. Corp.,* No. 09–cv–01179–BLF, 2016 U.S. Dist. LEXIS 194613, at *34 (N.D. Cal. June 29, 2016); *City of L.A.* v. *Wells Fargo & Co.,* No. 2:13–cv–09007–ODW(RZx), 2015 U.S. Dist. LEXIS 93451, at *21 (C.D. Cal. July 17, 2015); *Merritt* v. *Countrywide Fin. Corp.,* No. 09–cv–01179–BLF, 2015 U.S. Dist. LEXIS 125284, at *61 (N.D. Cal. Sep. 17, 2015).

Comment: HUD conflates prima facie standards with pleading standards.

Commenters stated that HUD's proposal conflates *prima facie* and burden-shifting standards with *pleading* standards, and that numerous courts have rejected this approach, including the Supreme Court in *Swierkiewicz* v. *Sorema N. A.*[81]

HUD Response: HUD appreciates these comments and has revised the Final Rule to clarify that HUD intends to establish a prima facie standard. However, HUD notes that *Swierkiewicz's* caution that ''the precise requirements of a prima facie case can vary depending on the context and were never intended to be rigid, mechanized, or ritualistic,''[82] must be read in light of the Court's heightened pleading standards in *Bell Atlantic Corp* v. *Twombly* and *Ashcroft* v. *Iqbal,* both of which the Court decided after *Swierkiewicz.* HUD's treatment of the pleading stage in disparate impact litigation is consistent with the Supreme Court's finding in *Twombly* that plaintiffs cannot survive the pleading stage by relying upon ''labels and conclusions,'' a ''formulaic recitation of the elements of a cause of action . . .'' or mere speculative factual allegations.[83] There must also be ''a reasonable expectation that discovery will reveal evidence of [illegality] . . .''[84]

Comment: Require some evidence of discriminatory intent.

Commenters suggested that the Final Rule should require a showing of some evidence of discriminatory intent, though not enough to satisfy the Constitutional standard of *Washington* v. *Davis,* to better align with disparate impact cases from the Third and Seventh Circuits. Commenters also suggested the Proposed Rule should be structured such that the plaintiff must ''show or demonstrate'' rather than ''allege'' the prima facie case.

HUD Response: On the issue of requiring a showing of discriminatory intent, the *Inclusive Communities* case is clear that a showing of disparate impact does not rely on intent, but is ''in contrast to a disparate treatment case,'' which does rely on intent.[85] On the issue of the prima facie case at the pleading stage, it is, as in any case, the plaintiff's obligation to allege sufficient facts, which is reflected in this Final Rule at § 100.500(b). Of course, in the case in chief plaintiff will have the burden of proof on the allegations.

Comment: Adding an element on statistical disparity.

Commenters suggested that HUD add to the description of prima facie burden an ''explicit recitation'' of *Inclusive Communities'* holding that a disparate impact claim cannot be based solely on a showing of statistical disparity. Other commenters stated that in the 2013 Rule, HUD explicitly declined to include a statistical standard to prove a prima facie case due to the variety of practices covered by the Fair Housing Act.

HUD Response: HUD agrees that a disparate impact claim cannot be based solely on a showing of statistical disparity, but does not believe this should be explicitly stated in the rule because the elements already listed necessarily provide a standard which would not be met through a showing of statistical disparity alone. HUD also agrees with commenters that it would be impractical to establish a particular statistical standard to prove a prima facie case due to the numerous and varied practices covered by the Fair Housing Act.

Comment: Using ''specific identifiable policy or practice'' is contrary to Inclusive Communities *and case law.*

Commenters suggested that the Proposed Rule was exempting single decisions. Commenters provided examples of disparate impact claims targeting zoning and land use laws and decisions that unfairly exclude minorities from certain neighborhoods without sufficient justification, arbitrary and discriminatory ordinances barring the construction of certain types of housing units, and unconscious prejudices and disguised animus that escape easy classification as disparate treatment, may all fall under this classification. Commenters cited cases challenging single actions, including *MHANY Management, Inc.* v. *County of Nassau,*[86] and *Huntington Branch, NAACP* v. *Huntington,*[87] which specifically held that a one-time zoning decision can be a policy subject to disparate-impact challenge. Commenters noted that any repeated course of conduct could be traced back to a single decision.

A commenter objected to the preamble section applying *Barrow* v. *Barrow,*[88] which follows *Inclusive Communities,* for the proposition that most ''one-time'' zoning decisions would not provide a basis for a disparate impact claim or enforcement process, noting that *Barrow* was not a case about zoning.

Commenters noted further that HUD's 2013 Rule preamble also explained that every federal court of appeals to have addressed the issue agreed that the Fair Housing Act prohibits practices with the unjustified effect of perpetuating segregation. The preamble cited numerous cases from various circuits demonstrating that HUD's position was reasonable and firmly grounded in the law and its application by courts since 1968.[89]

Commenters also objected that the ''specific, identifiable policy or practice'' language was undefined and vague. Commenters stated it was unclear whether the Proposed Rule would prohibit claims against a developer if the rental of affordable units had occurred at one site or for one building as opposed to hundreds of units at multiple buildings. Commenters also stated that it was unclear whether

[81] 534 U.S. 506, 512 (2002).

[82] *Id.* at 512 (citation omitted).

[83] *Bell Atl. Corp.* v. *Twombly* at 555 (citations omitted).

[84] *Twombly* at 556.

[85] *Inclusive Communities,* 135 S.Ct. at 2513.

[86] 819 F.3d 581 (2d Cir. 2016).

[87] 844 F.2d 926 (2d Cir. 1988).

[88] Civil Action No. 16–11493–FDS, 2017 U.S. Dist. LEXIS 103495, at *8 (D. Mass. July 5, 2017).

[89] *See, e.g., Huntington Branch, N.A.A.C.P.,* at 937; *Metropolitan Housing Development Corp.* v. *Village of Arlington Heights,* 558 F.2d 1283, 1290 (7th Cir. 1977); *U.S.* v. *City of Black Jack,* 508 F.2d 1179, 1184–86 (8th Cir. 1974).

the Proposed Rule would prohibit claims against a county development agency if its policy had only resulted in one instance of applying residency and age preferences to a county-financed rental building. Moreover, commenters stated that the preamble suggests that HUD itself, as opposed to a private plaintiff, will *never* bring a disparate impact claim against a ''single event'' land-use decision. Other commenters stated the language in the Proposed Rule limits a plaintiff to addressing business practices but is silent on addressing government practices.

Some commenters supported the ''specific, identifiable policy or practice'' language because it is consistent with Supreme Court precedent, clarifies what plaintiffs must challenge, and furthers the speedy case resolution principle.

HUD Response: HUD disagrees with the suggestion that this language will immunize all one-time decisions from disparate impact analysis. Plaintiffs can establish disparate impact liability based upon a single event if it represented a policy; even if, as *Inclusive Communities* clarified, plaintiffs may ''not easily'' be able to make such a showing.[90] HUD would bring a case against a single event where HUD believed that the single event represented a policy.

As commenters have discussed and HUD agrees, single events can represent a policy or practice. Further, if a jurisdiction implements zoning policy through discretionary decisions, that policy of granting discretion could be subject to a disparate impact suit even if a particular decision may not be. HUD does not believe that this position contradicts its previous position in the 2013 Rule. Further, the 2013 Rule predates *Inclusive Communities,* which prompted the addition of this language.

HUD does not believe that *MHANY Mgmt.* was an example of a post-*Inclusive Communities* court recognizing a one-time decision as a policy. While *MHANY Mgmt.* involved a zoning decision, the court clarified that it took place after ''many months of hearings and meetings'' and ''the change required passage of a local law . . .'' [91] HUD believes that these circumstances—particularly the fact of a change in local law—could allow a court to interpret this ''one-time decision'' as a policy under HUD's formulation. HUD believes courts are capable of determining on a case-by-case basis when a single event may have been the result of a policy, even if that task may be difficult. Further, *MHANY's* reference to the difficulty of distinguishing between a single event and a policy is within the Title VII and ADEA context and so it may have less relevance in the instance of disparate impact under the Fair Housing Act.

HUD also notes that while *Huntington Branch, NAACP* v. *Huntington* did involve a refusal to amend a zoning ordinance, the policy at issue was a zoning regulation ''which restricts private multi-family housing projects to a largely minority 'urban renewal area . . .' '' [92] Further, repeated application of a policy—the zoning regulation—can hardly be characterized as a one-time decision. A single decision on an ad hoc basis differs from a single policy under which multiple decisions are made.

As to the significance of *Barrow* v. *Barrow,* even though it is not a zoning decision, its ruling that a ''single decision relevant to a single piece of property, without more, is not evidence of a policy contributing to a disparate impact'' [93] illustrates the difference between such a single decision and a decision that would affect multiple properties and might be considered a policy.

Finally, HUD notes that *Ellis* v. *City of Minneapolis* supports HUD's perspective. *Ellis* repeats *Inclusive Communities'* caution that plaintiffs may lose their disparate impact case at the pleading stage for identifying a ''one-time decision'' that is not a policy and frames this protection as a ''standard'' for disparate impact cases.[94] It also repeats the significant reasons why *Inclusive Communities* adopted this standard, namely giving government entities ''leeway to apply reasonable housing-code provisions without fear of inviting a costly lawsuit.'' [95] Further, *Ellis* refused to ''bootstrap numerous 'one-time decision[s]' together in order to allege the existence of a City policy to misapply the housing code.[96] While plaintiffs asked the *Ellis* court to read one-time decisions as a policy that invalidated an official city policy, the *Ellis* court's reluctance to create a ''policy'' out of singular decisions is still instructive. Other courts after *Inclusive Communities* have also recognized this limitation to disparate impact liability.[97]

(b)(1) Arbitrary, Artificial and Unnecessary

Comment: ''*arbitrary, artificial, and unnecessary*'' *should be defined.*

Commenters noted that the Proposed Rule does not explain what it means to be ''artificial,'' ''arbitrary,'' or ''unnecessary'' as a pleading requirement. Commenters asked that HUD define ''arbitrary, artificial, and unnecessary.'' Other commenters suggested that HUD define the phrase ''arbitrary, artificial, and unnecessary'' as applying to a ''policy that is not reasonably calculated to achieve a legitimate goal within the sound discretion of the policy-maker and that imposes an otherwise unexplained burden on housing opportunities for persons in protected classes.'' Further, commenters suggest HUD provide examples of policies HUD considers ''arbitrary, artificial, and unnecessary'' and suggests ''zoning rules that artificially restrict the ability to develop multifamily housing'' as one such example. Commenters also stated that HUD should use the Court's standard in *Inclusive Communities* and should

[90] *Tex. Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.,* 135 S. Ct. 2507, 2523 (2015).

[91] *MHANY Management, Inc.* v. *County of Nassau,* 819 F.3d 581, 619 (2d Cir. 2016).

[92] *Huntington Branch, NAACP* v. *Huntington,* 844 F.2d 926.

[93] *Barrow* v. *Barrow,* Civil Action No. 16–11493–FDS, 2016 U.S. Dist. LEXIS 164330, at *16 (D. Mass. Nov. 29, 2016).

[94] *Ellis* v. *City of Minneapolis,* 860 F.3d 1106, 1111 (8th Cir. 2017).

[95] *Id.* at 1114.

[96] *Id.* at 1113 (citing *Inclusive Communities*).

[97] *See City of Joliet* v. *New West, L.P.,* 825 F.3d 827, 830 (7th Cir. 2016); *Hylton* v. *Watt,* 2018 U.S. Dist. LEXIS 156082, *12–13 (D.D.C. Sept. 13, 2018) (''Moreover, to the extent Hylton focuses his claim on the FHFA's one-time, and limited, decision to fill the Ombudsman position with a then-current 'Agency Executive,' he has failed to identify a 'policy' sufficient to sustain a disparate impact claim. ''As a general rule, a plaintiff 'cannot attack an overall decisionmaking process in the disparate impact context, but must instead identify the particular element or practice within the process that causes an adverse impact.' ''); *Davis* v. *District of Columbia.,* 246 F. Supp. 3d 367, 394 (D.D.C. 2017) (quoting *Stout* v. *Potter,* 276 F.3d 1118, 1124 (9th Cir. 2002)). In other words, disparate impact ordinarily ''looks at the effects of policies, not one-off decisions, which are analyzed for disparate treatment.'' *City of Joliet* v. *New West, L.P.,* 825 F.3d 827, 830 (7th Cir. 2016). Thus, as the Supreme Court has explained, ''a plaintiff challenging the decision of a private developer to construct a new building in one location rather than another will not easily be able to show this is a policy causing a disparate impact because such a one-time decision may not be a policy at all.'' *Inclusive Communities,* 135 S. Ct. at 2523; *see also Breen* v. *Chao,* 253 F. Supp. 3d 244, 265–66 (D.D.C. 2017). Like the plaintiff in that hypothetical, Hylton has failed to identify any ''policy'' or ''practice'' that might even arguably have had an adverse effect on a protected group.''); *Barrow* v. *Barrow,* 2016 U.S. Dist. LEXIS 164330, at *15–16 (''First, the complaint does not point to any specific policies of any of the defendants that result in racial discrimination. It alleges only that defendants, in various ways, acted to deprive plaintiff of the full value of her inheritance; there is no allegation of an unlawful practice or policy. A single decision relevant to a single piece of property, without more, is not evidence of a policy contributing to a disparate impact. *Tex. Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.,* 135 S. Ct. 2507, 2523 (2015).

revise § 100.500(b)(1) to read ''create artificial, arbitrary, and unnecessary barriers.''

HUD Response: HUD declines to define ''arbitrary, artificial, and unnecessary'' because of the wide variety of possible circumstances in which it may be used. Courts will continue to provide useful examples of this phrase as case law develops. HUD also declines to provide examples of ''arbitrary, artificial, and unnecessary'' policies because such policies would be too fact-specific to be of general use. HUD believes the addition of ''barriers'' in § 100.500(b)(1) would not be proper because the discussion of the ''barrier'' element is a consideration instead under (2), where the plaintiff must show that the policy or practice has a disproportionate adverse effect, *i.e.,* is a barrier.

Comment: Proposed § 100.500(b)(1) is not supported by caselaw cited in the Proposed Rule.

Some commenters opposed the Proposed Rule because it conflicts with prior case law by requiring plaintiffs to bear the burden of pleading and proving an ''artificial, arbitrary, and unnecessary barrier'' to fair housing in the prima facie stage. Commenters argued that this requirement is devoid of context because this language was raised by the Supreme Court as judicial dicta to allow defendants to argue that their policies have a valid interest, but the Court nowhere suggests that the plaintiffs are required to plead and prove it. Commenters also objected that the Proposed Rule would require plaintiffs to prove a negative, which contradicts HUD's determination in promulgating the 2013 Rule and the DOJ's position in litigation, and rebut the defendant's justification before the defendant had even advanced the justification. Commenters noted that this would also increase the cost of pleading a case. A commenter stated that ''artificial'' essentially means ''pretextual.'' A commenter stated that requiring plaintiffs to show a policy is ''arbitrary, artificial, *and* unnecessary'' would allow policies that are only one of these three. A commenter stated that the 2013 Rule adequately prevented plaintiffs from bringing arbitrary, artificial, and unnecessary claims. Some commenters argued that *Griggs* [98] did not establish an ''artificial, arbitrary, and unnecessary'' pleading standard, and so the Supreme Court citing that language could not be interpreted as such. A commenter stated that *Inclusive Communities* requires defendants to state their own valid interest, rather than the plaintiff, because under Title VII's business necessity standard the employer must affirmatively raise the defense. Commenters stated the Proposed Rule inappropriately requires plaintiffs to plead around an affirmative defense. Commenters asserted this approach broke from Congress's intent, affirmed by *Inclusive Communities,* for burden shifting in disparate impact claims, and Title VII case law.

Commenters also objected to the preamble's suggestion that *Ellis* v. *City of Minneapolis* [99] supports the proposed revisions, stating that *Ellis* does nothing more than apply well-established disparate-impact doctrine consistent with the 2013 Rule in holding that the plaintiffs failed to identify a specific policy with a robust causal link to the disparate impact. Commenters cited to a subsequent opinion explaining *Ellis* to support this proposition.[100]

Commenters noted this approach broke from Congress's intent, affirmed by *Inclusive Communities,* for burden shifting in disparate impact claims, and Title VII case law. Other commenters supported the ''arbitrary, artificial, and unnecessary'' language because it prevents abusive claims and the Proposed Rule asserts that a valid objective can be based on practical business considerations and/or profitability. Other commenters said this language is supported by Supreme Court precedent including *Inclusive Communities* and that it protects defendants' valid interests such as business or profit considerations. Commenters stated that ''artificial, arbitrary, and unnecessary barriers'' replaced the 2013 Rule's ''nondiscriminatory interests'' standard.

HUD Response: First, HUD notes that plaintiffs do not have to prove alleged facts at the pleading stage. As discussed in the Proposed Rule's preamble, plaintiffs merely have to plead facts supporting this claim sufficient to survive a motion to dismiss. Providing some sort of factual allegation to support the proposition that the policy challenged may plausibly be arbitrary, artificial, and unnecessary, or plausibly alleging that a policy or practice advances no obvious legitimate objective, would be sufficient to meet this pleading requirement.

Inclusive Communities made three references to the ''arbitrary, artificial, and unnecessary'' standard.[101] *Inclusive Communities* never clarifies that the ''artificial, arbitrary, and unnecessary'' requirement is exempt from the requirement for pleading a prima facie case, and two of these three references were in the context of providing standards for disparate impact suits to avoid constitutional questions that arise with expansive disparate impact liability. *Inclusive Communities* provides that courts should ''prompt[ly] resol[ve]'' disparate impact cases and examine disparate impact claims ''with care.'' Further, *Inclusive Communities* clarifies that ''disparate-impact liability must be limited so employers and other regulated entities are able to make the practical business choices and profit-related decisions that sustain a vibrant and dynamic free-enterprise system.'' [102] Removing this artificial, arbitrary, and unnecessary constraint as a screening mechanism would allow for an untimely resolution of disparate impact cases after expensive litigation and discovery, which is contrary to *Inclusive Communities.* Moreover, HUD believes that the ''artificial, arbitrary, and unnecessary'' standard gives valuable guidance about the qualitative nature of policies and practices that are suspect because otherwise, there would be a tendency to simply consider how much statistical disparity is too much—something the Supreme Court specifically directed parties to avoid as constitutionally suspect and which would constitute mere second guessing of reasonable approaches.

Ellis v. *Minneapolis* [103] supports HUD's interpretation. *Ellis* discussed the elements of a prima facie case, and explained that under *Inclusive Communities,* lower courts must examine ''whether a plaintiff has made out a prima facie case of disparate impact.'' [104] This includes facts about causation between a policy and disparate impact, but *Ellis* does not limit a prima facie case to just that element.

[98] 401 U.S. 424 (1971).

[99] 860 F.3d 1106 (8th Cir. 2017).

[100] *Nat'l Fair Hous. Alliance,* 261 F. Supp. 3d at 33 (citing *Ellis* v. *City of Minneapolis, Minn.,* No. 14–CV–3045 (SRN/SER), 2016 WL 1222227, at *6 (D. Minn. Mar. 28, 2016)).

[101] First, in the context of discussing limitations to disparate impact to avoid constitutional questions, the Court says that ''Disparate-impact liability mandates the 'removal of artificial, arbitrary, and unnecessary barriers,' not the displacement of valid governmental policies.'' *Inclusive Communities,* at 2512 (citing *Griggs,* at 43). Second, *Inclusive Communities* states that ''Governmental or private policies are not contrary to the disparate-impact requirement unless they are ''artificial, arbitrary, and unnecessary barriers.'' *Id.* at 2524 (citing *Griggs,* at 431). Third, *Inclusive Communities* states that if ''standards for proceeding with disparate-impact suits not to incorporate at least the safeguards discussed here, then disparate-impact liability might displace valid governmental and private priorities, rather than solely 'remov[ing] . . . artificial, arbitrary, and unnecessary barriers.' '' *Id.* at 2524 (citing *Griggs* at 431).

[102] *Inclusive Communities,* at 2518.

[103] 860 F.3d 1106 (8th Cir. 2017).

[104] *Ellis,* at 1111 (quoting *Inclusive Communities* at 2523).

Ellis also discusses the ''artificial, arbitrary, and unnecessary'' constraint as a separate prong from the causality requirement, when it notes that the plaintiff's complaint is insufficient exactly because it lacks ''factually supported allegations that [the housing-code provisions, the challenged policies] are arbitrary or unnecessary to health and safety.'' [105] Two Eighth Circuit cases advance HUD's interpretation of *Ellis.* First, *Khan* v. *City of Minneapolis* described *Ellis* as upholding ''the district court's grant of judgment on the pleadings for the city, concluding that the landlords had failed to point to an artificial, arbitrary, and unnecessary policy that a Fair Housing Act disparate-impact claim could remedy.'' [106] This interprets *Ellis* as imposing an ''artificial, arbitrary, and unnecessary'' requirement in the pleading stage for disparate impact cases. Second, a district court cites *Ellis* in explaining that ''[t]o plead a plausible disparate-impact claim, a plaintiff must plead the existence of an 'artificial, arbitrary, and unnecessary' '' policy.[107]

HUD also notes that to the extent *Inclusive Communities* referenced Title VII disparate impact liability, it was ''analogous'' to disparate impact liability under Title VIII. Such analogies do not limit HUD's significant discretion to impose additional guardrails for Title VIII disparate impact liability that do not exist under Title VII, particularly when *Inclusive Communities* clarified that the opinion ''announced'' ''cautionary standards'' for disparate impact liability under the Fair Housing Act.[108]

Griggs certainly did not rule that the ''artificial, arbitrary, and unnecessary'' standard could not be an element of a prima facie case. Even if *Griggs* did not explicitly establish such an element, it explained that Congress provided for ''the removal of artificial, arbitrary, and unnecessary barriers to employment. . .'' [109] in establishing disparate impact liability. Further, in the context of Title VIII disparate impact liability, for which *Inclusive Communities* enacted more guardrails than Title VII disparate impact liability, it would be reasonable to conclude that the ''artificial, arbitrary, and unnecessary'' constraint should be an element of a prima facie case, even if it is not for Title VII. For instance, unlike *Griggs, Inclusive Communities* provides, after discussing ''constitutional concerns'' with expansive disparate impact liability, that ''Courts must therefore examine with care whether a plaintiff has made out a prima facie case of disparate impact and prompt resolution of these cases is important.'' [110] Further, under a burden shifting approach someone must always plead a negative, consistent with general civil procedure in the United States. That seems more appropriately a burden on the plaintiff. It is also consistent with the Supreme Court's caution about not second-guessing two reasonable alternatives.

Additionally, the requirement for a plaintiff to plead a negative is not unique to HUD's disparate impact rule. For example, the Federal Driver's Privacy Protection Act creates a civil cause of action against a person from ''person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted. . .'' by the statute.[111] This requirement is ''only satisfied if shown that obtainment, disclosure, or use was not for a purpose enumerated under'' the statute.[112] It also prohibits State Departments of Motor Vehicles from disclosing personal information except for permissible uses.[113] Plaintiffs suing under this statute plead a negative, specifically that the disclosure at issue lacked a permissible purpose.[114]

HUD is not aware of courts that have responded to the requirement to prove a negative by ignoring that requirement. Courts are capable of tailoring the threshold for an acceptable prima facie showing to match the difficulty of making this type of showing.[115]

(b)(2) Robust Causal Link

Comment: Meaning of ''robust causal link'' is unclear.

Commenters expressed confusion about the meaning of § 100.500(b)(2). A commenter stated that the phrase ''robust causal link'' is unclear and that pointing to dicta in *Inclusive Communities* does not eliminate the confusion.

Commenters objected to the inconsistent terminology regarding causation in the Proposed Rule and its preamble, noting that HUD uses, interchangeably, four different causation phrases: ''robust causality,'' ''robust causal link,'' ''direct causation,'' and ''actual causation.'' Commenters stated the preamble explanation of § 100.500(b)(2) is unclear as to whether HUD is simply seeking to reflect established case law on proving discriminatory disparities or seeking to establish unprecedented requirements. Commenters stated that it is unclear from the text of proposed § 100.500(b)(2) whether a plaintiff must demonstrate both a 'robust causal link' and 'direct cause,' or whether a showing of 'direct cause' conclusively establishes the 'robust causal link.'

Commenters suggested that HUD should define ''robust causal link'' but avoid a definition that requires proof of actual or primary causation or that mandates a one-size-fits-all standard of causation. A commenter stated that any new definition of causality or 'robust' risks being overly prescriptive for what is necessarily a case- and context-sensitive question of fact. Commenters suggested that HUD should instead use ''substantial causal relationship,'' meaning the relationship is important, valid, reliable, meaningful, not trivial or tiny. Commenters stated that failing to provide a definition would increase litigation costs and would reduce the ability of potential litigants to analyze the risk of litigation. Other commenters questioned whether HUD intended to adopt in proposed § 100.500(b)(2) ''robustness'' as defined by George Box, who the commenters stated invented the concept of ''robustness'' in 1953.

HUD Response: HUD appreciates these comments and has clarified in the Final Rule that HUD intends ''robust causal'' link to mean that the policy or practice is the direct cause of the discriminatory effect. HUD intends these two terms to be synonymous. HUD declines to further define or explain ''robust causality'' due to the fact-specific nature of the various cases that courts will decide on a case-by-case basis. HUD does not intend to adopt the

[105] *Ellis,* at 1112. While *Ellis* does use the word ''or'' instead of ''and'' and omits the word unnecessary here, HUD does not believe this suggests that plaintiffs need only plead that a policy is artificial, arbitrary, *or* unnecessary. Elsewhere *Ellis* discusses a policy being ''arbitrary and unnecessary under the [Fair Housing Act].'' (*Id.* at 1112). Every other reference (four in total) is to something being ''artificial, arbitrary, and unnecessary.'' This includes the end, where *Ellis* concludes that plaintiffs had not pleaded a prima facie case because they did not meet the requirement in *Inclusive Communities* for a plaintiff to ''at the very least point to an 'artificial, arbitrary, and unnecessary' policy causing the problematic disparity.''

[106] 922 F.3d 872, 874 (8th Cir. 2019) (citing *Ellis* at 1109, 1114).

[107] *Hoyt* v. *City of St. Anthony Vill.,* 2019 U.S. Dist. LEXIS 85865, *17–18 (May 22, 2019).

[108] *Inclusive Communities,* at 2524.

[109] *Griggs* v. *Duke Power Co.,* 401 U.S. 424, 431 (1971).

[110] *Inclusive Communities* at 2523.

[111] 18 U.S.C. 2724(a).

[112] *Thomas* v. *George, Hartz, Lundeen, Fulmer, Johnstone, King & Stevens, P.A.,* 525 F.3d 1107, 1111 (11th Cir. 2018).

[113] 18 U.S.C. 2721.

[114] *See Welch* v. *Theodorides-Bustle,* 677 F. Supp. 2d 1283, 1287 (N.D. Fla. 2010).

[115] *See, e.g., Gill* v. *Whitford,* 138 S. Ct. 1916 (2018).

definition of ''robustness'' as defined by George Box.[116]

In addition, throughout the Final Rule and the preamble explaining any changes from the Proposed Rule, HUD has worked to use consistent terms to avoid confusion.

Comment: Regarding Lincoln Property.

Commenters objected to the proposed burden-shifting framework, particularly the robust causality pleading requirement, arguing that it is a misapplication of the causality requirements in *Inclusive Communities.* The commenters specifically cited *Inclusive Communities Project, Inc.* v. *Lincoln Property Co.,*[117] (*Lincoln Property*) as the source of that misapplication, stating that the Fifth Circuit created a burden of proof for the plaintiffs beyond what the Supreme Court required in *Inclusive Communities* by finding that it is insufficient to plead and prove that a defendant's challenged policy has a discriminatory impact based on race because of its interaction with pre-existing societal disparities if the defendant is not responsible for the underlying societal disparities. The commenters stated that HUD should specifically refute the higher standard of proof in *Lincoln Property,* otherwise HUD would open the door to more courts using higher burdens of proof for causality, making it even harder for plaintiffs to succeed in their disparate impact claims.

HUD Response: The ''robust causality'' requirement and other changes in the Final Rule are based on *Inclusive Communities* and are also supported by subsequent court of appeals decisions. HUD recognizes the concerns that commenters have with the *Lincoln Property* decision and does not intend to endorse this decision. HUD cites to *Lincoln Property* only as one of several cases which recognize the robust causality requirement articulated in *Inclusive Communities.* HUD agrees with the specific statements made in *Lincoln Property* that ''the Supreme Court never explicitly stated that it adopted the HUD regulation's framework'' [118] and ''the Supreme Court's opinion in [*Inclusive Communities*] undoubtedly announce[s] a more demanding test than that set forth in the HUD regulation.'' [119] HUD notes that *Ellis* [120] also provides support for the robust causality requirement, which includes it as a part of the ''cautionary standards'' announced in *Inclusive Communities.*

(b)(3) Adverse Effect on Members of a Protected Class

Comment: HUD uses different phrases and causes confusion about the interaction of § 100.500 paragraphs (b)(2) and (b)(3).

Commenters asked whether the concept in (b)(3), that the alleged disparity has ''an adverse effect'' on a protected class was already satisfied in § 100.500(b)(2), which requires pleading a ''disparate impact on members of a protected class.'' In addition, commenters noted that § 100.500(a) uses the phrase ''discriminatory effect on members of a protected class.'' Commenters stated that it is not apparent that *Inclusive Communities* requires a showing of ''adverse effect'' in addition to ''discriminatory effect,'' which is required in § 100.500(b)(2).

HUD Response: HUD appreciates these comments and has revised the Final Rule to clarify HUD's intent. These elements ((b)(2) and (b)(3)) both require that the plaintiff show that there is a policy or practice with an adverse effect, but differ in that the new element (2) (formerly element (3)) requires a showing that the policy or practice has a *disproportionate* adverse effects on members of the protected class, whereas the new element (3) (formerly element (2)) requires a showing that the policy or practice has a *robust causal link* to such adverse effect. Section 100.500(a) does not set forth the elements of the prima facie case and is therefore not repetitive with elements of paragraph (b).

Comment: Proposed Rule improperly excludes segregation claims.

Commenters opposed the revisions in § 100.500(b)(3) because HUD removed language explicitly allowing segregation claims in § 100.500(a) of the 2013 Rule, noting the harm of segregation on individuals and society generally.

HUD Response: The Proposed Rule did not intend to, and the Final Rule does not limit claims that result in unlawful segregation. While the reference was removed from explicit mention, it was not excluded from the definition altogether. HUD believes that segregation may be the harmful unlawful result of a policy or practice that violates the disparate impact standard.

Comment: HUD should clarify or change the ''adverse effect'' language.

Commenters stated that the third element has arbitrary meaning for requiring proof of effect of discriminating against a protected class as a group, because it is unclear what proof a plaintiff may have to show that the policy or practice as a whole has the effect of discriminating against a protected class as a group. Commenters asked if it would be enough for a plaintiff to claim that she and two other members of the same protected class constitute a group.

Some commenters suggested that § 100.500(b)(3) should have a heightened standard. Some commenters suggested the plaintiff must show that the alleged disparity has an adverse impact on a *significant* number of individuals of a protected class, so that claims impacting a small number of individuals (regardless of the percentage they constitute) are not actionable.

Alternatively, commenters opposed an elevated degree of harm, which they suggested the language in § 100.500(b)(3) proposed. Commenters stated that distinguishing degrees of harms would likely be unsuccessful, but, if done, should include accepted definitions for terms such as ''discriminatory'', ''adverse'', and ''prejudicial''. Other commenters suggested the Proposed Rule be revised so that a plaintiff may show an adverse effect even where some members of the protected class are not impacted.

Finally, commenters said the Proposed Rule provided necessary guidance on what an adverse impact on a protected group is. Commenters stated it is uncontroversial that a plaintiff must show that the policy or practice has a ''disproportionately adverse effect'' on members of a protected class in order to bring a disparate impact claim.

HUD Response: HUD has revised this language to add the word ''disproportionately'' to clarify that it is not enough to simply state that some number of members of a protected class are affected, but that a plaintiff must show that the policy or practice disproportionately affects members of protected class compared to similarly situated non-members. The size of the group and the disparity necessary to show that the adverse effect is 'disproportionate' are fact-specific questions which will vary from case to case. This clarifying language also shows HUD is not intending to create an ''adverse effect'' standard separate from the ''discriminatory effect'' standard, but is merely codifying the requirement inherent in disparate impact claims. HUD is also not intending to create a

[116] George E.P. Box, *Science and Statistics,* Journal of the American Statistical Association (1976), *https://www.jstor.org/stable/2286841.*

[117] 920 F.3d 890 (5th Cir. 2019).

[118] 920 F.3d at 902.

[119] *Id.*

[120] *Ellis* v. *City of Minneapolis,* 860 F.3d 1106, 1111 (8th Cir. 2017).

standard that would be inconsistent with *Inclusive Communities.* Therefore, HUD has determined not to implement language that would require the plaintiff to show a minimum number of people are affected. HUD also notes that it is clear that a plaintiff does not have to show that a policy or practice affects the entire group of protected class members, only that the effect is disproportionate on a cognizable portion of the protected class.

Comment: Does not list Disability.

Commenters noted that the Proposed Rule's discussion of the third proposed element does not list Disability as a protected class.

HUD Response: In an explanation HUD provided in the Proposed Rule's preamble, HUD listed protected classes by quoting 42 U.S.C. 3604(a), which does not include disability because disability is protected in 42 U.S.C. 3604(f).[121] This omission was unintentional. HUD recognizes that disability is a protected class covered under the Fair Housing Act and under § 100.500.

(b)(4) Significant Disparity

Comment: Regarding the definition of ''significant.''

Commenters objected to the section's use of the term ''significant.'' Commenters stated that without a definition, the term ''significant'' is ''too vague to survive review.'' Commenters stated that failing to define the term would create litigation to define it, increasing litigation costs and reducing the ability of potential litigants to properly analyze the risk of litigating. Commenters stated that the requirement that a plaintiff show a ''significant'' disparity is a highly subjective and inherently vague standard that will usurp the court's fact-finding role. Commenters noted that imposing a new materiality standard would allow for some undefined quantum of housing discrimination and noted that the Fair Housing Act makes unlawful *all* prohibited practices described by the Act. Commenters stated that HUD is inferring a materiality requirement through the word ''significant,'' which is not supported by *Inclusive Communities.* Commenters also expressed confusion and objected to the fact that the text of Proposed Rule § 100.500(b)(4) required a disparity to be ''significant,'' but the explanation of that subsection stated that the disparity needs to be ''material.'' Commenters noted that materiality is not a concept used in fair housing law and is more commonly applied in the fraud or breach of contract contexts.

Other commenters supported the use of the term ''significant.'' Commenters stated the requirement is consistent with disparate impact precedent, and directions provided by Federal regulators for assessing disparate impact risk. Commenters supported the Proposed Rule, which does not impose a cutoff on what is considered ''significant,'' but clarifies negligible disparities are not enough. Commenters said a plaintiff must be required to show that the disparity caused by the defendant's policy is significant to prevent frivolous, abusive claims, which protects businesses.

Commenters suggested HUD define a ''significant'' disparity in a functional way, and suggested language defining significant as ''qualitatively different.'' Other commenters suggested that HUD clarify that ''significant'' only means statistically significant. A commenter wrote that the Final Rule must specify whether it is referring to statistical significance (not product of chance) or practical significance (magnitude of disparity) or just ''big or large'' in the common, modern use of the term. A commenter noted that ''significance'' is a concept applied by courts regularly under the Fair Housing Act to refer to statistical significance. A comment suggested that HUD replace the proposed ''significance'' requirement at § 100.500(b)(4) with a balancing inquiry into the nature of the disparity and strength of the causal connection between the disparity and the challenged practice.

Conversely, some commenters opposed any attempt to define significance or materiality. The commenters stated that the Final Rule should allow these terms to be defined contextually, as they traditionally have been, and not create novel safe harbors for acts of discrimination artificially defined as ''insignificant,'' ''immaterial,'' or ''negligible'' or otherwise small.

Commenters suggested that courts should determine whether an effect constitutes a ''significant disparity'' rather than require the plaintiff to prove this as a part of the prima facie burden.

HUD Response: HUD agrees with commenters who believe an attempt to define ''significant'' is not helpful. The meaning of ''significant'' will vary from case to case and any attempt to define it would necessarily exclude fact-specific situations that HUD does not intended to exclude. HUD therefore declines to define ''significant'' in exclusively statistical terms, with a balancing inquiry, or in any other way that may limit its application.

HUD believes it is clear that ''significant'' is a necessary element in Fair Housing Act cases broadly, but especially in disparate impact cases. HUD notes that several courts have, since *Inclusive Communities,* identified a significance requirement.[122] This significance requirement is not exclusively a statistical test or a test of the amount of impact a policy has, but can apply elements of both depending on the situation. HUD does not believe this allows for a ''modicum'' of discrimination to exist, but recognizes that a numerical disparity is not the same as unlawful discrimination and that some differences may be random and not discriminatory. HUD also believes that it is clear that the requirements of proving a prima facie case rests with the plaintiff, and that this case includes the burden to show that the disparity being challenged is sufficient to be legally cognizable.

Finally, HUD's use of the word ''material'' in the Proposed Rule's preamble was intended to emphasize that an immaterial difference would not be sufficient. HUD does not intend to import a materiality requirement separate from the significance requirement. HUD also recognizes that many differences are unexplainable. Further, HUD is mindful of the Supreme Court's caution against approaches that might inexorably lead to quotas.

(b)(5) Direct Cause of Plaintiff Injury

Comment: Intensifies proximate cause.

Commenters stated that the addition of the proposed element that there be a ''direct link'' between a disparate impact and an alleged injury intensifies how much proximate cause there must be to prove a disparate impact at the pleading stage of a lawsuit, before parties have access to discovery and would unjustifiably narrow both the kinds of discriminatory policies that can be challenged and the class.

Commenters stated that the direct link requirement is not supported by the Fair Housing Act. Commenters stated the Proposed Rule improperly requires direct causation, rather than ''robust causation'' as expressed in *Inclusive Communities* or ''some direct relation'' as expressed in *Bank of Am. Corp.* v.

[121] 84 FR 42858 (Aug. 19, 2019).

[122] *See, e.g., City of Miami Gardens,* 931 F.3d at 1297; *Schaw* v. *Habitat for Humanity of Citrus Cty., Inc.,* 938 F.3d 1259, 1274 (11th Cir. 2019); *Waisome* v. *Port Auth. of New York & New Jersey,* 948 F.2d 1370, 1376 (2d Cir. 1991); *City of Los Angeles* v. *Wells Fargo & Co.,* 2015 WL 4398858 (C.D. Cal. July 17, 2015), aff'd, 2017 WL 2304375 (9th Cir. May 26, 2017).

City of Miami,[123] and this can be satisfied by alleging facts or statistical evidence. Commenters also noted that the Eleventh Circuit held that the Fair Housing Act is written in far-reaching terms.[124] Commenters also stated that this element's inclusion was not clearly related to *Inclusive Communities.* Commenters asserted that the Fair Housing Act states that there only needs to be ''some direct relation between the injury asserted and the injurious conduct alleged.''

Other commenters stated that *Bank of Am. Corp.* v. *City of Miami,* which cites *Holmes* v. *Securities Investor Protection Corporation,* was wrongly decided because *Holmes* was a securities fraud case and did not specifically discuss the Fair Housing Act.[125] Other commenters stated that the plaintiff should be required to show proof of disparity and establish a direct or sole cause between the defendant's actions and the disparity to bring a prima facie case.

HUD Response: HUD appreciates these comments. HUD intends to align with Supreme Court precedent in *Bank of Am. Corp.* v. *City of Miami* and has made changes in the Final Rule to mirror the language used in this decision at § 100.500(b)(5), that is, there is a direct relation between the injury asserted and the injurious conduct alleged. HUD is not relying on *Inclusive Communities* for this element. HUD also agrees with commenters that HUD is not authorized to establish standing doctrine, but HUD is only restating language that aligns with Supreme Court precedent. Because *Bank of Am. Corp.* v. *City of Miami* is itself binding precedent, the decision's reliance on *Holmes* does not alter the analysis.

(c) Failure To Allege a Prima Facie Case (General)

Comment: The structure of HUD's proposed pleading stage rebuttals available for defendants to use to refute the prima facie case will make it difficult for legitimate claims to go forward.

Commenters objected to the defenses available under the Proposed Rule, stating that the defenses in the Proposed Rule skew the plausibility of a disparate impact claim in the defendants' favor by greatly increasing the difficulty of proving even meritorious claims. These commenters wrote that finalizing a rule with such defenses available would cause HUD to violate its statutory duty to affirmatively further fair housing.

Commenters also said that expanding the available defenses contravenes disparate impact jurisprudence, because exemptions have only been recognized where they are statutorily authorized, and courts have expressly rejected arguments to expand exemptions. Other commenters asserted that the defenses are inconsistent with case law.

HUD Response: HUD disagrees that this rulemaking violates HUD's duty to affirmatively further fair housing. Affirmatively furthering fair housing is an independent obligation relating to the manner in which HUD administers its programs, not an independent or heightened enforcement mechanism. HUD has broad discretion in defining that obligation and carries out that statutory duty through various other policies, including through the Proposed Rule published on January 14, 2020, at 85 FR 2041.

In addition, HUD believes that the Proposed Rule, including the defenses, is supported by case law. As recognized by the Supreme Court in *Inclusive Communities,* disparate impact is not set forth explicitly in statutory language. This Final Rule is intended to reflect a constant, logical set of pleading requirements consistent with prevailing case law.

Comment: Support and opposition for the structure of HUD's process for rebutting the prima facie case.

Some commenters supported the proposed defenses against a plaintiff's prima facie case, stating that the defenses in the Proposed Rule will discourage abusive disparate impact filings while still preserving cases that are at the core of disparate impact liability. Commenters noted the Proposed Rule was consistent with *Inclusive Communities* and FRCP 12(b)(6) precedent, which allows for dismissal of meritless claims at the pleading stage.

Other commenters objected to the Proposed Rule's framework providing explicit defenses as part of the pleading stage. Commenters stated that the preface cites nothing from *Inclusive Communities*—or any other case law or statute—that provides for this new framework. Commenters cited the three-step, burden-shifting framework included in *Inclusive Communities* and the Fourth Circuit's description of the burden-shifting framework in *de Reyes* v. *Waples Mobile Home Park L.P.*[126] Commenters said that the *de Reyes* court described the burden-shifting framework as requiring plaintiffs to prove a ''robust causal connection'' in their prima facie case and defendants to prove legitimate nondiscriminatory interests while emphasizing that this causality requirement was not so strict as to obligate plaintiffs to show ''any facially neutral rationale to be the primary cause for the disparate impact on the protected class . . .''

HUD Response: HUD believes that the proposed framework is consistent with existing case law. The *de Reyes* court explicitly decided the case under *Inclusive Communities,* not HUD's standard, and declined to decide whether the two were different. In *Inclusive Communities,* the Court stated that courts must examine ''with care'' whether a plaintiff has made a prima facie case of disparate impact. The Court also cited specific elements of a prima facie case, and HUD has codified these prima facie requirements in the Final Rule. Section 100.500(d) then specifies that a defendant can allege in the pleading stage as a defense that the plaintiff has failed to allege all elements of the prima facie requirements.

Comment: HUD should provide additional clarity to the prima facie defenses.

Commenters stated that § 100.500(c) should include a clarification that defendants may introduce evidence that the plaintiff has failed to make a prima facie case, and that the defendant is entitled to dismissal upon successful establishment of a listed defense. These commenters wrote that otherwise, some district courts may erroneously deny these defenses in connection with a Rule 12 motion to dismiss the complaint.

Commenters also suggested that HUD specify that judges should decide defenses against a prima facie case as a question of law, rather than a question of fact.

HUD Response: HUD has revised the regulatory text for defenses, in § 100.500(d). The revised text clarifies that defendants can, as part of a motion to dismiss, argue that the plaintiff has failed to sufficiently plead facts sufficient to state a prima facie case, which would allow a judge to dismiss the case before discovery. There are also defenses available under paragraph (d)(2) after the motion to dismiss stage that would require discovery and further findings by the court. HUD believes issues of law and fact are best left to the judiciary.

Comment: Allowing defendants to get cases dismissed at the pleading stage violates the FRCP.

Commenters stated that the Proposed Rule purports to specify how the burden-shifting framework would apply at the pleading stage of a case and would allow defendants to have a case

[123] 137 S. Ct. 1296 (2017).

[124] Commenters cited *City of Miami* v. *Wells Fargo & Co.,* 923 F.3d 1260, 1278, 1280 (11th Cir. 2019).

[125] *Id.*

[126] 903 F.3d 415 (4th Cir. 2018).

dismissed at the pleading stage by making certain affirmative showings, even when the complaint alleges all necessary elements of the claim. The commenter argues that this squarely contravenes the FRCP regarding motions to dismiss, summary judgment, and Rule 12(d), which HUD has no authority to repeal or modify. Other commenters assert that the Proposed Rule improperly encourages adoption of this prima facie burden by courts.

HUD Response: HUD has revised the regulatory text to clarify what elements are necessary to establish a prima facie case and what defenses are available at the pleading stage. The revised text only allows for a defense at the pleading stage if the plaintiff has failed to properly plead a prima facie case. However, a defendant may make this defense by showing, through the plaintiff's complaint or other information admissible at the pleading stage, that the plaintiff has failed to meet one of the elements. HUD especially notes that the defendant may show a failure to plead causation by showing that the defendant's alleged actions are reasonably necessary to comply with a third party requirement, such as a state law.

While the FRCP govern pleading requirements, HUD's disparate impact rule addresses the underlying definition of one specific cause of action under the Fair Housing Act, which HUD has the authority to implement. Specifically, HUD's Final Rule sets forth the standard for establishing a disparate impact claim (§ 100.500(a)), clarifies the prima facie burden for plaintiffs in a disparate impact case (§ 100.500(b)) and how a defendant can demonstrate that a plaintiff has failed to allege a prima facie case (§ 100.500(c)), and clarifies the burdens of proof in disparate impact cases (§ 100.500(d)).

Additionally, this follows the approach that HUD took in its 2013 Rule. HUD's 2013 Rule both established a burden-shifting framework and defined the content of a ''prima facie showing of disparate impact'' to mean ''proving that a challenged practice caused or predictably will cause a discriminatory effect . . .'' HUD's Final Rule also allocates the burden of proof and defines when disparate impact can occur. The main difference between HUD's 2013 Rule and the Final Rule is that HUD is now providing more precise guidance for when disparate impact may occur in response to *Inclusive Communities.*

HUD believes that *Inclusive Communities* makes it particularly important for courts to scrutinize whether each element of a prima facie disparate impact claim is sufficiently pled before allowing a claim to proceed, given the constitutional and prudential considerations that *Inclusive Communities* outlined and HUD has articulated. HUD believes allowing a defendant to demonstrate that a plaintiff has not pled the prima facie element of connecting the disparate impact with actions the defendant has taken is appropriate at the pleading stage.

Comment: HUD does not have authority to create fact-specific safe harbors.

Commenters stated that courts have declined to adopt exemptions and safe harbors from disparate impact liability as beyond their authority and cited to *Graoch Assoc.* v. *Louisville/Jefferson County Metro Human Relations Commission.*[127] Commenters stated that absent such instruction, HUD lacks the authority to evaluate the pros and cons of allowing disparate-impact claims challenging a particular housing practice and to prohibit claims that we believe to be unwise as a matter of social policy.

HUD Response: HUD is not creating a practice-specific exemption or safe harbor, and HUD's defenses are based on HUD's determination that a defendant who can prove the defense has necessarily shown that the defendant cannot be liable in the manner described by the plaintiff. HUD's Final Rule provides no specific action that insulates a party from liability in the manner of a ''safe harbor'' but instead elucidates the general parameters of the disparate impact theory consistent with Supreme Court precedent.

(c)(1) Prima Facie Case Not Established Because Defendant Discretion Is Materially Limited by a Third Party

Comment: HUD should define ''materially limited''.

Commenters asked for a definition of ''materially limited'' to clarify the defense's bounds. Commenters stated that it is uncertain whether ''materially'' refers to information that is germane to the criteria governing loan transactions or the nature of an inaccuracy or difference or the magnitude of the effect of that disparity. Commenters also noted that while the preamble suggests that the defense of ''materially limited'' discretion applies where a party must take action that would constitute a disparate-impact violation, its plain language sweeps much further. It is arguable that every action in heavily regulated industries such as insurance or lending is taken when the actor's ''discretion is materially limited'' in some way, thus eliminating the disparate impact argument entirely.

HUD Response: HUD has revised the regulatory text to permit this defense only when it is reasonably necessary to comply with a law or court order. HUD believes that this will clarify that the law or court order must lead directly to the defendant's policy or practice.

Comment: ''Materially limited by federal or state law'' defense not supported by existing statute or case law.

Many commenters expressed concern about the Proposed Rule's defense for defendants who can show their actions are materially limited by a third-party such as a law or court decision. Some commenters expressed that there is nothing in the Fair Housing Act or *Inclusive Communities* that would support such a defense. Others stated that allowing such a defense may prevent plaintiffs from being able to bring a claim against a state or local agency for a discriminatory practice. Commenters expressed support for parties being able to implead state or local governments if a state or local law is at issue.

Commenters also stated that this defense is much broader than HUD's previous position that HUD would only recognize defenses based on conflicts with state law in the context of the McCarran-Ferguson Act.[128] Commenters noted section 816 of the Fair Housing Act, which states that laws requiring or permitting discriminatory housing practices are invalid to that extent, and they stated that the statutory provision conflicted with HUD's proposal to create defenses that apply to only certain defendants.

HUD Response: In *Inclusive Communities,* the Supreme Court recognized that HUD's 2013 Rule had a 3-step process for disparate impact overall. First, the plaintiff must establish a prima facie showing of disparate impact. The defendant must then have the opportunity to prove that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests. The plaintiff could still establish liability by showing that those interests can be served by another practice that has a less discriminatory effect. In *Inclusive Communities,* the Court expanded upon those steps, including by favorably citing the lower court's concurring opinion that included as an element of a plaintiff's prima facie case

[127] 508 F.3d 366 (6th Cir. 2007) (''Nothing in the text of the [Fair Housing Act] instructs us to create practice-specific exceptions.'').

[128] 15 U.S.C. 1011–1015.

a demonstration that the defendant's policy or practice is not a result of a law that substantially limits the defendant's discretion.[129] If the defendant's discretion is limited in such a way, the Supreme Court identified this as a lack of causal connection between the policy or practice and the disparate impact, and therefore the case should be dismissed.

In addition, HUD does not believe there is a conflict with section 816. The framework of this Final Rule is to require that, where an alleged discriminatory policy or practice is the direct result of state or local legal requirements, entities merely complying with such laws should not be held responsible. Issues of impleaders, joinder, and identifying appropriate defendants are matters of civil procedure outside the scope of this rulemaking.

Comment: HUD should alter the scope of the ''materially limited'' defense.

Several commenters asked that HUD alter the scope of the defense where the defendant is materially limited by a third party. Some commenters suggested that the scope be narrowed by removing the words ''such as'' to clarify that this defense is available only when a defendant's discretion is materially limited by Federal, state, or local law or a binding court or other similar order, and not when there are limitations from other third parties. Others stated that the defense should only be available where a binding order or regulation rendered a less discriminatory alternative unavailable to the defendant.

Other commenters asked that the defense be expanded. Commenters suggested that defendants be allowed to demonstrate that the defendant acted to comply with applicable laws because the defendant's action is explicitly required or authorized by the statute, or because the action is permitted by the law or reasonably calculated to comply with the other law.

HUD Response: HUD believes that this defense should be permitted only when the policy or practice is legally mandated by a third party. However, those third parties can create the mandates through a variety of methods other than statutes or binding court orders. HUD believes that defendants should be able to argue that their actions are required, regardless of the form of mandate the third party uses. HUD is therefore leaving ''such as'' in the Final Rule.

HUD does not agree that language should be added explicitly discussing when a binding order rendered an alternative unavailable to the defendant. This issue would instead be covered by the defense for a policy or practice that was reasonably required by a law or court order.

HUD also disagrees with expanding the availability of the third-party defense to when actions are merely permitted by the law, as in those instances the policy or practice would not be mandated by the law or court order. In such cases, it would not be reasonably necessary to comply with a third-party requirement. If the defendant's action is not reasonably required to comply with the law or court order, then the defendant has not shown that the cause of the disparate impact is a binding third party.

Comment: The proposed third-party defense eliminates defendants' liability for discriminatory actions.

Commenters objected to the proposed defense that a defendant's actions are materially limited by a third party, because they stated that allowing such a defense would eliminate liability for bad actors by allowing them to blame other entities. Commenters pointed out that limited action of the government entity promulgating the requirement would shield the developer or landlord acting upon the governmental policy from liability, and thus no full relief would be available to the plaintiffs. Commenters stated that previous cases have held that where an agent discriminates by following the directions of a principal, both the principal and agent are liable for the discrimination.[130] Some commenters additionally asserted that the third-party defenses are inconsistent with the common law principle that there can be more than one proximate cause of injury.

Commenters expressed that many actions would result in a finding of no liability, such as discriminatory zoning decisions made in conformance with local law or the reliance on crime-free or nuisance ordinances in evictions of victims of domestic violence.

HUD Response: In disparate impact cases where liability is found, the Supreme Court has directed that the remedial order should concentrate on rectifying and changing the discriminatory practice.[131] Therefore, in the event that unlawful discriminatory practices are mandated by statute or court order, the most effective way to eliminate the unlawful discrimination is to remove or modify the underlying statute or order that mandated the unlawful discrimination. That also allows for a single legal proceeding to affect multiple actors, rather than requiring many lawsuits for all the entities affected by the statute or court order.

Under the Fair Housing Act, individuals may make complaints about discriminatory policies or practices, including those mandated by statute, to HUD, and HUD has the authority to proceed against various actors, including governments. In addition, under section 813 of the Fair Housing Act, individuals have the ability to bring suit against defendants, including governmental entities, in district court. Principal-agent law is inappropriate to the relationship between the government and the governed. Nothing in the Final Rule suggests that a government can insulate itself by its own laws. Additionally, the third-party defense is not available under the language of the Final Rule in traditional principal-agent relationships.

Comment: The proposed third-party defense inappropriate at motion-to-dismiss phase.

Commenters asserted that the proposed defense at § 100.500(c)(1) is impossible to fairly adjudicate as part of the motion-to-dismiss inquiry, noting that HUD does not explain how this defense can fit into the practical realities of litigation. Commenters stated that if the complaint sufficiently alleges that the defendant is responsible for the challenged policy, and the defendant contends otherwise, this question cannot be resolved at the motion-to-dismiss stage and must instead be addressed through summary judgment or trial. Commenters stated that determining whether a defendant's discretion is limited should be deferred to the traditional second step when the burden shifts to the defendant to offer justification, rather than as part of the prima facie stage.

Other commenters noted that the Proposed Rule does not state whether the defenses under § 100.500(c) present questions of fact for resolution by a fact finder or questions of law for resolution by a judge. They stated that the Proposed Rule should make clear that the defenses under § 100.500(c) present questions of law for resolution by a judge and that a judge should make any subsidiary factual determinations bound up within the overall legal analysis.

HUD Response: In *Inclusive Communities,* the Supreme Court favorably cited the lower court

[129] *See Tex. Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.,* 135 S. Ct. 2507, 2524 (2015) (citing 747 F.3d, at 283–84).

[130] *See Alexander* v. *Riga,* 208 F.3d 419, 4333 (3d Cir. 2000).

[131] See *Inclusive Communities* at 1224.

concurring opinion [132] that included, as an element of a plaintiff's prima facie case, a demonstration that it was the defendant's policy or practice, is not a result of a law, that substantially limits the defendant's discretion.[133] If the defendant's discretion is limited in such a way, there is no causal connection between the defendant's policy or practice and the disparate impact, and therefore the case should be dismissed. As a result, HUD believes that this defense is properly available to defendants at the pleading stage. However, HUD has also revised § 100.500(d) to clarify that the third-party defense is also available in the fact-finding stage of the litigation. As noted, HUD does not believe it is appropriate for HUD to seek to delineate legal and factual issues.

Comment: HUD should provide examples.

Commenters stated it would be helpful for HUD to articulate examples of laws and rules in (c)(1) that materially limit a covered party's discretion. For example, several Federal, State and local statutes, regulations, and guidance substantially limit the discretion of rental housing providers in using credit, rental, and criminal history in their selection of tenants. Housing providers following these mandated criteria may have a complete defense available to them, in some circumstances, where their compliance with mandated processes and practices result in disproportional effect against one or more protected classes.

HUD Response: HUD finds it difficult to provide specific examples, as each situation is fact specific. However, it is HUD's intent in this rule to provide protection for defendants with policies or practices that are reasonably required by state law or are within such a narrow range of discretion that there is no practical alternative.

Comment: Clarification of separate defenses.

Commenters suggested HUD add the word ''or'' at the end of § 100.500(c)(1) to clarify each of the defenses are independent and separately available as a complete defense to a disparate impact claim.

HUD Response: HUD has refined the ''defenses'' section of the regulatory text in § 100.500(d) to provide clarity on what defenses are available and at what stage of the litigation.

(c)(2)—Defenses When Disparate Impact Results From Use of System or Risk-Assessment Algorithm

Comment: HUD should amend the defense for use of algorithms or models created by third parties.

HUD received many comments regarding the proposed § 100.500(c)(2), which provided certain defenses when the alleged cause of a discriminatory effect is a model used by the defendant. Some commenters objected to the proposed defense, stating that HUD did not have enough information on the nature, propriety, and use of algorithmic models to adequately propose a regulation on the topic. Commenters urged HUD to consult with other agencies to gain insight on the use of artificial intelligence. Other commenters noted that the relationship between algorithms and the laws regulating algorithms may create unpredictable and potentially dangerous outcomes. Some commenters asserted that the Proposed Rule only addressed algorithms in prescribing defenses for their use and failed to address their potential harms or unintended consequence. Commenters also asserted that allowing safe harbors for the use of algorithms would create devastating economic costs and increase discrimination.

Commenters also stated that the premise of the defense was flawed, as it provided a safe harbor for entire industries that rely on algorithms, particularly the insurance industry. Some commenters suggested that HUD lacks the statutory authority to create such safe harbors, and the proposed defense is counter to case law, including *Inclusive Communities.* Commenters stated that HUD should always require a case-by-case analysis of disparate impact claims rather than allowing blanket safe harbors which would hold defendants liable for their choices and allow defendants to demonstrate that the algorithm's use is a for a legitimate and nondiscriminatory purpose. Commenters wrote that the proposed defense defeats the purpose of the Fair Housing Act and effectively imposes an intent requirement in stark opposition of the disparate impact theory.

Commenters stated HUD has not identified the criteria that can be used to confirm whether particular models can be relied upon to produce nondiscriminatory risk assessments, and HUD should undertake additional analysis of models used in the housing industry to confirm whether these models yield useful, nondiscriminatory risk assessments or at a minimum attempt to establish neutral criteria the housing providers and third parties that develop such models can use to assess whether they meet the safe harbor requirements in advance.

Commenters said that allowing a defense for ''industry standard'' algorithm would still allow for discriminatory impacts. Commenters asserted that none of the authorities that allow for self-testing create safe harbors for algorithms vetted by a third party that determines industry standards. Others stated that allowing safe harbors when algorithms are used will undermine trust in technology.

Commenters stated that allowing a blanket defense for the use of algorithms would be counter to HUD's own actions in recent litigation dealing with targeted advertising. Commenters asserted that insurance companies are free to adopt or modify third-party products or to use their own algorithms, and therefore there should be no defense for using an algorithm.

Commenters stated that the proposed defense language contained many phrases and terms that are unclear and undefined, which would lead to increased litigation costs. Other commenters stated that certain terms, such as ''industry standard'', should remain undefined to account for rapid business changes that may occur. Commenters asked for further guidance on how to evaluate assertions of the proposed third-party defense.

Others stated that the defense permitted the use of statistically sound algorithms based on biased data, potentially because of a concern that the technology industry is not diverse enough to create products without discriminatory outcomes. Commenters stated that data testing should be mandated to uncover otherwise invisible barriers to fair housing.

Others asserted that it would make disparate impact cases more difficult for plaintiffs to win, even potentially rising to the point of violating the Equal Protection Clause. Some said that it would automatically exempt defendants from having to demonstrate that a policy is necessary to achieve a valid interest and it would increase the burden for plaintiffs to prove there is a less discriminatory alternative. Commenters also stated that defendants may combine the use of algorithms with subjective determinations, where the subjective determination results in a disparate impact, but the proposed defense may not effectively allow plaintiffs to assert such a claim.

Commenters asserted that the Proposed Rule would create an incentive to use third-party algorithms without evaluating and testing the

[132] *Inclusive Cmtys. Project, Inc.* v. *Tex. Dep't of Hous. & Cmty. Affairs,* 747 F.3d 275,283–84 (5th Cir. 2014).

[133] *Inclusive Communities,* at 2524.

results and outputs of the algorithms, thus shifting responsibility for disparate impacts to third parties. Commenters pointed to cases such as *Miller* v. *Countrywide Bank, NA.*[134] Commenters asserted that third parties have incentives to secure repeat business rather than eliminating discriminatory effects or giving candid advice about potential impacts, and this defense will allow a wide array of practices facilitated by faulty algorithmic models without liability.

Commenters also questioned whether the proposed defense would afford any relief to plaintiffs. Some commenters asked HUD to clarify that the algorithm developer could be held liable for claims, even if the developer was not directly engaged in making or purchasing loans. Others stated that third-party vendors may try to claim that the discrimination was a result of user misuse, thus potentially leaving plaintiffs without any recourse. Commenters suggested that HUD require vendors to indemnify covered entities for discriminatory compliance issues.

Some commenters expressed concern that developers would attempt to rely on trade secret law to avoid disclosing information about the model, making it difficult or impossible to examine biases inherent in the data being used, particularly in the pleading stage before discovery. Commenters suggested HUD might add confidentiality protections to limit the disclosure of proprietary information to enable examinations. Others stated that HUD should require algorithmic models be published to provide transparency, including factors considered, weights assigned, and all elements that would contribute to a decision. Some commenters stated that plaintiffs with disabilities will not have access to the type of information necessary to challenge an algorithmic model.

Commenters stated that allowing a third-party to certify the algorithm's soundness would further frustrate plaintiffs' ability to evaluate the model, and such third parties are not always reliable. Some commenters suggested that the Proposed Rule contained language explicitly stating that experts cannot be deemed biased based on the fact that the expert has received payment or has prior history with litigation under the Fair Housing Act. Commenters stated that the Proposed Rule does not require the third parties to have fair housing experience, nor does it provide standards for the soundness certification. Commenters expressed concern that an algorithm could still be discriminatory even if it is ''statistically sound.'' Commenters stated that the proposed defense is unclear on whether the algorithm must be validated before or after initial use of the model. Commenters also asserted that HUD cannot mandate that a court accept an expert's testimony as conclusive fact. Commenters stated that it would be expensive for plaintiffs to disprove third-party verifications of models, requiring plaintiffs to gather data and retain expert analysis and testimony.

Commenters also stated that HUD failed to account for the additional burden that small entities would need to undertake to get their own algorithms validated by a third-party, and stated that larger companies, with their increased capacity for getting algorithms validated, would be able to create a higher barrier of entry for small businesses looking to develop algorithms.

Commenters stated that the Proposed Rule should focus more on any algorithm's outputs. Some stated the defense would be problematic without requiring independent audits to determine the accuracy and reliability of algorithmic-based decisions. Commenters stated that the proposed defense did not account for the way data combinations can produce negative impacts, particularly if artificial intelligence is allowed to ''learn'' to create proxies for otherwise prohibited factors.

Commenters stated that the standard that material factors in the algorithm not be substitutes or proxies for protected classes was inadequate, as close proxies can be used if they are not ''material'', and sometimes multiple components that are neutral on their face can be an indicator of membership in a protected class when combined. Commenters also stated that what is a close proxy for a protected class may even be mutable over time, and that there are variables that may not be ''substitutes of close proxies'' but are still influenced by a history of discrimination.

HUD Response: HUD appreciates all of the comments and suggestions. As noted in the Proposed Rule, HUD believes that this area was particularly difficult and specifically solicited input on this topic. After considering the comments, HUD has removed this language from the Final Rule. Instead, in § 100.500(d)(2)(i), HUD has included language allowing a defendant to demonstrate that the policy or practice being challenged is intended to predict the occurrence of an outcome, the prediction represents a valid interest, and the outcome predicted by the policy or practice does not or would not have a disparate impact on protected classes compared to similarly situated individuals not part of the protected class. HUD believes this results-based approach is consistent with a number of well-founded comments.

HUD believes that this language achieves many of the goals of the proposed defense while addressing many of the concerns raised by commenters. The defense eliminates the issue of whether the challenged policy or practice is the use of an algorithm and who created or reviewed the algorithm. The defense also does not rely on whether the inputs are proxies for protected classes, eliminating the necessity for examining all the components of the algorithm.

Instead, HUD believes that the Final Rule is improved by focusing the inquiry on whether the defendant has a valid interest in predicting an outcome and whether the ultimate outcome of the challenged policy or practice has a disparate impact on a protected class compared to similarly situated individuals outside of the protected class.

(d) Burdens of Proof for Discriminatory Effect

Comment: HUD should not have changed the 2013 Rule's burden of proof.

Commenters stated that the Proposed Rule provided no explanation for changing the burdens of proof set out in the 2013 Rule and that the 2013 Rule's burden shifting framework is consistent with *Inclusive Communities,* which cited the 2013 Rule regarding burdens, and established law. One commenter stated that the proposed burden of proof is a high barrier that would make it virtually impossible to bring the bedrock and heartland housing discrimination cases that Justice Kennedy in *Inclusive Communities* expressly stated should be brought using disparate impact. Commenters noted that a district court expressly rejected the argument that the Supreme Court was changing the three-prong doctrine.[135]

Commenters stated that the 2013 Rule framework was consistent with *United States* v. *City of Black Jack,*[136] which was cited by *Inclusive Communities* and established a three-step test similar to that established for Title VII employment cases in *Griggs* v. *Duke Power.*[137] Commenters noted that when

[134] 571 F. Supp. 2d 251, 260 (D. Mass. 2008).

[135] *Smith* v. *City of Boston, Mass.,* 144 F. Supp. 3d 177, 211 n.43 (D. Mass. 2015).

[136] 508 F.2d 1179, 1186 (8th Cir. 1974).

[137] 401 U.S. 424 (1971).

Congress amended the Fair Housing Act in 1988, nine federal courts of appeals had endorsed *Black Jack's* basic holding that the statute prohibits actions with an unjustified disparate impact. Commenters cited to post-*Inclusive Communities* decisions in which courts have followed long-standing Fair Housing Act disparate impact jurisprudence. Commenters also stated that *Wards Cove's* reasoning suggests that putting such a burden on plaintiffs at the pleading stage is not appropriate, or that *Wards Cove's* reasoning is based largely on careful analysis of the practical realities of Title VII compliance, and not Fair Housing issues. Several commenters asserted that the Proposed Rule's defenses to disparate impact liability are unnecessary because defendants could already raise such defenses as legally sufficient justifications under the 2013 Rule. Commenters expressed preference for the 2013 Rule's analysis of disparate impact claims on a case-by-case basis and noted that the 2013 Rule's ''business necessity defense'' was already flexible enough to incorporate many of the defenses in the Proposed Rule.

Commenters objected to the requirement that a defendant merely has a burden of production concerning a valid interest and the specification that a plaintiff must prove a less discriminatory alternative. Commenters acknowledged that this requirement is drawn from *Wards Cove.* However, commenters asserted that these burden-shifting standards established by *Wards Cove* were quickly rejected by Congress in the Civil Rights Act of 1991. Commenters stated that nothing in *Inclusive Communities* now renders it more appropriate to import *Wards Cove* into the Fair Housing Act and that although *Inclusive Communities* includes one favorable citation to *Wards Cove,* it is to a portion that was not abrogated by the Civil Rights Act of 1991. Commenters noted HUD specifically rejected giving the defendant only a production burden, but not a persuasion burden, in the 2013 Rule because it is consistent with the burden of proof allocation in settled Fair Housing Act case law and with the standard under Title VII and the ECOA.

Other commenters stated that the plaintiff properly bears the burden of proof at all stages, and the persuasion burden does not shift to the defendant in the pleading stages.

HUD Response: HUD has revised the Final Rule's structure to clarify the burden shifting approach. This Final Rule is similar to the 2013 Rule's burden shifting approach, but provides more detail and clarity following the Supreme Court's decision in *Inclusive Communities.* The 2013 Rule inappropriately required the defendant to prove that the challenged practice was necessary to achieve a substantial, legitimate, nondiscriminatory interest.

In *Inclusive Communities,* the Supreme Court stated that the Fair Housing Act is not an instrument to force housing authorities to reorder their priorities, but rather to ensure that those priorities can be achieved without arbitrarily creating discriminatory effects. The Supreme Court analogized to, rather than expressly adopted, the business necessity standard under Title VII.[138]

HUD finds that the analogy to the business necessity standard under Title VII is persuasive. Per *Wards Cove,* if a Title VII plaintiff establishes a prima facie case of discrimination, the burden of producing evidence of a legitimate business justification for those practices will shift to defendant, but the burden of persuasion will remain with the plaintiff at all times.[139] This is consistent with the concept in *Inclusive Communities* of giving housing authorities and developers ''leeway to state and explain the valid interest served by their policies.'' The Proposed Rule would implement this standard in the fair housing context in its section on burden of proof.[140]

Wards Cove remains relevant law. Historically, disparate impact standards under Title VII have tracked standards under Title VIII Fair Housing Act liability. Thus, *Wards Cove* has implications for Title VIII Fair Housing Act liability. Congress did not amend Title VIII when it amended Title VII, so *Wards Cove* is still operative in Fair Housing Act cases. Further, while *Inclusive Communities* acknowledges that *Wards Cove* was ''superseded,'' it still cites *Wards Cove* on the importance of a robust causality requirement and cites to the statutory change that only impacted Title VII as the reason for the superseding.[141] Thus, the Supreme Court still believes that *Wards Cove* is controlling for disparate impact fair housing cases even if not now controlling for Title VII cases.

HUD also notes that the burden of production is a more logical burden for the defendant because the defendant may effectuate a defense by challenging other elements of the plaintiff's case, without reaching the issue of a valid interest. If the defendant chooses to raise this particular defense, then the defendant must produce evidence to support such a defense. It is ultimately the plaintiff's burden to prove a case, and the plaintiff must do so by rebutting any evidence produced by the defendant.

As to the comment that *Smith* v. *City of Boston* rejected the reading of *Inclusive Communities* as changing the three-prong burden shifting test, those statements by the District Court in a footnote, which were part of a discussion of the role of the third prong in Title VII analysis (that plaintiffs can rebut a showing of business necessity by identify a less discriminatory alternative that meets the defendant's legitimate needs), were simply dicta, as that part of the burden shifting test was expressly not a factor in the actual holding because the defendant's case failed at an earlier stage.[142]

(d)(1) Not Remote or Speculative

Comment: ''remote or speculative'' is vague and unnecessary.

A commenter asserted that the ''remote or speculative'' standard is inherently vague and gives litigants no useful marker to evaluate evidence, particularly at the pleading stage. The commenters further agreed that it raises the standard a plaintiff must meet to prove their case at every stage of the proposed burden shifting test. A commenter stated that adding this language is unnecessary as administrative and judicial proceedings would necessarily exclude this type of evidence. Other commenters stated that HUD should define the term as ''objective evidence that is measurable, valid, and reliable.''

HUD Response: HUD has concluded that evidence which is remote or speculative would necessarily not be allowed under administrative and judicial rules of evidence. Thus, HUD has removed the term from the Final Rule, as it is unneeded and confusing.

(d)(1)(i) Plaintiff's Evidentiary Burden

Comment: Plaintiff should ''demonstrate'' not ''prove''.

Commenters suggested an alternative that plaintiffs should not be required to

[138] *Inclusive Communities,* at 2522.

[139] *Wards Cove Packing Co.* v. *Atonio,* 490 U.S. 642, 644 (1989).

[140] *See also* the Proposed Rule, 84 FR 42858, footnote 43 (August 19, 2019).

[141] *See Inclusive Communities,* at 2523 (''A robust causality requirement ensures that ''[r]acial imbalance . . . does not, without more, establish a prima facie case of disparate impact'' and thus protects defendants from being held liable for racial disparities they did not create. *Wards Cove* at 653 superseded by statute on other grounds, 42 U.S.C. § 2000e–2(k).'').

[142] *Smith* v. *City of Boston,* 144 F. Supp. 3d 177, 211 fn. 43 (D. Mass. 2015)

''prove'' elements in paragraphs (b)(2) through (5), but should instead be required to ''demonstrate'' the elements through preponderance of evidence.

HUD Response: The regulation refers to burden of proof by preponderance of the evidence, which is the usual standard of proof for a plaintiff in civil cases.

(d)(1)(ii) Less Discriminatory Policy

Comment: ''Equally effective'' alternative not legally justified.

Commenters noted that at least one post-*Inclusive Communities* case has rejected the argument that a less discriminatory alternative must be an equally effective means for achieving a legitimate interest. Other commenters stated this prong renders the ''less discriminatory alternative'' ineffective. Commenters also stated that the ''legally sufficient justification'' standard already existed under the 2013 Rule and HUD correctly implemented it in ''Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions.'' [143] Several commenters stated HUD considered and rejected elements of the Proposed Rule when HUD published the 2013 Rule, like the ''equally effective manner'' element and that the plaintiff must prove a practice lacks a legitimate justification.

HUD Response: The 2013 Rule provided that it is a defense to a plaintiff's prima facie case that there is a ''legally sufficient justification'' for the practice, and that the legitimate, nondiscriminatory interests that constitute the legally sufficient justification could not be served by a less discriminatory alternative practice.

The Proposed Rule would change the burden on the parties such that, if the defendant rebuts the plaintiffs' case by showing that the challenged practice advances a valid interest or interests, the plaintiff must then show that by a preponderance of the evidence that a less discriminatory policy or practice exists that would serve the defendant's identified interest in an equally effective manner without imposing materially greater costs on, or creating other material burdens for, the defendant.

This approach is consistent with *Inclusive Communities,* which noted, ''[I]t would be paradoxical to construe the Fair Housing Act to impose onerous costs on actors who encourage revitalizing dilapidated housing in our Nation's cities merely because some other priority might seem preferable.'' [144]

The Final Rule, therefore, balances these interests involved by requiring that a less discriminatory alternative, if posed as a basis for discriminatory impact liability, is one that will not unduly harm defendants. HUD notes here that the costs or burdens to be considered and the nature of the less discriminatory alternative both incorporate an assumption of materiality. In order for plaintiffs to fail to meet their burden on this issue, the costs or burdens that would be imposed by the less discriminatory alternative must be material. The ''less discriminatory alternative'' prong would also have to be material and would be properly balanced against the defendant's legitimate interests.

Comment: ''Less discriminatory alternative'' is too generous to plaintiffs.

Commenters suggested that HUD eliminate the less discriminatory alternative requirement altogether. Commenters stated that allowing a plaintiff to rebut a defendant's showing that the challenged practice advances a valid interest where a defendant insurer can show that it utilized risk-based pricing and underwriting in accordance with state insurance laws, allows the plaintiff to rebut and then require the defendant to prove a material cost or burden is contrary to the holding in *Inclusive Communities.* The commenter asserted this process would force a federal court to weigh the relative merits of insurance rating methods, which is the purview of the states under the McCarran-Ferguson Act [145] and would greatly hinder the insurer's ability to make reasonable decisions inherent in a free economy. Other commenters stated that the Proposed Rule should require the plaintiff to prove the existence of a nondiscriminatory alternative that has actually been implemented in an operation similar to the defendant's.

HUD Response: HUD does not believe that these proposals would be consistent with *Inclusive Communities,* or the Fair Housing Act generally, and therefore declines to accept them. Generally, the ability of a plaintiff to raise the existence of a less discriminatory alternative that is equally as effective has been recognized consistently by courts in Title VII and Title VIII disparate impact cases. As far as applicability to insurance specifically, Federal courts have ruled on the applicability of the Fair Housing Act in cases where States regulate insurance, and that case law would apply.[146] HUD itself has also opined on this issue and determined that a general waiver of disparate impact law for the insurance industry would be inappropriate.[147] After further consideration, HUD continues to believe that this determination was correct.

Comment: Less discriminatory alternatives analysis is flawed.

Commenters stated that the Proposed Rule's discussion of less discriminatory alternatives does not acknowledge that lowering a requirement like an income requirement may appear to reduce the discriminatory effect when comparing acceptance rates, but may appear to increase the discriminatory effect when comparing denial rates. The commenters stated that the Final Rule should provide guidance on how such a situation would apply in a less discriminatory alternative.

HUD Response: HUD declines to opine on fact-specific situations. Whether an alternative is less discriminatory is left to the sound judgment of a court. Parties may generally present arguments and evidence about the impact of a particular policy or practice and the proper perspective for considering it.

Comment: HUD should provide additional defenses.

Several commenters suggested that HUD provide an additional defense. Some commenters suggested a complete defense where a defendant shows inaccuracies or unreliability in the data methodology used to prove the existence of a disparity or where the defendant was not the actual cause of the disparate impact.

Commenters proposed an additional or alternative defense for owners that adopt a written policy that is not discriminatory on its face and is reasonably calculated to achieve a legitimate property management objective.

Other commenters proposed a defense where the challenged practice is consistent with any policy or practice that HUD has approved for the operation of Federally insured housing, is related to determining tenant eligibility or selection, and is reasonably calculated to enhance housing opportunities for persons who are

[143] U.S. Department of Housing and Urban Development, *HUD Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, HUD.gov* (April 4, 2016), *https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.*

[144] *Inclusive Communities,* at 2512.

[145] 15 U.S.C. 1011–1015.

[146] *E.g., Nationwide Mut. Ins. Co.* v. *Cisneros,* 52 F.3d 1351 (6th Cir. 1995); *Ojo* v. *Farmer's Group,* 600 F.3d 1205 (9th Cir. 2010).

[147] *See* ''Application of the Fair Housing Act's Discriminatory Effects Standard to Insurance,'' 81 FR 69012 (Oct. 5, 2016).

members of protected classes or other vulnerable classes.

Commenters requested the Final Rule include language allowing reliance on a housing finance agency's analysis of local conditions as proof that a policy or practice is necessary.

HUD Response: HUD declines to adopt these proposed defenses. While HUD believes that each of these situations would generally not be situations in which the defendant would be found liable, HUD declines to provide a specific exception because HUD believes that there may be fact-specific situations which HUD cannot foresee but which may lead to liability in these situations. HUD notes that the Final Rule, while not providing these defenses specifically, provides more general defenses which defendants in similar situations could use to rebut a case alleging disparate impact such as reasonable steps to comply with a governmental request.

Comment: Special defense for Public Housing Agencies (PHAs) exercising discretion.

Commenters stated there should be no special defense for public housing agencies. Commenters said *Inclusive Communities* does not provide support for adding a separate defense for either PHAs or housing finance agencies and said HUD's current standard is sufficient to ensure that PHAs are afforded ''leeway to state and explain the valid interest served by their policies.'' Commenters stated that such a question is fact specific. Some commenters supported a defense for housing authorities who demonstrate their actions or decisions were reasonable and made with sound discretion.

HUD Response: HUD's 2013 Rule did not have such a defense and HUD has determined a defense particularly for PHAs is not appropriate. HUD believes that the protections which are already in the proposed and Final Rule provide sufficient safeguards for PHAs.

(d)(2) Defendant's Burden

Comment: Regulatory Text is Repetitive.

A commenter asserted that (d)(2) unnecessarily repeats that the respondent may assert the complainant has failed to support their allegations with a preponderance of the evidence.

HUD Response: HUD seeks to avoid unnecessary repetition but believes some repetition aids in ensuring that burdens and duties in disparate impact litigation are clear at all steps. HUD has made edits to the Final Rule to provide clarity and avoid repetition where possible.

Comment: Suggestions specifically for the defendant's burden at 100.500(d)(2).

Commenters requested that HUD clarify the Proposed Rule so that it is the plaintiff's burden to demonstrate ''equally effective manner,'' ''materially greater costs,'' and ''material burden.''

Commenters also stated that HUD should limit the scope of any ''individualized assessments,'' because of the burden it creates for housing providers. Although not explicitly required in the Proposed Rule, the commenters state this should be clarified considering the mitigating evidence required by the courts in prior cases.

HUD Response: HUD has made clarifying edits to each party's burdens and believes that these burdens are clear. HUD notes that the less discriminatory alternative is the plaintiff's burden of proof, but the defendant has the burden of rebutting a plaintiff's proposed alternative if the defendant seeks to show that the alternative would impose materially greater costs or burden.

(d)(2)(iii) Valid Business Interest

Comment: The business interest defense conflicts with law, related agency practice, and places unequal burdens on the plaintiff versus the defendant.

Commenters asserted that the business interest defense: Conflicts with the 2013 Rule, Title VII, and ECOA because it fails to require the business interest to be substantial, legitimate, or nondiscriminatory; does not require that the challenged policy is necessary to accomplishing the purported interest; and does not require that a defendant's evidence be material and not remote, speculative or hypothetical (while requiring plaintiffs' evidence to be so). Commenters stated that the Proposed Rule does not provide an explanation for altering the business interest defense, noting that *Inclusive Communities* provides no support for this revision, and suggested it would create a dramatic imbalance in the quality of evidence required for plaintiffs as opposed to defendants.

Commenters asserted that case law requires instead an assessment of whatever justifications the defendant advances and carefully weighing them against the degree of adverse effect the plaintiff has shown.[148]

Many commenters expressed concern that the Proposed Rule would contradict established precedent and exempt potential defendants from liability for implementing policies that produce profits because a less discriminatory policy must also be shown to produce substantially similar profits under the Proposed Rule. Commenters asserted that factors 'relevant to the justification' of a practice with a discriminatory impact 'could include cost and profitability,' but a practice cannot be justified simply because of cost or profit. Commenters stated that the alternative policy element is inadequate without a definition explaining ''other material burdens'' or ''materially greater costs.''

HUD Response: Inclusive Communities stated that defendants must be given leeway to ''state and explain the valid interest served by their policies.''[149] HUD mirrors this language by requiring defendants to provide a ''valid interest.'' What is considered valid is a fact-specific question, but an interest that is intentionally discriminatory, non-substantial, or otherwise illegitimate would necessarily not be ''valid.'' HUD does not believe this creates a ''dramatic imbalance,'' but merely allows the defendant the opportunity to identify any valid reason for the policy being challenged. Profit is necessarily a valid interest for businesses. It was expressly recognized by the Supreme Court in *Inclusive Communities.* If a defendant produces evidence which is not persuasive, that evidence must be weighed appropriately.

HUD also declines to define ''material.'' What is ''material'' is a fact-specific question which is heavily dependent on the type of defendant and the type of valid interest being raised. It is not the intent of this Final Rule that a defendant would be insulated from liability simply because a less discriminatory alternative shows an immaterial decrease in profits or burden. As the Proposed Rule states, the costs or burdens imposed must be material, and something more than a mere inconvenience to the business. What is material in a specific case will have to be determined by the court, and this analysis may consider the materiality of the harm which the disparate impact is causing. However, HUD does not find a prescribed balancing test to be consistent with *Inclusive Communities,* which stated ''[i]t would be paradoxical to construe

[148] *Inclusive Communities,* 135 S. Ct. at 2522 (''The Act aims to ensure that [local housing] priorities can be achieved without arbitrarily creating discriminatory effects or perpetuating segregation . . . in order to prevent segregated housing patterns that might otherwise result from covert and illicit stereotyping'') (citing *Huntington Branch, N.A.A.C.P.* v. *Town of Huntington,* 844 F.2d 926 (2nd. Cir. 1988) .

[149] *Id.* at 2522.

the [Fair Housing Act] to impose onerous costs on actors who encourage revitalizing dilapidated housing in our Nation's cities merely because some other priority might seem preferable.'' [150]

Comment: Plaintiffs cannot prove that defendant's asserted interest is illegitimate.

Commenters stated that the Proposed Rule does not set forth an opportunity for plaintiffs to prove that the defendant's asserted interest is illegitimate because the Proposed Rule immediately shifts to the third step and requires the plaintiff to prove that there is a less discriminatory alternative.

HUD Response: The Proposed Rule was drafted under the assumption that the plaintiff would necessarily have the opportunity to prove that the defendant's asserted interest is not valid. The Final Rule has been revised to make this explicit.

100.500(e)—Business of Insurance

Comment: Proposed rule's interaction with State regulation of insurance.

Commenters stated that proposed § 100.500(e) would create a safe harbor for insurance claims under the Fair Housing Act, or preempt all such possible claims that the McCarran-Ferguson Act has no reverse-preemptive effect on Federal law at all. A commenter asserted that insurers were required to litigate whether their practices were ''actuarially sound and in accordance with state law.'' This would force Federal courts to second-guess the actuarial soundness of particular state-regulated insurance practices, including whether there is a less discriminatory but equally effective alternative practice that would serve the defendant's identified interest. A commenter stated that this would violate the McCarran-Ferguson Act.[151] A commenter further stated that HUD has provided no evidence to support the need for an insurance industry exemption. Conversely, another commenter stated that the proposed section 100.500(e) does not mention the McCarran-Ferguson Act, but asserted that the proposed regulation uses parallel language and attempts to exempt the insurance industry from disparate impact liability. The commenter stated that there is no reason the insurance industry cannot comply with both the McCarran-Ferguson Act and the Fair Housing Act, because disparate impact liability is not incompatible with the insurance business, as the Final Rule is expressly written to accommodate legitimate business practices, and exempting lenders from disparate impact liability would eliminate an important mechanism for plaintiffs to challenge intentional discrimination. Another commenter stated that HUD in the Proposed Rule declined to exempt homeowner's insurance or meaningfully address whether extending disparate impact liability to homeowner's insurance would interfere with State regulation of insurance in violation of the McCarran-Ferguson Act. Commenters also argued that states were better equipped to regulate the insurance industry.

Finally, some commenters asserted that the Proposed Rule conforms to the McCarran-Ferguson Act and noted court decisions have affirmed the Fair Housing Act does not conflict with state insurance laws, and that the Fair Housing Act necessarily addresses the insurance industry by virtue of addressing the lending industry.

HUD Response: Relevant case law indicates that neither of the extreme positions—that all insurers should be shielded from all disparate impact liability, or that McCarran-Ferguson has no preemptive effect at all—is correct. Rather, ''[w]hen federal law does not directly conflict with state regulation, and when application of the federal law would not frustrate any declared state policy or interfere with a State's administrative regime, the McCarran-Ferguson Act does not preclude its application.'' [152] HUD is neutral as to the application of McCarran-Ferguson in specific cases. A federal law that does not relate specifically to the business of insurance is not to be construed to invalidate, impair, or supersede State law enacted for the purpose of regulating the business of insurance.[153]

The Proposed Rule and Final Rule make clear that HUD is only clarifying that its disparate impact rule is not specifically related to the business of insurance. State laws regulating insurance will supersede the Fair Housing Act in a discriminatory impact case if the application of the Fair Housing Act in that case would invalidate, impair, or supersede State law regulating insurance.[154] In the *Ojo* case, then, the dispositive question was ''whether application of the [Fair Housing Act] to Ojo's case might invalidate, impair, or supersede'' certain provisions of the Texas insurance code, in which case State law would prevail; or on the other hand, could ''complement'' that State's law, in which case the Fair Housing Act's provisions would apply and a disparate impact suit would not be prevented. In *Ojo,* the court found that Texas law was unsettled, and certified the issue to the State Supreme Court for resolution.[155]

An example of a case where the Fair Housing Act was found to complement State insurance law, allowing a disparate impact suit to go forward, is *Nationwide Mutual Ins. Co.* v. *Cisneros.*[156] In that case, which was a geographic redlining case involving an allegation that an insurance policy was cancelled due to the insured's race and place of residence, the Ohio law at issue prohibited insurers from ''making or permitting any unfair discrimination between individuals of the same class'' involving ''the same hazard in the amount of premium, policy fees, or rates charged.'' [157] The Sixth Circuit held that the presence of additional remedies under the Fair Housing Act did not cause the Fair Housing Act to invalidate, impair, or supersede Ohio insurance law, and under McCarran-Ferguson, the Fair Housing Act was not preempted. Similarly, in another redlining case, where the allegation was that the insurer declined to renew a policy based on the neighborhood in which the insured lived, *United Farm Bureau Mut. Ins. Co.* v. *Metropolitan Human Relations Comm'n,*[158] the court found that since the State ''does not require or condone redlining, or commit to insurers all decisions about redlining,'' application of the Fair Housing Act was not precluded.

Examples of cases where a court found that the McCarran-Ferguson Act prevented the application of the Fair Housing Act include *Taylor* v. *Am. Family Ins. Group,*[159] in which the plaintiff alleged that defendant's policy of using an insured's credit score to set prices violated civil rights laws, including the Fair Housing Act. The state law allowed the use of credit information to create insurance scores for the purpose of assessing risk and setting premiums. The court found that allowing the plaintiff to challenge the defendant's credit-based insurance scoring system under federal civil rights statutes, including the Fair Housing Act, would impair the State-specific insurance laws and, therefore, the plaintiff's claims under those federal

[150] *Id.* at 2523.

[151] 15 U.S.C. 1011–1015.

[152] *Humana Inc.* v. *Forsyth,* 525 U.S. 299, 310 (1999).

[153] 15 U.S.C. 1012(b).

[154] *Ojo* v. *Farmers Group, Inc., et al.,* 600 F.3d 1205, 1209 (9th Cir. 2010).

[155] *Id.* at 1209–1210.

[156] 52 F.3d 1351 (6th Cir. 1995).

[157] *Id.* at 1361.

[158] 24 F.3d 1008 (7th Cir. 1994).

[159] 2008 U.S. Dist. LEXIS 61181 (D. Neb., Aug. 11, 2008).

statutes could not proceed under the McCarran-Ferguson Act.[160] In *Saunders* v. *Am. Family Mut. Ins. Co.,*[161] the plaintiffs alleged price discrimination. The court found the claims barred under McCarran-Ferguson based on the fact that the State provided an exclusive administrative remedy for insurance rate complaints, including under the State law that prohibited rates that are ''excessive, inadequate, or unfairly discriminatory.'' The court found that if McCarran-Ferguson did not apply, the court would be forced to determine what a fair and non-discriminatory rate would have been, creating a conflict with the State's administrative regime.[162]

This rulemaking does not establish an insurance industry exemption. As required by Federal law, specifically the McCarran-Ferguson Act, the Final Rule recognizes that Federal law that does not specifically relate to insurance may be barred if it would impair, invalidate, or supersede the State's insurance laws and regulations, and that this result under McCarran-Ferguson is a potential defense to disparate impact liability under the Fair Housing Act. It will be for the courts in individual cases to decide if a particular application of disparate impact liability under the Fair Housing Act would invalidate, impair, or supersede State law.

Comment: Practice of risk-based pricing and underwriting should be a complete defense to disparate impact claims.

A commenter asserted that the practice of risk-based pricing and underwriting is an objective practice that is necessary for the insurance industry to function and should provide a complete defense to disparate-impact based claims. A commenter offered that if insurers could not set rates or make underwriting decisions based on objective, predictive, and permitted risk factors, the insurance industry could not function properly.

HUD Response: The applicability of Federal law to insurance industry practices is governed by the McCarran-Ferguson Act.[163] McCarran-Ferguson preemption,[164] insofar as it relates to the applicability of disparate impact liability, has to do only with whether Federal law impairs, invalidates, or supersedes State law; it says nothing about risk-based pricing or any specific insurance practice per se. If the State law requires risk-based pricing regardless of other considerations, and the insurance practice involved is in accordance with that requirement, a claim that risk-based pricing results in disparate impact would likely impair, invalidate, or supersede State law and would be preempted. However, in cases where risk-based pricing is not required, the court would have to do a further examination as to whether application of disparate impact liability would impair, invalidate, or supersede State law or the State's administrative regime. If the State law itself prohibits discrimination in pricing or underwriting, application of disparate impact liability may be held not to impair State law because it is complementary.[165] A similar result may occur if the State law is silent on risk-based pricing. Due to the potential variability of State laws, a blanket defense for insurance matters is outside the authority of HUD under the Fair Housing Act.

Comment: Robust causal link cannot be satisfied by an insurer's reliance on risk-based pricing and underwriting.

A commenter asserted that insurers' use of risk-based pricing and underwriting results in the practice not being a direct cause of any resulting disparate impact. Thus, the commenter stated that a plaintiff challenging risk-based pricing and underwriting of homeowners and commercial habitational insurance cannot satisfy the ''robust causal link'' requirement of proposed § 100.500(b)(2) and is the result of factors that are not within the control of insurers. Relatedly, commenters asserted that State laws thus ''substantially limit'' the discretion of insurers in a manner that would make it impossible to ascribe any disparate effects of underwriting or pricing practices to insurers' independent choices.

HUD Response: While HUD does not agree categorically that there can never be a robust causal link between the use of risk-based pricing and an adverse effect on members of a protected class, that could be true in many cases. Further it may be a defense under the Final Rule that the actions of the insurer were a reasonable attempt at compliance with State law. While it may be true that in most cases the risk-based factors will be facially neutral, the basis for liability under a disparate impact claim is that practices that are not obviously discriminatory can nonetheless have an unjustified discriminatory impact on a protected class.

However, while this may be true of a required risk-based pricing regime in general, the specific risk factors chosen, and the weights given them, may be within insurers' control. If the choice of specific risk factors among permissible alternatives is the cause of a disproportionate adverse effect on the protected population as compared to similarly situated members of a non-protected class with respect to the claim being made, then the causal link between the choice of a specific factor or factors and a disparate impact on a protected class conceivably could be shown. This is a case-based decision that is not amenable to a broad regulatory solution. Therefore, HUD declines to adopt a provision that risk-based pricing can never be the cause of a disparate impact under the Fair Housing Act.

Comment: Proposed rule exempts the insurance industry from disparate impact liability.

Commenters expressed concern that the Proposed Rule exempts the insurance industry from disparate impact liability, noting that courts interpret the Fair Housing Act and McCarran-Ferguson Act in such a way as to avoid conflict and allow for efficient adjudication of claims.

HUD Response: Proposed § 100.500(e) includes the standards of the McCarran-Ferguson Act, 15 U.S.C. 1012(b). Under court decisions, the Fair Housing Act applies to insurance when application of the Fair Housing Act would not invalidate, impair, or supersede State laws enacted for the purpose of regulating the business of insurance. For instance, this could include situations where the State law is silent or where the State law also prohibits racial discrimination. On the other hand, if a State law explicitly permitted an insurance policy or practice and an insurer were following that policy or practice, it would be up to a court to determine whether application of the Fair Housing Act would impair, invalidate, or supersede the State regulatory regime.

Comment: A safe harbor under the McCarran-Ferguson Act would be inappropriate.

A commenter asserted that the provision dealing with recognition of state insurance laws would improperly

[160] *McKenzie* v. *S. Farm Bureau Cas. Ins. Co.,* 2007 U.S. Dist. LEXIS 49133 (N.D. Miss. July 6, 2007) has a similar factual situation. In that case, the court held that since the State enacted a regulation authorizing the activity about which plaintiff complained (using credit history to set rates), a Fair Housing Act challenge is untenable because of the McCarran-Ferguson Act (15 U.S.C. 1011–1015).

[161] 2007 U.S. Dist. LEXIS 18804 (W.D. Mo., March 16, 2007).

[162] *Id.* at *27–28.

[163] 15 U.S.C. 1011–1015.

[164] 12 U.S.C. 1012(b).

[165] *Ojo* v. *Farmers Group, Inc., et al.,* 600 F.3d 1205, 1209 (9th Cir. 2010) (If Texas law prohibits the use of credit-score factors that would violate the Fair Housing Act on the basis of a disparate-impact theory, then the Act would complement—rather than displace and impair—Texas law).

shield insurers from disparate impact liability. Commenters stated that the McCarran-Ferguson Act requires a particularized inquiry into the specific details of state insurance law that are affected by a claim under the Fair Housing Act, and the ways in which application of the Fair Housing Act might disrupt state insurance regulation. Commenters asserted that a safe harbor under the McCarran-Ferguson Act would be inappropriate, and that *Ojo* does requires a ''particularized inquiry.''

HUD Response: Section 100.500(e) and McCarran-Ferguson do not create a blanket shield against Fair Housing Act liability for the insurance business.[166] Rather, this rulemaking simply applies long-standing McCarran-Ferguson jurisprudence to the Fair Housing Act, acknowledging neither the Fair Housing Act nor the rule overrides state insurance laws. Beyond that, courts must make a case-by-case determination whether or not a finding of liability under the Fair Housing Act would invalidate, impair, or supersede any State law enacted for the purpose of regulating the business of insurance.

Comment: Insurance exemption should be located in a different section.

A commenter stated that because the proposed business of insurance addition would not amend 24 CFR 100.70(d)(4), which stipulates that the provision of property insurance is a covered practice under the Fair Housing Act, but rather amends § 100.500, which defines disparate impact liability itself, this opens the door to arguments that any enforcement of disparate impact liability would have effects on state insurance law and thus be preempted.

HUD Response: The issue of the applicability of Federal law to insurance is governed by the McCarran-Ferguson Act and cases interpreting it, regardless of whether the related language is in § 100.70(d)(4) or § 100.500(e). The arguments that the McCarran-Ferguson Act always precludes application of the Fair Housing Act when it implicates State insurance law has been rejected by Federal courts.[167] Likewise, it is clear that in many cases, a Fair Housing Act case will be precluded under the McCarran-Ferguson Act.[168] The issue, which must be decided by courts on a case-by-case basis, is whether allowing a plaintiff to proceed on claims under the Fair Housing Act would impair, invalidate, or supersede State law.[169] Addressing the advisability of § 100.70(d)(4), which also applies to disparate treatment claims, is beyond the scope of this rulemaking.

Comment: Inclusive Communities *did not address insurance, so neither should the Proposed Rule.*

Some commenters expressed concern about the Proposed Rule's inclusion of provisions specific to the insurance industry, arguing that the Supreme Court did not specifically address the business of insurance in the *Inclusive Communities* decision. Commenters expressed concern that the Proposed Rule will make recovery from insurance companies based on disparate impact nearly impossible.

HUD Response: Inclusive Communities did not deal with insurance, and so, of course, does not address that issue. However, *Inclusive Communities* did address the issue of causality where there are intervening factors; a significant factor is compliance with other laws. Consistent with the McCarran-Ferguson Act, states broadly regulate the insurance industry. This rulemaking does not interpret the McCarran-Ferguson Act or require any particular outcome in a specific case, but does seek to set forth an appropriate framework for analysis in light of existing precedent from case law. As otherwise noted, various courts have held the Fair Housing Act to not be preempted by the McCarran-Ferguson Act.

Comment: HUD does not have authority to interpret the McCarran-Ferguson Act's applicability to the Fair Housing Act.

Commenters argued that HUD does not have authority to change the standard for McCarran-Ferguson preemption from conflict preemption to the ''material limitation'' standard, because HUD's 2013 Rule left McCarran-Ferguson Act questions for courts to decide. Another commenter argued HUD does not have authority to interpret the McCarran-Ferguson Act and noted the interactions of the Fair Housing Act and the McCarran-Ferguson Act is the subject of conflicting court decisions.

HUD Response: The Final Rule does not interpret the McCarran-Ferguson Act and HUD is neutral regarding its application in specific cases. HUD acknowledges that different courts have reached differing results on differing facts. However, in accordance with case law, analysis under the McCarran-Ferguson Act is required in cases where insurance practices are alleged to have a disparate impact in violation of the Fair Housing Act, and the Final Rule reflects this fact. The McCarran-Ferguson Act's language itself, as well as the majority of case law interpreting its application to the Fair Housing Act and other civil rights statutes has, consistent with the proposed regulation, held that where the Federal law does not invalidate, impair, or supersede a particular provision of State insurance law permitting an insurance policy or practice or the related State administrative regime, the Federal law may apply, and where the Federal law would have the invalidating effect, it may not be construed to so apply.[170]

Comment: HUD should clarify that the Final Rule does not prohibit, restrict, or conflict with practices based on state law.

A commenter stated that § 100.500(e) recognizes the ''supremacy of state law in the field of insurance regulation,'' but HUD should make it clear that the Final Rule will not be construed to prohibit or restrict practices based on, or not inconsistent with, state insurance law. Another commenter stated that, consistent with *Inclusive Communities,* language should be added to note that where the actual cause of a disparate impact is another law rather than the defendant's decision, a plaintiff cannot establish that the defendant is the actual cause of the disparate impact. The commenter suggested a new clause should be added to the end of proposed § 100.500(e), stating that nothing in this section ''is intended to impose liability for any action permitted by state law.''

HUD Response: As has been discussed elsewhere in this preamble, Federal courts have decided issues of the applicability of the Fair Housing Act

[166] *See, e.g., Dehoyos* v. *Allstate Corp.,* 345 F.3d 290, 298–299 (5th Cir. 2003).

[167] *See, e.g., id.; Ojo* v. *Farmer's Group,* at 1209.

[168] *See, e.g., Saunders* v. *Am. Family Mut. Ins. Co.,* 2007 U.S. Dist. LEXIS 18804 (W.D. Mo., March 16, 2007).

[169] *See, e.g., Taylor* v. *Am. Family Ins. Group,* 2008 U.S. Dist. LEXIS 61181 (D. Neb., August 11, 2008).

[170] See *Ojo* v. *Farmers Group, Inc., et al.,* 600 F.3d 1205 (9th Cir., 2010); *Dehoyos* v. *Allstate Corp.,* 345 F.3d 290, 297 (5th Cir. 2003) (because Appellants do not identify a state law or policy that would be impaired by the application of the federal statutes, suit under Fair Housing Act and other civil rights laws not barred); *Moore* v. *Liberty Nat'l Life Ins. Co.,* 267 F.3d 1209, 1221 (11th Cir., 2001) (stating that McCarran-Ferguson does not apply to a civil rights suit because ''the federal rule does not contradict directly the terms of the state statute or render it impossible to effect or implement that statute''); *Nationwide Mutual Ins. Co.* v. *Cisneros,* 52 F.3d 1351 (6th Cir., 1995); *NAACP* v. *American Family Mut. Ins. Co.,* 978 F.2d 287, 302 (7th Cir. 1992) (reversing lower court to the extent that it held that Fair Housing Act is inapplicable to property and casualty insurance written or withheld in connection with the purchase of real estate). *But see Taylor* v. *Am. Family Ins. Group,* 2008 U.S. Dist. LEXIS 61181 (D. Neb., August 11, 2008) (involving the setting of rates using credit scores, preempting a disparate impact claim); *Doe* v. *Mutual of Omaha,* 179 F.3d 557 (7th Cir. 1999) (Americans with Disabilities Act case preempted when it would interfere with the State's administrative regime).

to State insurance matters in consideration of the McCarran-Ferguson Act. This rule does not intend to alter that jurisprudence. Therefore, HUD declines to provide addition clarifications or restrictions; HUD believes that this is a job for the courts.

Comment: Home insurance should only be regulated by the States.

A commenter stated that State regulation of insurance is comprehensive and includes rate and coverage issues and prohibition of unfairly discriminatory rates. Further, State laws permit, and the majority require, risk-based pricing. The commenter stated that, conversely, State laws make clear that failing to take risk into account results in unfair discrimination. Insurers are typically prohibited from taking protected characteristics into account or collecting such information. Finally, the commenter noted that state insurance commissioners review the rates charged by insurers to protect consumers.

HUD Response: HUD acknowledges the general scheme of insurance rating and regulations. HUD does not supplant State regulation of the insurance industry in this rulemaking. Housing laws vary from State to State and different facts present themselves in different cases, as do the conditions under which Federal law may or may not be applicable. The effect on Fair Housing Act claims by State insurance law and regulation is determined by the McCarran-Ferguson Act and related case law. Federal regulation cannot take account of all possible variations of State law, and each case has to be evaluated by a court based on the particulars of the Fair Housing Act claim and the specific State law.

Comment: Risk based pricing can never be ''arbitrary, artificial, and unnecessary'' under proposed § 100.500(b)(1).

A commenter asserted that it is essential for a viable market that insurers make pricing and underwriting decisions based on risk factors, which therefore would be arbitrary, artificial, and unnecessary. Based on this, the commenter stated that risk-based pricing and underwriting should be exempt from disparate impact liability.

HUD Response: HUD does not believe it can be stated categorically that no disparate impact plaintiff could ever meet the ''arbitrary, artificial, and unnecessary'' showing with respect to risk-based pricing and underwriting. This is because there is no uniform or unchanging approach to risk-based pricing and underwriting. For example, the specific risk factors used, in cases where those are within the discretion of the insurer, would have to be considered. Accordingly, HUD declines to adopt a position that risk-based pricing and underwriting for insurance can never be arbitrary, artificial, and unnecessary.

Comment: The Proposed Rule would overly burden the insurance industry.

Commenters argued that the application of disparate impact to risk-based pricing would make it more difficult for the insurance industry to accurately price for risk.

HUD Response: HUD does not believe that the possibility of disparate impact standards within the prudential safeguards set forth in this Final Rule will unreasonably affect the ability to price risk in the insurance business. It does not appear that this has been the case over a large number of years where disparate impact liability was potentially applicable in a broader way to insurance.

Comment: Suggestions for Section 100.500(e).

Some commenters suggested that, if an exemption for the insurance industry is not granted, HUD should explicitly incorporate a complete defense for actuarial risk-based pricing and underwriting in order to better align the Proposed Rule with the *Inclusive Communities* decision, state law, and the McCarran-Ferguson Act. They asserted that case-by-case adjudication in federal court would permit insurers to be held liable for use of sound risk-based practices. Commenters made similar statements regarding the filed-rate doctrine, which bars courts from reexamining the reasonableness of rates that have been filed and accepted by insurance regulators.

HUD Response: As discussed above, HUD does not believe that the variety of laws and factual circumstances in the insurance business allow for field preemption of the Fair Housing Act.[171] Similarly, a complete defense for actuarial risk-based price and underwriting, as a business practice is in HUD's view unduly broad. For instance, not all States appear to require risk-based pricing. According to information provided by another commenter, Nebraska, Oklahoma, and Wyoming do not require risk-based pricing.[172] Likewise, not all states require state review and approval of filed rates.[173] Nevertheless, in appropriate circumstances, the McCarran-Ferguson bar or the more general defense under paragraph (d)(1)(i) for following state law may be applicable. The filed-rate requirement, when applicable, is generally aimed at competition issues and in any event does not necessarily answer the variety of issues that could arise under the Fair Housing Act. An exemption for it would be the effective equivalent of a field preemption. HUD declined to accept this approach for the reasons noted above.

Comment: State laws already prohibit discrimination.

One commenter stated that variables like race and disability are irrelevant, and home insurance should simply be excluded from the disparate impact standard. The commenter also asserted that application of disparate impact liability would unnecessarily inject racial and other demographic considerations into insurance and State laws that already prohibit use of protected class information. Further, applying disparate impact liability would require insurers to collect sensitive data on protected classes in an effort to ensure that insurers will not be held liable under disparate impact theory.

HUD Response: As described elsewhere herein, the Final Rule contains a number of safeguards, as contemplated by *Inclusive Communities,* to avoid injecting race or other protected class status into ordinary governmental and business decision-making processes. The Final Rule expressly provides that it does not create a data collection obligation, and (d)(2)(iii)(A) requires a reasonable relationship between the law and the policy or practice said to flow from it, appropriate to address this issue.

Comment: Proposed § 100.500(c) defenses for actions permissible under state insurance law.

Some commenters noted that the limited discretion defense set forth in § 100.500(c)(1)(i) (paragraph (d)(1)(i) in this Final Rule) may apply only where state law requires the challenged insurance practice and therefore, HUD should clarify that the defense also applies where state insurance law permits the challenged practice.

HUD Response: HUD believes this Final Rule strikes an appropriate

[171] *Dehoyos* v. *Allstate Corp.,* 345 F.3d 290, 298–299 (5th Cir. 2003) (rejecting a field preemption approach to analyzing the applicability of the McCarran-Ferguson Act); *Property Cas. Insurers Ass'n of Am.* v. *Donovan,* 66 F. Supp. 3d 1018, 1025 (N.D. Ill. 2014) (stating that ''In *Humana Inc.* v. *Forsyth,* 525 U.S. 299 . . . [citations omitted], the Supreme Court rejected the view that the McCarran-Ferguson Act created 'any sort of field preemption' '').

[172] *See* Appendix 1; available at *https://www.regulations.gov/document?D=HUD-2019-0067-3436* (last visited February 3, 2020).

[173] *Id.*

balance between what is required and permitted. HUD notes that in many contexts, what is permitted by law is incredibly broad. In other instances, what is permitted is so narrow as to effectively be a requirement. HUD believes the Final Rule language in (d)(1)(i) and (d)(2)(iii)(A), requiring a reasonable relationship between the law and the policy or practice said to flow from it, appropriately addresses the issue.

Comment: Defendants' burden of proof would interfere with the McCarran-Ferguson Act.

Commenters stated that requiring a defendant to prove a material cost or burden (under proposed § 100.500(d)(1)(ii)) (paragraph (c)(3) in this Final Rule) would force a Federal court to weigh the relative merits of a different insurance rating method, which is left to the purview of the States under the McCarran-Ferguson Act, and it would hinder the insurer's ability to make reasonable business decisions inherent in a free economy.

HUD Response: HUD agrees that the Proposed Rule provides a framework that allows for the McCarran-Ferguson Act to be appropriately raised when relevant. Whether a given Fair Housing Act claim conflicts with State insurance laws such that it can be said to impair, invalidate, or supersede such laws is a case-by-case determination. HUD also agrees that its Fair Housing regulation at 24 CFR 100.70(d)(4) correctly interprets the Fair Housing Act as applicable to property or hazard insurance.

Other General Comments

Comment: Issues with language used in the section.

Several commenters expressed concerns about the language used in the Proposed Rule. Commenters pointed out concerns with the terms ''building codes'' and ''permitting rules.'' One commenter was concerned that adding the terms ''building codes'' and ''permitting rules'' to the language would have a detrimental effect on governmental efforts to advance up-to-date building code adoption and enforcement, as well as create new legal risks for communities seeking to improve building codes and strengthen disaster resilience, thereby competing with other regulatory requirements and governmental initiatives. Another commenter stated that there is no legal basis or regulatory precedent supporting the addition of the terms ''building codes'' and ''permitting rules,'' citing to the *Inclusive Communities* decision, which the commenter asserted did not overrule *Gallagher* v. *Magner.*[174]

One commenter stated that HUD should further explain the addition of local and building ordinances to this section.

HUD Response: HUD thanks commenters for their perspectives. HUD notes that the Supreme Court in its decision in *Inclusive Communities* expressly stated that *Gallagher* v. *Magner* was decided without the cautionary standards announced in *Inclusive Communities.*[175] While each case must be decided on its particular facts, under this Final Rule, HUD expects that valid policies will be upheld and ones that are arbitrary, artificial, and unnecessary will be subject to remedy. HUD's identification of particular items is not intended to impact the general analysis under § 100.500. The listing of items is § 100.70(d)(5) is representative only and not exclusive but does not neglect particular areas where HUD has observed problematic policies and practices in Fair Housing Act enforcement.

Comment: Statute of Limitations.

Commenters suggest a statute of limitations for disparate impact claims arising from lending decisions. Some suggested that HUD include language clarifying that a lending decision is a ''discrete act,'' which should trigger the running of the statute of limitations. Commenters said HUD should restate verbatim the Fair Housing Act's statute of limitations. Commenters also requested that HUD provide further clarity regarding the tolling period for the statute of limitations on claims.

HUD Response: HUD appreciates these comments, but declines to repeat statute of limitations requirements set forth in statutes. This Final Rule does not modify the statute of limitations regarding claims under the Fair Housing Act, which are generally applicable to both disparate treatment and disparate impact cases. Whether a claim is time-barred is a fact-specific question which is dependent on the details of the case and most appropriate for the court or other administrative authority considering the case to determine. Similarly, whether an action constitutes a ''discrete act'' under the Fair Housing Act, or whether it is a ''continuing violation'' is also regularly litigated and is a fact-specific question dependent on the details of a case. Therefore, HUD does not choose to establish a regulation regarding the tolling period or issues related thereto for the statute of limitations in this disparate impact rule.

Comment: Proposed Rule fails to have an adequate cost-benefit analysis.

Several commenters argued that a more robust discussion of the costs associated with the Proposed Rule should be completed by HUD prior to issuing the Final Rule. Commenters stated that the Proposed Rule did not contain an adequate analysis of the costs and benefits of the Proposed Rule. One commenter stated that HUD did not consider quantitative and qualitative measures of costs and benefits, and did not attempt to tailor its rule to impose the least burden on society, consistent with obtaining regulatory objectives. Another commenter stated that the Proposed Rule fails to consider the benefits created by the availability of disparate-impact claims, which the commenter asserted are threatened by insurmountable litigation burdens and imposes unsupported safe harbors in the Proposed Rule. One commenter also argued that the Proposed Rule did not have crucial sources of data and research that would allow a full assessment of any harms from the Proposed Rule's promulgation, while another commenter argued that entities will now bear the costs of reconciling existing authorities with a seemingly inconsistent HUD rule. Commenters also asked HUD to explain the Proposed Rule's economic impact, including clarifying what HUD meant when it said the Proposed Rule would result in more affordable housing.

HUD Response: HUD acknowledges commenters' arguments, but disagrees. HUD's intent in promulgating this Final Rule is to exercise its discretion to further the purpose of the Fair Housing Act and to ensure that HUD's interpretation of disparate impact liability is in line with HUD's understanding of Title VIII disparate impact law and with the Supreme Court's decision in *Inclusive Communities,* as well as Executive Orders 13771 and 13777. Accordingly, this Final Rule does not create any new requirements, but merely provides clarification of how disparate impact liability is effectuated under the Fair Housing Act. HUD has prepared an RIA for this rule which provides a cost-benefit analysis of this rule, but notes here that, in well-pleaded, fully litigated cases, the same result would be reached even in the absence of HUD's discriminatory effects rule. However, this Final Rule should result in greater clarity for litigants, regulators and industry professionals when making and challenging facially neutral policies

[174] 619 F.3d 823 (8th Cir. 2010).

[175] *Tex. Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.,* 135 S. Ct. 2507, 2524 (2015).

that may have a discriminatory effect on one or more protected classes.

Clarity about the applicable legal requirements increases compliance with the Act and furthers its nondiscrimination purposes. This clarity should also reduce litigation cost and duration by reducing uncertainty. The Final Rule is accordingly expected to encourage more housing development activity in all areas of local communities.

Comment: Regulatory Flexibility analysis was inadequate.

A commenter also objected to the Proposed Rule because HUD failed to provide and publish in the **Federal Register** a statement providing the ''*factual basis* for its determination'' that the Proposed Rule would not have a significant economic impact on a substantial number of small entities. Commenters stated that, among other things, HUD provided no description or estimate of the number of small entities to which the Proposed Rule would apply; it provided no estimate of the economic impacts on those entities; and it provides no disclosure of its assumptions. The commenter asserted that examining both the beneficial and adverse impacts would have resulted in a finding of significant economic impact on a substantial number of small entities. In particular, the commenter stated that small entities that rely on disparate impact litigation to ensure the vindication of their rights will face a higher burden to bring claims and will therefore suffer lost business opportunities, frustration of their missions, and un-remedied violations of their civil rights because of HUD's proposed strict burdens and standards. Similarly, small businesses that have developed tools to help entities comply with existing disparate impact law would suffer the cost of lost revenue due to decreased competitive advantage and the additional cost of developing new software to satisfy HUD's new framework with respect to housing credit, in addition to maintaining software that complies with the existing frameworks applicable to credit generally.

HUD Response: HUD notes that a regulatory impact analysis is not required if the rule will not have a significant economic impact on a substantial number of small entities. HUD certified that this Proposed Rule would not have such an impact because it is merely updating HUD's uniform standards for determining when a housing practice with a discriminatory effect violates the Fair Housing Act. HUD also noted that no such analysis was performed with respect to the 2013 Rule, which was developed in the absence of Supreme Court guidance and at a time when there was substantial questions, as indicated by the dissent in *Inclusive Communities,* over the existence of the disparate impact theory under the Fair Housing Act. It is HUD's position that this Final Rule will reduce burdens on parties by providing clarity regarding the burdens involved in a disparate impact case. Despite this certification, however, HUD also invited commenters to provide less burdensome alternatives to the Proposed Rule that would meet HUD's objectives. HUD has revised this Final Rule in light of comments. HUD has also considered comments submitted in response to the question regarding how the Proposed Rule might increase or decrease costs and economic burden for relevant parties. HUD does not believe the Final Rule will result in an adverse impact on lawyers and consultants because a clear law is easier to follow by ordinary citizens.

Comment: Impacts on low-income renters.

A commenter stated that HUD should republish the Proposed Rule with estimates of its impacts on low-income renters and Federal affordable housing programs and solicit public comments on those estimates and their implications. This commenter stated that, as drafted, the Proposed Rule did not sufficiently address or justify all changes and their effects on low-income renters. Other commenters were concerned that the Proposed Rule would weaken disparate impact liability by allowing neutral policies that have a discriminatory effect to remain.

HUD Response: HUD's requests for comments elicited feedback on the potential impact of the Proposed Rule on low-income individuals, including voucher holders. HUD appreciates and considered these comments as they raised several issues affecting cities across the nation such as gentrification, increased housing cost burden, and lack of available affordable housing for voucher holders. However, HUD believes it has promulgated an effective Final Rule to challenge discriminatory practices while not having unintended adverse consequences on the creation of decent, safe and affordable housing.

Comment: The Proposed Rule would make challenges to zoning and land use decisions more difficult, and so it should be withdrawn.

Commenters asserted that cases involving state action impacting property, such as local zoning and land use decision, should be treated uniquely. Another commenter recommends HUD include a method to identify local efforts to limit housing options earlier in the burden-shifting framework. A comment urged HUD to withdraw the Proposed Rule because the current disparate impact standard is the primary tool used to challenge local zoning and land use planning rules that exclude manufactured housing. Commenters suggested that HUD's approach to such cases conform to relevant and recent court decisions, including the *Knick* v. *Township of Scott, Pennsylvania* decision.[176] One comment recommended a study be conducted for the adverse impacts of actions such as land use and zoning decisions and tax credit policies rather than focusing solely on real estate transactions and lending.

HUD Response: HUD disagrees that local zoning and land use decisions should have more unique treatment. Disparate impact liability is available under this Final Rule to challenge facially neutral policies and practices that relate to dwellings, including land use policies. There is no basis under the Fair Housing Act for unique treatment of zoning and land use planning rules, on the one hand, or with respect to manufactured housing on the other hand. The case of *Knick* v. *Township of Scott, Pennsylvania* involves a Fourth Amendment search issue and a Fifth Amendment taking issue and is inapposite to this rulemaking.[177] HUD appreciates commenters' input regarding recommendations for future studies into issues affecting housing; however, such studies are outside the scope of this rulemaking.

Comment: The Proposed Rule implicates federalism.

Commenters asserted that HUD failed to consider and evaluate the federalism implications of the Proposed Rule. Because of this alleged failure, according to one commenter, HUD violated the APA and Section 6 of Executive Order 13132.

HUD Response: HUD acknowledges the commenter's perspective but disagrees. Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule imposes substantial direct compliance costs on State and local governments and is not required by statute or preempts State law. As discussed in responses to previous comments, this rulemaking does neither of these. HUD is codifying in regulation statutory requirements to prove or defend a case of discriminatory effect. This is no different from HUD's decision in the 2013 Rule to codify HUD's

[176] 139 S. Ct. 2162 (2019).

[177] *Id.* at 2167.

interpretation of disparate impact law at that time. HUD has specific authority to promulgate regulations under the Fair Housing Act.

Comment: Fails to consider studies about lending and insurance practices.

A commenter asserted that HUD's failure to consider both the direct and quantifiable harms as well as indirect and non-quantifiable harms under the Proposed Rule would result in more entrenched residential segregation, exclusion of protected groups from housing, and discrimination in home purchasing and rental markets.

HUD Response: HUD notes that, as stated previously, disparate impact liability is a valuable and powerful tool to challenge facially neutral policies that have an unlawful discriminatory effect on one or more protected groups. However, HUD also recognizes that, consistent with *Inclusive Communities,* disparate impact liability must be properly limited to avoid both constitutional infirmities and to avoid second guessing a legitimate governmental and business decision. Both of those issues would also have direct and indirect quantifiable and non-quantifiable harm to housing choice. As such, HUD thoughtfully considered all changes being made to the 2013 Rule to provide a rule consistent with *Inclusive Communities* and the Fair Housing Act, including the remedies to which persons in protected classes are entitled and the important of fairness and certainty in the housing market.

Comment: HUD should allow expert witnesses.

Commenters stated that expert witnesses should be allowed for both parties, and that the Proposed Rule should allow for rebuttal of those witnesses.

HUD Response: The manner and type of particular evidence is a matter of civil procedure outside of the scope of the Final Rule as revised. In the case of an administrative change, during an investigation into discrimination allegations, both parties are provided the opportunity to provide evidence and witnesses to HUD (or a substantially equivalent State agency). After an investigation, if HUD files a charge of discrimination, the Fair Housing Act allows parties to present evidence, cross-examine witnesses and obtain the issuance of subpoenas by HUD during an administrative hearing.[178] Thus, HUD declines to include expert witness specific provisions in the Final Rule because they are not necessary in light of other more general treatment of expert witnesses.

Comment: HUD should expand the Proposed Rule to add additional protections for specific groups.

Commenters stated that HUD should create regulations that apply specifically to discrimination based on disability, since the nature of proof for such cases is distinct. Commenters also proposed that HUD add additional protections for individuals facing discrimination based on source of income and criminal records. Others suggested that HUD add former offenders and convicted felons to the protected class list. Another comment requested that Lesbian, Gay, Bisexual, Transgender, and Queer individuals be added to the list of protected classes.

HUD Response: HUD appreciates the perspective provided by commenters who argued that HUD should expand upon the regulations to provide more guidance in disability cases as well as adding protected classes. To the extent that the commenters requested that HUD add protected classes to the Fair Housing Act, HUD lacks the authority to do so. Congress enacted the Fair Housing Act and expressly included race, color, national origin, sex and religion as protected classes, as well as the Fair Housing Amendments Act, which added disability and familial status as protected classes. Disparate impact is a theory of relief under the Fair Housing Act and upheld by the Supreme Court in its decision in *Inclusive Communities.* HUD is therefore not ''creating law,'' but merely providing clarity regarding how the Fair Housing Act is to be interpreted as it relates to disparate impact, in light of the Court's decision in *Inclusive Communities.* Regarding commenters' request for HUD to create regulations that apply specifically to persons with disabilities, HUD notes that it has regulations specifically regarding persons with disabilities in 24 CFR part 8 and part 100, subpart D. Nothing in the Final Rule precludes its use in the context of disability.

Comment: HUD should, in general, provide definitions throughout the rule.

Commenters stated that HUD's Proposed Rule used many terms without firm definitions, which would cause confusion and complicate implementation of the rule. Commenters stated that providing definitions now, instead of waiting for courts to create them in case law, would promote compliance and avoid additional litigation. Commenters said unclear definitions created uncertainty about how the rule will function. Commenters pointed to the words ''significant,'' ''robust,'' and ''material'' as meaning the same thing, but are used interchangeably, which causes confusion about whether the intent is for them to be different. Commenters suggested that HUD instead use ''substantial,'' meaning of important value, rather than ''significant,'' which refers to statistical significance. Using ''substantial'' would avoid unnecessary legal disputes over the different terms throughout the Proposed Rule.

HUD Response: Prior to 2013, disparate impact as a theory of liability was largely developed through the courts and that has continued to a significant extent even after the 2013 Rule. Further, definitions are typically highly litigated since discriminatory effect cases tend to be highly fact specific. HUD has made changes to the regulatory text to distinguish ''robust causality'' as discussed in *Inclusive Communities,* use ''significant'' for purposes of pleading that the disparity caused by the policy or practice is significant, and use ''material'' with regard to the alternative proposed policy or practice burden and costs. This notice elsewhere makes clear that ''significant'' is not used exclusively in the statistical sense of the term. HUD believes these changes provide clarity and further discusses them above.

Comment: HUD should provide more guidance for implementing the Proposed Rule.

Commenters asked HUD for additional guidance on specific practices that would be prohibited or allowed under the Proposed Rule. Commenters stated that sub-regulatory guidance would be able to clarify concepts with examples of safe harbors or asked specific questions about whether particular practices would be considered illegal under the Proposed Rule. Commenters also asked for a sample form or template for pro se plaintiffs regarding the elements.

HUD Response: HUD has sought to provide a comprehensive framework for the Final Rule for considering a wide range of potential applications. Issues of disparate impact are particularly fact specific. Accordingly, HUD declines to provide additional examples of any specific situations which may succeed or fail under disparate impact liability, including specific safe harbors, particular practices, or a compliant template for disparate impact. These types of decisions are well within the competency of administrative law judges and courts to evaluate on a case by case basis within the Final Rule's framework. Under Executive Order 13891, sub-regulatory guidance does not generally have the force of law and

[178] *See* 42 U.S.C. 3612(c).

would not in the context of this Final Rule to the extent it added objections have binding effect. Further, with regard to the creation of a sample form or template, HUD provides an online complaint form that allows individuals to provide a brief description of their allegations to HUD to start the process of filing a discrimination complaint.[179] Housing discrimination complaints that are received by HUD are then reviewed by a fair housing specialist, who will assist in the drafting and filing of an official complaint. HUD's process does not require that a party be represented by an attorney and provides individuals the opportunity to speak directly to a fair housing specialist for any questions they have throughout the process.

HUD will review existing guidance for conformity with this Final Rule and other applicable authorities and remove inconsistent items. The issue of whether additional guidance is warranted will be considered as the rule is put into practice.

Comment: HUD should take a more data-driven approach.

A commenter recommended looking at the number of Fair Housing Act disparate impact claims filed in Federal court, before and after the 2013 Rule, and after the Supreme Court's decision in *Inclusive Communities.* The commenter specifically noted that nationwide, very few disparate impact claims were filed since 2013, and those that were brought were resolved at an early stage. The commenter also stated that a local survey showed that the overall number of cases since 2013 has not increased, and that the *Inclusive Communities* decision in 2015 has not affected the number of claims brought under a disparate impact theory.

Similarly, several commenters noted that HUD should use a more data driven approach to disparate impact liability and provided a number of suggestions. Another commenter stated that it is appropriate for HUD to look to information or data available to assess the Proposed Rule's impact, including how many discriminatory effect claims were meritorious.

Commenters asserted that they believe HUD's attorneys have been studying the number, type, and likelihood of success of disparate impact claims since 2015, and it would be helpful for HUD to publish its findings based on that research and solicit public feedback concerning the quality of that research and HUD's conclusions.

HUD Response: HUD appreciates the suggestions for improving disparate impact regulations in the future, including using a data-driven approach. Data is an important element in many disparate impact claims, and parties are of course free to use data within the framework of this Final Rule in individual cases. HUD has in the past and will continue to review cases as they move through both the administrative and civil court processes in order to ensure the Final Rule is working as intended. As it has always done, HUD will be sure to continuously evaluate claims of discriminatory effect and intentional discrimination in its efforts to uphold the promise of and enforce the Fair Housing Act.

Comment: Recordkeeping requirements should be added.

A commenter recommend that Federal financial assistance recipients and all complexes with more than 15 tenants should be required to maintain applications and housing decisions on file for five years, and such information should be made available for review during litigation for use in determining disparate impact of business decisions in order to enforce the Fair Housing Act.

HUD Response: This Final Rule does not alter recordkeeping requirements for HUD housing programs, and entities receiving Federal financial assistance are responsible for maintaining records in a manner that is compliant with the relevant guidelines of the programs in which they participate. Further, this Final Rule makes no changes to rules related to civil and administrative procedures relative to records retention, litigation, or the Fair Housing Act's requirement to provide documents and other evidence during an investigation.

Comment: Social Vulnerability Index should be adopted.

One commenter suggested HUD adopt the ''Social Vulnerability Index'' [180] as a tool to ensure fair and just access to housing. The commenter proposed the following three-point inquiry to determine whether the impact of an individual's actions or institution's policy creates an adverse impact: (1) Does it happen more frequently to members of one group than others? (2) Is there a differential impact on members of one group than another? (3) Is it more difficult for members of one group to overcome than another?

HUD Response: The Final Rule provides a framework for evaluating whether non-intentional, unlawful discrimination occurs under the Fair Housing Act as interpreted by *Inclusive Communities.* The ''social vulnerability index'' appears inconsistent with applicable law.

Comment: 2016 guidance on use of criminal background checks should be withdrawn.

Multiple commenters stated that HUD's 2016 guidance threatened disparate impact liability for providers who use criminal screening to disqualify prospective residents to protect other residents. Commenters also stated that HUD should limit the scope of any ''individualized assessments'' regarding criminal records because of the burden it creates for housing providers. Although not explicitly required in the Proposed Rule, the commenters stated that this should be clarified considering the mitigating evidence required by the courts in prior cases.

HUD Response: HUD intends to review its existing guidance for consistency with the Final Rule.

Comment: The Proposed Rule should consider the Takings Clause of the U.S. Constitution when discussing state action.

A commenter suggested the application of disparate impact regulations in cases involving state action impacting property should differ from other circumstances, especially when such state action violates the Takings Clause. This commenter recommended that the Proposed Rule be withdrawn or revised to ensure an appropriate balance with respect to local zoning ordinances that create barriers to affordable housing.

HUD Response: HUD appreciates the commenter's suggestion but declines to carve out a separate portion of the Final Rule for government action. Unlike the situation that led to the Supreme Court's decision in *Knick* v. *Township of Scott, Pennsylvania,*[181] cited by the commenter, the disparate impact rule and the Takings Clause of the U.S. Constitution are not mutually exclusive. An individual may challenge a zoning ordinance as having a discriminatory effect on a protected class group, while the owner of the affected property may challenge the same ordinance under the Takings Clause. It is also HUD's position that the changes being made do not create an imbalance that would prevent an individual's ability to challenge a zoning or land use ordinance as having a discriminatory effect based on protected class status.

Comment: Exceptions to requirements.

[179] U.S. Department of Housing and Urban Development, *File a Complaint, HUD.gov, https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint.*

[180] U.S. Department of Health and Human Services, *CDC's Social Vulnerability Index (SVI),* ATSDR Agency for Toxic Substances and Disease Registry (Sept. 12, 2018), *https://svi.cdc.gov/.*

[181] 139 S. Ct. 2162 (2019).

A commenter recommended that landlords renting four or fewer units should not be subject to the Proposed Rule; another suggests HUD add an exemption for private landlords who do not receive funds under any HUD program.

HUD Response: HUD does not have the authority to create new exceptions under the Fair Housing Act. Contained within the Fair Housing Act is an exemption for a single-family house sold or rented by an owner if that owner does not own more than three houses.[182] Another exemption applies to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.[183]

Comment: HUD should define and provide examples of discriminatory intent.

Another commenter suggested that HUD should define discriminatory intent and provide examples to clarify when a claim should not be brought under disparate impact but under discriminatory intent. This commenter also suggested that HUD clarify that policies which allow for the exercise of discretion cannot be challenged under disparate impact law because allowing discretion is not the harm, but the intentional discrimination that results from this discretion is the harm.

HUD Response: Intentional discrimination is outside the scope of this rulemaking and not included in any way under this Final Rule. Nothing impairs a party's ability to bring a claim that includes both intentional discrimination and disparate impact allegations. As discussed above, a single discretionary action typically is not a policy or practice. As noted by the commenter, this does not mean that such single action may not be unlawful under the Fair Housing Act.

Comment: Property management companies should not have the ability to impose minimum income amounts on prospective tenants.

A commenter opposed property management companies' ability to impose minimum income amounts on prospective tenants. The commenter believes that if a tenant can pay rent, then they may be able to use other government assistance, such as SNAP food assistance, and should not be excluded from renting.

HUD Response: While there may be some instances where certain policies and practices regarding tenant finances could constitute unlawful disparate impact, such a claim should be considered under this Final Rule's framework. A blanket rule on this issue is inconsistent with *Inclusive Communities.* HUD also notes that socio-economic status is not a protected class under the Fair Housing Act.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Executive Order 13563 (''Improving Regulation and Regulatory Review'') directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs, emphasizes the importance of quantifying both costs and benefits, of harmonizing rules, of promoting flexibility, and of periodically reviewing existing rules to determine if they can be made more effective or less burdensome in achieving their objectives. Under Executive Order 12866 (''Regulatory Planning and Review''), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. This rule was determined to be a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

This Final Rule continues to hold to the longstanding interpretation that the Fair Housing Act includes disparate impact liability, and continues to establish uniform, clear standards for determining whether a practice that has a disparate impact is in violation of the Fair Housing Act, regardless of whether the practice was adopted with intent to discriminate.

As stated in the Background section, the need for this updated rule arises in part because *Inclusive Communities,* which held that disparate impact claims are cognizable under the Fair Housing Act, established guidelines and warned of constitutional limitations to the doctrine. These guidelines and warnings were not available to HUD when HUD drafted the 2013 Rule. Further, *Inclusive Communities* used standards with specific phrases such as ''robust causal link'' and ''artificial, arbitrary, and unnecessary'' which were not previously part of established discriminatory effect jurisprudence and were not included in the 2013 Rule. The Final Rule is therefore more consistent with the now binding Supreme Court precedent than the 2013 Rule. Further, the 2013 Rule provided a three-step burden shifting framework, but provided few details regarding how these burdens are met, and provided no analysis of how a prima facie disparate impact case would be met or of how a defendant may rebut such a case.

As discussed in the preamble to this Final Rule, HUD is exercising its discretionary rulemaking authority to bring uniformity, clarity, and certainty by updating this rule. This Final Rule aligns with the guidelines and language used in *Inclusive Communities* and provides further detail than the 2013 Rule regarding the elements required to plead a case and the defenses available in responding to a case. This would simplify compliance with the Fair Housing Act's discriminatory effects standard and decrease litigation cost, duration and uncertainty associated with such claims. This Final Rule will reduce the burden associated with litigating discriminatory effect cases under the Fair Housing Act by clearly establishing which party has the burden of proof and how such burdens are to be met.

This Final Rule also provides clarity on how the Fair Housing Act applies in light of the McCarran-Ferguson Act. As discussed in the preamble and in the Proposed Rule, this question has been the subject of controversy and debate. HUD's opinion as reflected by this Final Rule aligns itself with the judicial consensus HUD has observed.

HUD reviewed comments made in response to HUD's questions for public comment in the Proposed Rule, especially to aid HUD in its regulatory impact analysis. These questions and HUD's responses are discussed in the section IV of this Final Rule's preamble. HUD notes that that these comments and HUD's own further deliberation aided HUD in drafting the Final Rule to be consistent with *Inclusive Communities* and HUD's interpretation of the disparate impact standard generally. HUD believes that the Final Rule accurately reflects the standard provided in *Inclusive Communities.* Accordingly, while this Final Rule is a significant regulatory action under Executive Order 12866 in that it establishes uniform standards for determining whether a housing action or policy has a discriminatory effect on a protected group, it is not an economically significant regulatory action. The burden reduction that HUD believes will be achieved through updating these standards will not reach an annual impact on the economy of $100 million or more, because HUD's approach is not a significant departure

[182] 42 U.S.C. 3603(b)(1).

[183] 42 U.S.C. 3603(b)(2).

from, but in fact aligns with, the Supreme Court's holding in *Inclusive Communities.* Although the burden reduction provided by this Final Rule will not result in an economically significant impact on the economy, it nevertheless provides some burden reduction through the uniformity and clarity presented by HUD's standards promulgated through this Final Rule and is therefore consistent with Executive Order 13563.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This Final Rule updates HUD's uniform standards for determining when a housing practice with a discriminatory effect violates the Fair Housing Act. Given the recent Supreme Court decision, HUD's objective in this rule is to ensure consistency and uniformity, and therefore reduce burden for all who may be involved in a challenged practice.

Accordingly, the undersigned certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This Final Rule sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) Imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This Final Rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This Final Rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 100

Civil Rights, Fair Housing, Individuals with disabilities, Mortgages, Reporting and Recordkeeping requirements.

For the reasons discussed in the preamble, HUD amends 24 CFR part 100 as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

■ 1. The authority for 24 CFR part 100 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3620.

■ 2. In § 100.5, amend paragraph (b) by revising the second sentence, adding a third sentence, and adding paragraph (d) to read as follows:

§ 100.5 Scope.

* * * * *

(b) * * * The illustrations of unlawful housing discrimination in this part may be established by a practice's discriminatory effect, even if not motivated by discriminatory intent, and defenses and rebuttals to allegations of unlawful discriminatory effect may be made, consistent with the standards outlined in § 100.500. Guidance documents and other administrative actions and documents issued by HUD shall be consistent with the standards outlined in § 100.500.

* * * * *

(d) Nothing in this part requires or encourages the collection of data with respect to race, color, religion, sex, handicap, familial status, or national origin.

■ 3. In § 100.70, add a new paragraph (d)(5) to read as follows:

§ 100.70 Other prohibited sale and rental conduct.

* * * * *

(d) * * *

(5) Enacting or implementing land-use rules, ordinances, procedures, building codes, permitting rules, policies, or requirements that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.

■ 4. Revise § 100.500 to read as follows:

§ 100.500 Discriminatory effect prohibited.

(a) *General.* Liability may be established under the Fair Housing Act based on a specific policy's or practice's discriminatory effect on members of a protected class under the Fair Housing Act even if the specific practice was not motivated by a discriminatory intent.

(b) *Pleading stage.* At the pleading stage, to state a discriminatory effects claim based on an allegation that a specific, identifiable policy or practice has a discriminatory effect, a plaintiff or charging party (hereinafter, ''plaintiff'') must sufficiently plead facts to support each of the following elements:

(1) That the challenged policy or practice is arbitrary, artificial, and unnecessary to achieve a valid interest or legitimate objective such as a practical business, profit, policy consideration, or requirement of law;

(2) That the challenged policy or practice has a disproportionately adverse effect on members of a protected class;

(3) That there is a robust causal link between the challenged policy or practice and the adverse effect on members of a protected class, meaning that the specific policy or practice is the direct cause of the discriminatory effect;

(4) That the alleged disparity caused by the policy or practice is significant; and

(5) That there is a direct relation between the injury asserted and the injurious conduct alleged.

(c) *Burdens of proof in discriminatory effect cases.* The burdens of proof to establish that a policy or practice has a discriminatory effect, are as follows:

(1) A plaintiff must prove by the preponderance of the evidence each of the elements in paragraphs (b)(2) through (5) of this section.

(2) A defendant or responding party (hereinafter, ''defendant'') may rebut a plaintiff's allegation under (b)(1) of this section that the challenged policy or practice is arbitrary, artificial, and unnecessary by producing evidence showing that the challenged policy or practice advances a valid interest (or

interests) and is therefore not arbitrary, artificial, and unnecessary.

(3) If a defendant rebuts a plaintiff's assertion under paragraph (c)(1) of this section, the plaintiff must prove by the preponderance of the evidence either that the interest (or interests) advanced by the defendant are not valid or that a less discriminatory policy or practice exists that would serve the defendant's identified interest (or interests) in an equally effective manner without imposing materially greater costs on, or creating other material burdens for, the defendant.

(d) *Defenses.* The following defenses are available to a defendant in a discriminatory effect case.

(1) *Pleading stage.* The defendant may establish that a plaintiff has failed to sufficiently plead facts to support an element of a prima facie case under paragraph (b) of this section, including by showing that the defendant's policy or practice was reasonably necessary to comply with a third-party requirement, such as a:

(i) Federal, state, or local law;

(ii) Binding or controlling court, arbitral, administrative order or opinion; or

(iii) Binding or controlling regulatory, administrative or government guidance or requirement.

(2) *After the pleading stage.* The defendant may establish that the plaintiff has failed to meet the burden of proof to establish a discriminatory effects claim under paragraph (c) of this section, by demonstrating any of the following:

(i) The policy or practice is intended to predict an occurrence of an outcome, the prediction represents a valid interest, and the outcome predicted by the policy or practice does not or would not have a disparate impact on protected classes compared to similarly situated individuals not part of the protected class, with respect to the allegations under paragraph (b). This is not an adequate defense, however, if the plaintiff demonstrates that an alternative, less discriminatory policy or practice would result in the same outcome of the policy or practice, without imposing materially greater costs on, or creating other material burdens for the defendant.

(ii) The plaintiff has failed to establish that a policy or practice has a discriminatory effect under paragraph (c) of this section.

(iii) The defendant's policy or practice is reasonably necessary to comply with a third party requirement, such as a:

(A) Federal, state, or local law;

(B) Binding or controlling court, arbitral, administrative order or opinion; or

(C) Binding or controlling regulatory, administrative, or government guidance or requirement.

(e) *Business of insurance laws.* Nothing in this section is intended to invalidate, impair, or supersede any law enacted by any state for the purpose of regulating the business of insurance.

(f) *Remedies in discriminatory effect cases.* In cases where liability is based solely on a discriminatory effect theory, remedies should be concentrated on eliminating or reforming the discriminatory practice so as to eliminate disparities between persons in a particular protected class and other persons. In administrative proceedings under 42 U.S.C. 3612(g) based solely on discriminatory effect theory, HUD will seek only equitable remedies, provided that where pecuniary damage is proved, HUD will seek compensatory damages or restitution; and provided further that HUD may pursue civil money penalties in discriminatory effect cases only where the defendant has previously been adjudged, within the last five years, to have committed unlawful housing discrimination under the Fair Housing Act, other than under this section.

(g) *Severability.* The framework of the burdens and defenses provisions are considered to be severable. If any provision is stayed or determined to be invalid or their applicability to any person or circumstances invalid, the remaining provisions shall be construed as to be given the maximum effect permitted by law.

Anna Maria Farías,

Assistant Secretary for Fair Housing and Equal Opportunity.

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Part III

The President

Proclamation 10077—Constitution Day, Citizenship Day, and Constitution Week, 2020

Proclamation 10078—National POW/MIA Recognition Day, 2020

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 10077 of September 17, 2020

Constitution Day, Citizenship Day, and Constitution Week, 2020

By the President of the United States of America

A Proclamation

In the summer of 1787, fifty-five delegates from throughout the fledgling United States gathered at the Pennsylvania State House in Philadelphia, intent on erecting a government that would stand the test of time and protect hard-won freedoms secured during the Revolutionary War. Two hundred and thirty-three years later, the document they produced—our Constitution—remains the bedrock of our system of government, one rooted in equality under the law and an unyielding commitment to individual liberty. On this day and during this week, we celebrate our great founding charter as an enduring beacon of freedom and strive toward active citizenship in service of its ideals.

With profound wisdom, the Framers of our Constitution divided political power among three separate and coequal branches, and further between the Federal and State governments, ensuring that a government of the people, by the people, and for the people would remain accountable to its citizens, from whom all legitimate political power is derived. Our Constitution outlines a government that encourages individuals to flourish while still empowering the state to perform necessary functions like protecting law and order and providing essential public goods. This revolutionary concept has made and continues to make our Nation the most free and just society in the world. Because its principles are timeless and rooted in truth, our Constitution has fostered freedom at home, as well as the liberation of countless oppressed peoples around the world. In the more than 2 centuries since its ratification, it has served as an unparalleled engine for human progress.

A key feature of our Constitution is an independent Federal judiciary, which helps safeguard its structure and ensure individual rights. In *Federalist 78,* Alexander Hamilton describes the proper role of the courts as keeping the legislature ''within the limits assigned to their authority,'' handing down decisions in accordance with the principle that ''a constitution is, in fact, and must be regarded by the judges, as a fundamental law.'' In reverence of the wisdom of the Founders, I have made it a top priority to nominate to the Federal bench only those judges who have demonstrated a commitment to enforcing the Constitution as written. To date, I have nominated and the Senate has confirmed more than 240 judges who will faithfully adhere to this foundational judicial principle, including two incredible Supreme Court Justices.

While freedom-loving Americans rightfully venerate and defend our Constitution, we must also remain cognizant that there are those in our society who wish to tear down our institutions and threaten our sacred constitutional freedoms. In recent months, statues of great American heroes like Abraham Lincoln, Ulysses S. Grant, and Theodore Roosevelt have been threatened, torn down, defaced, and destroyed. In cities throughout our country, radical groups have attacked monuments honoring the unrivaled contributions our Founding Fathers made to human freedom. These groups and individuals are attempting to topple constitutional law and order—the very foundation of self-government—by attacking the Constitution and the integrity of our

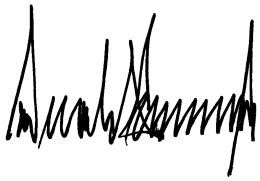
national heroes, falsely decrying our country and its institutions as evil and unjust.

As President, I will never allow such heinous attacks to go unpunished. I will continue to honor the legacy of our history by protecting our freedoms and safeguarding our Constitution and the boundless opportunity it affords to the people of our great Nation. We should always celebrate the brave Americans who fought tyranny to secure the very liberty that these extremists take for granted. To this end, in June of this year, I signed an Executive Order on Protecting American Monuments, Memorials, and Statues, and Combating Recent Criminal Violence, ensuring that anarchy and base criminal acts will no longer tarnish memorials built to honor the heroes who have served our country and defended our Constitution. On this Constitution and Citizenship Day, and during this Constitution Week, we recommit to upholding our constitutional system, to honoring its Framers and those who have sacrificed to defend it—who knew the true price of liberty—and to embracing the duty we as citizens have to preserve the society it has built.

The Congress, by joint resolution of February 29, 1952 (36 U.S.C. 106), designated September 17 as ''Constitution Day and Citizenship Day,'' and by joint resolution of August 2, 1956 (36 U.S.C. 108), requested that the President proclaim the week beginning September 17 and ending September 23 of each year as ''Constitution Week.''

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 September 17, 2020, as Constitution Day and Citizenship Day, and September 17, 2020, through September 23, 2020, as Constitution Week. On this day and during this week, we celebrate the citizens and the Constitution that have made America the greatest Nation this world has ever known. In doing so, we recommit ourselves to the enduring principles of the Constitution and thereby ''secure the Blessings of Liberty to ourselves and our posterity.''

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of September, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



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Presidential Documents

Proclamation 10078 of September 17, 2020

National POW/MIA Recognition Day, 2020

By the President of the United States of America

A Proclamation

Throughout our Nation's history, America's sons and daughters have heroically safeguarded our precious freedoms and defended the cause of liberty both at home and abroad. On National POW/MIA Recognition Day, we remember the more than 500,000 prisoners of war who have endured incredible suffering and brutality under conditions of extraordinary privation, and the tens of thousands of our patriots who are still missing in action. Although our Nation will never be able to fully repay our debt to those who have given so much on our behalf, we commemorate their bravery and recommit to working for their long-suffering families who deserve answers and solace for their missing loved ones.

Today, I join a grateful Nation in honoring those POWs who faithfully served through extreme hardship and unimaginable physical and emotional trauma. Their lives and resilience reflect the best of the American Spirit, and their immeasurable sacrifices have ensured the blessings of freedom for future generations. On this day, we also reaffirm our unceasing global efforts to obtain the fullest possible accounting of our MIA personnel. The search, recovery, and repatriation of MIA remains help bring closure to families bearing the burden of the unresolved fate of their loved ones. That is why in 2018, I worked to secure the historic repatriation of remains from North Korea, and why we are continually working to bring more home from around the world. My Administration will never waver in fulfilling our country's obligation to leave no service member behind.

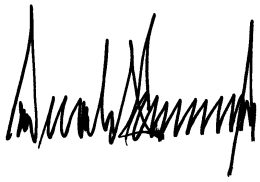
This year, as we commemorate the 75th anniversary of the end of World War II and reflect upon both the 70th anniversary of the start of the Korean War and the 45th anniversary of the end of the Vietnam War, we pause to recognize the men and women who were held as POWs or deemed MIA in these conflicts against repressive ideologies. These service members and civilians, many from the Greatest Generation, deserve a special place of honor in the hearts of all Americans because of their selfless devotion, unflinching courage, and unsurpassed dedication to our cherished American values.

On September 18, 2020, our Nation's citizens will look to the iconic black and white flag as a powerful reminder of the service of America's POWs and service members who have gone MIA. This flag, especially when flying high above our military installations abroad, conveys the powerful message of American devotion to the cause of human liberty and our commitment to never forget the brave Americans lost defending that liberty. On this National POW/MIA Recognition Day, our Nation takes a special moment to pay tribute to those who endured the horrors of enemy captivity and those lost in service to our country. Our Nation will continue to be resolute in our relentless pursuit of those remains of service members who have yet to return home from war and our steadfast promise to their families that their loved ones will never be forgotten.

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 laws of the United States, do hereby proclaim September 18, 2020,

as National POW/MIA Recognition Day. Together with the people of the United States, I salute all American POWs who, in the presence of great dangers and uncertainties, valiantly honored their duty to this great country. Let this day also serve as a reminder for our Nation to strengthen our resolve to account for those who are still missing and provide their families long-sought answers. I call upon Federal, State, and local government officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of September, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fifth.



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